

NOTE: This order is nonprecedential.

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

GARY L. THURMAN,
Petitioner

v.

UNITED STATES POSTAL SERVICE,
Respondent

2022-2196

Petition for review of the Merit Systems Protection Board in No. AT-0752-17-0162-I-1.

Before DYK, BRYSON, and PROST, *Circuit Judges*.

PER CURIAM.

O R D E R

Having considered the parties' responses to the court's order to show cause, the court now transfers this case to the United States District Court for the Northern District of Georgia.

Gary L. Thurman appealed to the Merit Systems Protection Board, challenging his removal from the United States Postal Service. Before the Board, Mr. Thurman argued that the Postal Service violated Title VII of the Civil Rights Act of 1964. After the Board issued its final decision

affirming the agency's removal action, Mr. Thurman filed this petition to review that decision. Mr. Thurman states that he wishes to continue to pursue his Title VII claim, ECF No. 3 at 2; ECF No. 6; ECF No. 12.

Although this court has jurisdiction to review certain decisions of the Board, in cases involving agency actions appealable to the Board and alleged to be based on Title VII discrimination, the appropriate forum for review is the district court. 5 U.S.C. § 7703(b)(2) (listing cases of discrimination under the Civil Rights Act of 1964); *Perry v. Merit Sys. Prot. Bd.*, 137 S. Ct. 1975, 1985 (2017). Here, there appears to be no dispute that Mr. Thurman raised a discrimination claim before the Board, even though the Board declined to consider it on the grounds that it was unduly vague and not raised before the administrative judge.

This court, under 28 U.S.C. § 1631, may, if in the interest of justice, transfer a case to another court where it “could have been brought at the time it was filed.” Here, the Postal Service asserts without contradiction that court is the Northern District of Georgia. While the Postal Service urges dismissal over transfer, contending that Mr. Thurman's discrimination claim “is arguably frivolous,” ECF No. 13-1 at 9, we deem it the better course to transfer to allow the district court to consider any argument on the merits.

Accordingly,

IT IS ORDERED THAT:

Pursuant to 28 U.S.C. § 1631, this case and all transmittals are transferred to the United States District Court

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for the Northern District of Georgia.

FOR THE COURT

December 22, 2022
Date

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