

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1459

TYSHA S. HOLMES,

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE ARMY; U.S. MERIT SYSTEMS
PROTECTION BOARD,

Respondents.

On Petition for Review of an Order of the Merits Systems Protection Board. (AT-0752-11-0263-B-4)

Submitted: September 28, 2023

Decided: October 2, 2023

Before NIEMEYER, THACKER, and RUSHING, Circuit Judges.

Petition dismissed by unpublished per curiam opinion.

Tysha S. Holmes, Petitioner Pro Se. Miles Jarrad Wright, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Katherine Michelle Smith, UNITED STATES MERIT SYSTEMS PROTECTION BOARD, Washington, D.C., for Respondents.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tyscha S. Holmes seeks review of the Merit Systems Protection Board's (MSPB) final decision upholding Holmes' removal from service and finding that Holmes failed to prove her race discrimination and whistleblower retaliation affirmative defenses. The United States Department of the Army ("the Army") has filed a motion to dismiss Holmes' petition, and the MSPB has filed a motion to amend the caption to designate the Army as the sole respondent. Holmes opposes Respondents' motions and moves for an extension of time to file her petition for review.

As she did before the MSPB, Holmes argues that discrimination and whistleblower retaliation were the bases for her removal from service. Holmes has therefore brought a "mixed case" and may only seek judicial review of the MSPB's decision "in federal *district court*." *Zachariasiewicz v. U.S. Dep't of Just.*, 48 F.4th 237, 243 (4th Cir. 2022) (emphasis added). We therefore grant the Army's motion to dismiss and dismiss Holmes' petition for lack of subject matter jurisdiction. We deny as moot the MSPB's motion to amend and Holmes' motion for extension of time. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DISMISSED