

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3087

JAMES E. SLATE,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Petition for review of the Merit Systems Protection Board in
DC3330080612-I-2.

ON MOTION

Before LINN, Circuit Judge.

ORDER

James E. Slate moves for reconsideration of the court's January 29, 2009 order dismissing his petition for review for failure to pay the filing fee and failure to submit a Fed. Cir. R. 15(c) statement concerning discrimination or, in the alternative, requests that the court transfer the case to the United States Court of Appeals for the Fourth Circuit.

Slate submits a Rule 15(c) form and a form indicating that the underlying appeal at the Merit Systems Protection Board involved a claim pursuant to Uniformed Services Employment and Reemployment Rights Act (USERRA). Although it is unclear whether a USERRA claim was raised before the Board, the administrative judge's decision indicates that before the Department of Labor Slate asserted rights under USERRA. Under these circumstances, the court waives the filing fee.

With respect to Slate's alternative request that the court transfer the case to the Fourth Circuit, this court may transfer only if we determine that we lack jurisdiction. See 28 U.S.C. § 1631. This court has jurisdiction to review Board decisions. See 28 U.S.C. § 1295(a)(9). Thus, transfer is not proper.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion for reconsideration is granted, the mandate is recalled, and the petition for review is reinstated.
- (2) The alternative motion to transfer is denied.
- (3) The United States Postal Service should calculate the due date for its brief from the date of filing of this order.

FOR THE COURT

MAY - 4 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

cc: James E. Slate
Shari A. Rose, Esq.

MAY -4 2009

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JAN HORBALY
CLERK