

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2009-3079

PATRICIA HOOKS,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board in  
AT0752070959-I-1.

ON MOTION

Before MOORE, Circuit Judge.

### ORDER

Patricia Hooks moves for an extension of time to file her brief. The Merit Systems Protection Board moves for leave to intervene for purposes of moving to reform the caption to designate the Board as respondent. The Board states that the Department of the Interior opposes.

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.

Hooks filed an appeal alleging that her resignation was involuntary. The Administrative Judge determined that Hooks had not demonstrated that her resignation was involuntary and dismissed the appeal for lack of jurisdiction. Because the Board held

that it did not have jurisdiction, it did not address the merits of the case. See Garcia v. Department of Homeland Security, 437 F.3d 1322, 1341 (Fed. Cir. 2006) (en banc) (“In a constructive action case, the jurisdictional fact at issue is almost always whether the facially voluntary action was involuntary. Involuntariness is essential for jurisdiction and it must be proven by the claimant. But while jurisdiction is established under 5 U.S.C. § 7512, the merits of the case are determined by the agency’s compliance with § 7513(a)-(b). In other words, the jurisdictional determination is not identical to the merits determination”). Thus, the Board is the proper respondent.

Accordingly,

IT IS ORDERED THAT:

(1) Hooks’ motion for an extension of time is granted. Hooks’ brief is due within 60 days of the date of filing of this order. No further extensions should be anticipated.

(2) The Board’s motion to reform the caption is granted. The revised official caption is reflected above.

FOR THE COURT

**MAR 20 2009**

Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

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

cc: Willie C. Weaver, Sr., Esq.  
James P. Connor, Esq.  
Calvin M. Morrow, Esq.

**MAR 20 2009**

**JAN HORBALY**  
**CLERK**

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