

NOTE: This order is nonprecedential.

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

STEPHEN W. GINGERY,
Petitioner,

v.

DEPARTMENT OF THE TREASURY,
Respondent.

2010-3093

Petition for review of the Merit Systems Protection
Board in CH3330090303-I-1.

ON MOTION

O R D E R

Stephen W. Gingery moves to reform the caption to name the Merit Systems Protection Board as the respondent. The Department of the Treasury opposes. Gingery also moves without opposition for a 30-day extension of time.

Gingery filed a complaint with the Board seeking corrective action under the Veterans Employment Opportunities Act of 1988 (VEOA) for failure to select him

to the position of Internal Revenue Agent for announced vacancies in Detroit, Pontiac, and Mt. Clemens, Michigan.

The Administrative Judge (AJ) issued an initial decision denying Gingery's request for a corrective action. Gingery sought review of the AJ's initial decision by the Board. In its December 28, 2009 decision now on review, the Board sustained the AJ's denial of Gingery's request for corrective action. However, the Board modified the AJ's decision to reflect that the Board lacked jurisdiction over the challenge to the nonselection for the Detroit or Pontiac positions because Gingery had failed to exhaust his administrative remedies before seeking review by the Board.

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. Because the Board in part reached the merits of the underlying VEOA corrective action, the agency is the proper respondent.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to reform the caption is denied.

(2) The motion for an extension of time is granted. Gingery's brief is due within 30 days from the date of filing of this order.

FOR THE COURT

JUN 11 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

JUN 11 2010

JAN HORBALY
CLERK

cc: Stephen W. Gingery
Devin A. Wolak, Esq.

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