

NOTE: This order is nonprecedential.

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

2009-3280

BRODIE J. FLOOD,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Petition for review of the Merit Systems Protection Board in  
PH0831090314-I-1.

ON MOTION

Before MOORE, Circuit Judge.

## **ORDER**

Brodie J. Flood responds to the court's order directing him to respond whether he intends to proceed with his petition for review in this court or his petition for review before the Merit Systems Protection Board and requests that the court appoint pro bono counsel to represent him. The Office of Personnel Management (OPM) moves to dismiss Flood's appeal for lack of jurisdiction.

Flood filed an appeal seeking review of OPM's reconsideration decision reducing the amount of his Civil Service Retirement System annuity. The administrative judge (AJ) issued a decision on June 25, 2009 affirming OPM's reconsideration decision. The AJ's decision indicated that it would become final on July 30, 2009 unless Flood filed a petition for review on that date. Flood filed a petition for review with the Board on August 18, 2009, beyond the permissible time limit. Flood then filed a petition for review in this court on September 4, 2009.

OPM argues that Flood's petition seeks review of a nonfinal decision of the AJ. OPM argues that the AJ's June 25, 2009 is not final based on Flood's attempt to proceed simultaneously in both this court and before the Board. We determine that the June 25 order is a final order, however. The June 25 order became final on July 30, and subsequent events, including the filing of simultaneous petitions for review in this court and with the Board, cannot divest a decision of finality. Thus, we deny the motion to dismiss.

Because it appeared that Flood was attempting to proceed with his case simultaneously in this court and before the Board, the court directed him to respond whether he wished to proceed in this court or with the Board. Although Flood responds that he does not want to dismiss his Board petition, he further explains that he is "appealing to this board." We interpret this as a request to proceed with his case in this court. Further, the court notes that the Board denied Flood's petition for review on October 5, 2009. Under these circumstances, the court determines that Flood may proceed with his case in this court.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is denied.
- (2) Flood's brief is due within 30 days of the date of filing of this order.
- (3) Flood's request that the court appoint pro bono counsel is denied.

FOR THE COURT

FEB 26 2010

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Brodie J. Flood (pro se guide and informal brief form enclosed)  
Alex P. Hontos, Esq.

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

FEB 26 2010

JAN HORBALY  
CLERK