

NOTE: This order is nonprecedential.

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

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**MARSHA L. PAYTON,**  
*Petitioner,*

v.

**MERIT SYSTEMS PROTECTION BOARD,**  
*Respondent.*

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2013-3011

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Petition for review of the Merit Systems Protection Board in case no. AT0353110956-I-1.

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**ON MOTION**

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**O R D E R**

The Department of Homeland Security moves to recaption to name the Merit Systems Protection Board as respondent.

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. The employing agency is designated as the respondent when the Board reaches the merits of the underlying case. Here, the Board

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dismissed Payton's appeal for lack of jurisdiction. Thus, the Board is the proper respondent in this petition for review.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The revised official caption is reflected above. The Board's responsive brief is due within 21 days of the date of filing of this order.

FOR THE COURT

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

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