

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

GENISE A. PENNANT,
Petitioner

v.

DEPARTMENT OF THE AIR FORCE,
Respondent

2024-2295

Petition for review of the Merit Systems Protection Board in No. AT-0752-19-0689-I-1.

Before REYNA, LINN, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Genise A. Pennant petitions this court to review the final decision of the Merit Systems Protection Board affirming her removal and rejecting her affirmative defense of discrimination based on disability. In response to this court's show cause order, Ms. Pennant appears to argue in favor of this court's jurisdiction, while the Department of the Air Force argues in favor of transfer.

Federal district courts, not this court, have jurisdiction over "[c]ases of discrimination subject to the provisions of

[5 U.S.C. §] 7702,” 5 U.S.C. § 7703(b)(2), which involve an allegation of an action appealable to the Board and an allegation that a basis for the action was covered discrimination (even if other defenses are also raised), § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). Here, Ms. Pennant appealed her removal to the Board, alleged that a basis of that action was covered discrimination, and continues to pursue her discrimination claim, such that her case belongs in district court.¹ We agree with the Department of the Air Force that transfer to the United States District Court for the Middle District of Florida, where the employment action appears to have occurred, is appropriate. *See* 28 U.S.C. § 1631.

Accordingly,

¹ Ms. Pennant argues that she did not raise a claim of covered discrimination under § 7702 (contrary to the Board’s decision), ECF No. 12 at 1, yet she continues to argue that “[f]ederal [l]aw was supposed to provide protections . . . [under] Titles I and V of the Americans with Disabilities Act (ADA).” ECF No. 10 at 2. “[T]he ADA does not apply to federal employers,” but “the Rehabilitation Act [of 1973, listed in § 7702,] provides federal employees with an essentially identical remedy for employment discrimination based on disability.” *Knope v. Garland*, No. 20-3274, 2021 WL 5183536, at *1 n.2 (2d Cir. Nov. 9, 2021).

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IT IS ORDERED THAT:

This matter and all case filings are transferred to the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 21, 2024
Date