

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3249

JAMES E. SWINK, JR.,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board
in CH752S090328-I-1.

ON MOTION

ORDER

The United States Postal Service moves to reform the official caption to designate the Merit Systems Protection Board as the respondent. James E. Swink, Jr. 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 should calculate its brief due date from the date of filing of this order.

FOR THE COURT

JAN 13 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: James E. Swink, Jr.
Michael D. Austin, Esq.
B. Chad Bungard, Esq. (copy of petitioner's brief enclosed)

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

JAN 13 2010

JAN HORBALY
CLERK