

NOTE: This order is nonprecedential.

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

2009-3214

GENE M. AUSTON,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent,

And

DEPARTMENT OF VETERANS AFFAIRS,

Intervenor.

On petition for review of the Merit Systems Protection Board  
in CH-1221-09-0041-W-1.

ON MOTION

## **ORDER**

The Department of Veterans Affairs moves to reform the official caption to designate the Merit Systems Protection Board as the respondent and moves for leave to intervene. The Department states that Gene M. Auston 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 deciding agency is designated as the respondent when the Board reaches the merits of the underlying case.

In this case, the Board dismissed the appeal for lack of jurisdiction. Thus, the Board is the proper respondent.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The revised official caption is reflected above.
- (2) The Board and Department should calculate their brief due date from the date of filing of this order.

FOR THE COURT

JAN 11 2010

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Gene M. Auston  
Roger A. Hipp, Esq.  
Jeffrey Gauger, Esq. (copy of petitioner's brief enclosed)

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

JAN 11 2010

JAN HORBALY  
CLERK