

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3151

WILLIAM B. WILEY,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board in
SF0831090055-I-1.

ON MOTION

Before NEWMAN, Circuit Judge.

ORDER

The Office of Personnel Management (OPM) moves to reform the caption to name the Merit Systems Protection Board as the respondent. OPM states that the Board consents to this motion. William B. Wiley 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. In this case, the Board dismissed the appeal because OPM rescinded its decision and advised that it would be issuing a new decision. Wiley's argument that the dismissal was improper does not change the fact that the Board did not reach the merits of the underlying case. Thus, pursuant to the statute, the Board is designated as the respondent.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The official caption is reflected above.

FOR THE COURT

MAY 19 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

cc: Peter B. Broida, Esq.
Sameer P. Yerawadekar, Esq.
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MAY 19 2009

**JAN HORBALY
CLERK**

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