NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT,
Petitioner

v.

RONALD L. MOULTON, JILL MOULTON, MERIT SYSTEMS PROTECTION BOARD,
Respondents

2024-109

Petition from the Merit Systems Protection Board in No. DE-0841-18-0053-I-1.

ON PETITION

Before CHEN, LINN, and HUGHES, *Circuit Judges*.

PER CURIAM.

O R D E R

The Director of the Office of Personnel Management ("OPM") petitions for review of a final order of the Merit Systems Protection Board pursuant to 5 U.S.C. § 7703(d). Specifically, OPM seeks review of the Board's decision that

the governing statute, 5 U.S.C. § 8421(c), authorizes apportionment of a retirement annuity supplement only when the terms of a court order expressly provide for division of the supplement. The Board does not oppose the petition. Ronald L. Moulton and Jill Moulton did not respond.

Pursuant to 5 U.S.C. § 7703(d), this court has "discretion" whether to permit OPM's petition for review of a Board decision when OPM determines that "the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive."[1] We conclude that OPM's petition should be permitted here. We note that Mrs. Moulton passed away after the Board issued its decision.[2] Any personal representative or attorney for Mrs. Moulton's estate who intends to participate on appeal must file a motion for leave to intervene.

Accordingly,

IT IS ORDERED THAT:

(1) OPM's petition is granted. This case is transferred to the regular docket. OPM's opening brief is due within 60 days of the date of entry of this order.

---

[1] While Mr. Moulton appears to have raised a claim of age discrimination before the Board, Appx7 n.7, this is not a "mixed case" subject to review in district court, because this case is brought under § 7703(d) and not § 7703(b), *see Kaplan v. Conyers*, 733 F.3d 1148, 1154 (Fed. Cir. 2013).

[2] OPM and the Board agree that there is a live case or controversy based at least on Mr. Moulton's cognizable interest in a refund of his previously apportioned supplement payments. *See* Pet. at 5 n.4; Board Resp. at 2–3.

(2) Absent objection within 30 days of the date of entry of this order, the official caption will be revised to remove Jill Moulton as a respondent in the case. Any personal representative or attorney for Mrs. Moulton's estate intending to participate on appeal must file a motion for leave to intervene within that time.

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

May 3, 2024
Date