

NOTE: This order is nonprecedential.

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

MICHAEL CORDARO,
Petitioner

v.

DEPARTMENT OF DEFENSE,
Respondent

2022-2247

Petition for review of the Merit Systems Protection Board in No. NY-0432-18-0217-I-1.

ON MOTION

Before HUGHES, WALLACH, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Michael Cordaro petitions for review of a decision of the Merit Systems Protection Board and moves for leave to proceed *in forma pauperis*. We determine that this matter should be transferred to the United States District Court for the Western District of New York.

Mr. Cordaro's mixed case (involving an alleged adverse personnel action appealable to the Board based, at least in part, on a claim of discrimination) has been before this court once before. Previously, Mr. Cordaro filed petitions for review from the same initial decision to the Board and this court. We transferred the case to the Western District of New York. *Cordaro v. Dep't of Def.*, No. 2019-2073 (Fed. Cir. Aug. 16, 2019).^{*} That court entered judgment against Mr. Cordaro, and he has an appeal pending before the United States Court of Appeals for the Second Circuit.

On August 25, 2022, the Board denied Mr. Cordaro's petition as barred on res judicata grounds in light of the district court's judgment. Mr. Cordaro now petitions this court for review of the Board's final decision. Mr. Cordaro's filings before this court indicate that he wishes to continue to pursue his discrimination claim. See ECF No. 3; ECF No. 4.

As we previously explained, only federal district courts have jurisdiction to review a mixed case. See *Perry v. Merit Sys. Prot. Bd.*, 137 S. Ct. 1975, 1985 (2017); *Williams v. Dep't of the Army*, 715 F.2d 1485, 1487 (Fed. Cir. 1983) (en banc); 5 U.S.C. § 7702(a)(1); 29 C.F.R. § 1614.302(a); 5 C.F.R. § 1201.151. We therefore transfer this matter under 28 U.S.C. § 1631 to the Western District of New York.

Accordingly,

^{*} Our transfer order noted that the then-pending petition before the Board did not impact the district court's jurisdiction. See 5 U.S.C. § 7702(e)(1)(B) (allowing an employee to file a civil action if "there is no judicially reviewable action" after "the 120th day following the filing of an appeal with the Board under subsection (a)(1)").

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IT IS ORDERED THAT:

Pursuant to 28 U.S.C. § 1631, this matter and all transmittals are transferred to the United States District Court for the Western District of New York.

FOR THE COURT

November 10, 2022
Date

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