

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3216

STUART D. MILLER,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board in DC0752080714-I-1.

ON MOTION

Before GAJARSA, Circuit Judge.

ORDER

The Department of Homeland Security moves to reform the official caption to designate the Merit Systems Protection Board as respondent. Stuart D. Miller opposes.

Miller filed two appeals at the Board: one alleging that the Department improperly reassigned him to a lower-grade position and improperly denied his request to use annual leave; the other alleging that his subsequent decision to retire was involuntary. The Board determined that it lacked jurisdiction over Miller's reassignment and leave appeal and remanded his involuntary retirement appeal for further adjudication. Miller petitions for this court's review of the Board's reassignment and leave appeal decision.

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. In this

case; the Board dismissed the appeal for lack of jurisdiction. Thus, the Board is the proper respondent in this petition for review.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The revised official caption is reflected above.
- (2) The Board should calculate its brief due date from the date of filing of this

order.

FOR THE COURT

OCT 01 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Stuart D. Miller
Kent C. Kiffner, Esq.
Calvin Morrow, Esq. (copy of petitioner's informal brief enclosed)

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

OCT 01 2009

JAN HORBALY
CLERK