

NOTE: This order is nonprecedential.

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

HEATHER CLARK,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1501

Petition for review of the Merit Systems Protection Board in No. PH-1221-24-0032-W-1.

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

PER CURIAM.

O R D E R

In response to this court's March 15, 2024 show cause order, the Merit Systems Protection Board urges dismissal while Heather Clark urges the court to "remand" "for proper due process, with a new judge" because her case has been "unlawful[ly] stay[ed]," ECF No. 16 at 3, 5.

Ms. Clark filed a whistleblower individual right of action appeal with the Board on October 17, 2023. On February 13, 2024, the administrative judge issued an order denying Ms. Clark's motion to dismiss based on alleged

judicial misconduct, directing the parties by the end of that month to address whether Ms. Clark’s resignation was voluntary, and to caution Ms. Clark against sending inappropriate communications to the Board. ECF No. 18 at 24. Ms. Clark appears to seek this court’s review of that order.

This court’s jurisdiction is limited to “an appeal from a final order or final decision of the . . . Board.” 28 U.S.C. § 1295(a)(9). “[A]n order is final only when it ends the litigation on the merits and leaves nothing for the [tribunal] to do but execute the judgment.” *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). Here, the Board has not finally resolved Ms. Clark’s appeal. Ms. Clark’s reliance on Rule 54(b) of the Federal Rules of Civil Procedure is unavailing because that rule does not apply to the Board, *see* Fed. R. Civ. P. 1 (noting the rules apply to federal district courts), and, in any event, the February 13, 2024 order did not resolve any claims and was not certified by the administrative judge for immediate appeal to the Board. Thus, there has been no final, appealable decision or order. If necessary, Ms. Clark may seek this court’s review of her case and arguments of error(s) after the Board issues a final decision or order in her proceedings.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed as premature.
- (2) Each side shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

May 3, 2024
Date