

NOTE: This order is nonprecedential.

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

JOSEPH C. PAYNE,
Petitioner

v.

UNITED STATES POSTAL SERVICE,
Respondent

2022-1419

Petition for review of the Merit Systems Protection Board in No. PH-3443-21-0363-I-1.

ON MOTION

Before DYK, REYNA, and CHEN, *Circuit Judges*.

PER CURIAM.

O R D E R

The United States Postal Service (USPS) moves to waive the timing requirement under Federal Circuit Rule 27(f) and to dismiss this petition for review for lack of jurisdiction. Joseph C. Payne responds.

On September 21, 2021, Mr. Payne filed an appeal at the Merit Systems Protection Board related to USPS's

failure to promote him in 2008. He raised two claims, one under the Veterans Employment Opportunity Act (VEOA), and the second under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

After USPS moved to dismiss and the Board issued show cause orders for each claim, the Board dismissed the VEOA claim in a January 11, 2022 preliminary status conference order on the grounds that his claim was untimely and he failed to establish a basis for equitable tolling. SAppx31. On January 18, 2022, the Board suspended case processing for 30 days to allow the parties to prepare for a hearing on Mr. Payne's USERRA claim. That order states that the case was to resume on February 17, 2022. SAppx33. While his case was suspended at the Board, Mr. Payne filed the present petition for review. It appears that Mr. Payne's USERRA claim remains pending, and no initial decision has been issued.

This court's review of Board decisions is limited to final orders or final decisions. *See* 28 U.S.C. § 1295(a)(9); *see also Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009). A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). The administrative judge here has not yet issued an initial decision resolving the entirety of Mr. Payne's claims. Because there is no final order or final decision, this court currently lacks jurisdiction, and therefore this petition must be dismissed.

This order does not prevent Mr. Payne from seeking this court's review by filing a timely petition after the Board enters a final determination in his case.

Accordingly,

IT IS ORDERED THAT:

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(1) The motion is granted, and the petition is dismissed.

(2) All other pending motions are denied as moot.

(3) Each side shall bear its own costs.

FOR THE COURT

April 22, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

ISSUED AS A MANDATE: April 22, 2022