

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2007-3021

MARIA E. WILLIAMS,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent,

and

DEPARTMENT OF THE ARMY,

Intervenor.

ON MOTION

Before RADER, Circuit Judge.

## ORDER

The Merit Systems Protection Board moves for leave to intervene and moves to reform the caption to designate the Board as the respondent. The Board states that Maria E. Williams opposes. The Department of the Army opposes and moves, in the alternative, for leave to intervene.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns the procedure or jurisdiction of the Board. The employing agency is designated as the respondent when the Board reaches the merits of the underlying case.

Williams filed an appeal at the Board alleging that her resignation from her position of administrative support assistant was involuntary. The Administrative Judge determined

that she had not demonstrated that her resignation was involuntary and dismissed the appeal for lack of jurisdiction. Because the Board held that it did not have jurisdiction, it did not address the merits of her case. See Garcia v. Department of Homeland Security, 437 F.3d 1322, 1341 (Fed. Cir. 2006) (en banc) (“In a constructive action case, the jurisdictional fact at issue is almost always whether the facially voluntary action was involuntary. Involuntariness is essential for jurisdiction and it must be proven by the claimant. But while jurisdiction is established under 5 U.S.C. § 7512, the merits of the case are determined by the agency’s compliance with § 7513(a)-(b). In other words, the jurisdictional determination is not identical to the merits determination.”).

Because the Board determined that it lacked jurisdiction, the Board is the proper respondent.

Accordingly,

IT IS ORDERED THAT:

- (1) The Board’s motions are granted. The revised official caption is reflected above.
- (2) The Army’s motion for leave to intervene is granted.
- (3) The Board and the Army should calculate the due date for their briefs from the date of filing of this order.

February 15, 2007  
Date

/s/ Randall R. Rader  
Randall R. Rader  
Circuit Judge

cc: Maria E. Willams  
John S. Groat, Esq.  
Jeffrey A. Gauger, Esq. (copy of petitioner’s informal brief enclosed)

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