

NOTE: This order is nonprecedential.

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

ERIKA GOODMAN,
Petitioner

v.

DEPARTMENT OF LABOR,
Respondent

2023-2108

Petition for review of the Merit Systems Protection Board in No. CH-0752-21-0327-I-1.

ON MOTION

Before DYK, CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

O R D E R

The Department of Labor moves to waive Federal Circuit Rule 27(f) and to dismiss Erika Goodman's petition for review as untimely. Ms. Goodman opposes. We agree that this court lacks jurisdiction, albeit on a different basis, and we conclude that transfer to the United States District Court for the Northern District of Illinois is appropriate.

Ms. Goodman filed an appeal with the Merit Systems Protection Board challenging her removal as a Management Analyst with the Department of Labor in Chicago, Illinois. As relevant here, Ms. Goodman alleged that the removal constituted retaliation for Equal Employment Opportunity (“EEO”) activities. The Board ultimately affirmed the agency’s actions.

We have jurisdiction to review “a final order or final decision of the Board,” except in “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” which involve allegations of an agency action appealable to the Board, and the action was based on covered discrimination. 5 U.S.C. § 7703(b)(1), (b)(2). Such “mixed cases shall be filed in district court.” *Kloeckner v. Solis*, 568 U.S. 41, 50 (2012). See *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 432 (2017); *Diggs v. Dep’t of Hous. & Urb. Dev.*, 670 F.3d 1353, 1357 (Fed. Cir. 2011). Here, Ms. Goodman alleged before the Board that her removal was based, at least in part, on retaliation for prior EEO activity and states that she continues to seek review of her discrimination claim. See ECF No. 10. Thus, Ms. Goodman has brought a mixed case, which we do not have jurisdiction to review.

Under 28 U.S.C. § 1631, when this court lacks jurisdiction, we shall transfer a case, “if it is in the interest of justice” to do so, to an appropriate court where the “action or appeal could have been brought at the time it was filed.” The Department of Labor’s motion does not challenge the district court’s subject-matter jurisdiction over this case. We conclude that it is in the interest of justice to transfer to the United States District Court for the Northern District of Illinois.

Accordingly,

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IT IS ORDERED THAT:

The motion to waive Federal Circuit Rule 27(f) and to dismiss is granted to the extent that this case and all filings are transferred to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 1631.

FOR THE COURT

October 20, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court