

Appendix C

NOTE: This order is nonprecedential.

United States Court of Appeals
for the Federal Circuit

HENRY E. GOSSAGE,

Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent

2018-1970

Petition for review of the Merit Systems Protection
Board in No. SE-0731-01-0261-I-5.

Before REYNA, TARANTO, and STOLL, *Circuit
Judges.*

PER CURIAM.

O R D E R

After receiving the parties' responses to this court's
show cause order, the court dismisses Henry E.
Gossage's petition for review for lack of jurisdiction.

I.

In July 2008, an administrative judge of the Merit Systems Protection Board affirmed the determination of the Office of Personnel Management (“OPM”) that Mr. Gossage was not suitable for employment. The full Board affirmed that decision on March 24, 2009. Mr. Gossage petitioned this court to review that final Board decision, but the petition was ultimately dismissed in October 2009 for failure to prosecute after he failed to file a brief.

In February 2012, Mr. Gossage sought the Board’s reconsideration, alleging that he obtained evidence in 2011 that revealed OPM had defrauded the Board during the course of his first appeal. Mr. Gossage filed a second request for reconsideration in May 2012, which repeated these allegations. On August 3, 2012, the Board’s Office of the Clerk (“Clerk”) sent Mr. Gossage a form letter explaining that he had no right to seek reconsideration of the Board’s March 24, 2009 final decision. Mr. Gossage did not seek review of that letter in this court.

On March 12, 2018, Mr. Gossage filed at the Board a document styled as a new appeal but merely reasserting the allegations from his prior requests for reconsideration. * On April 27, 2018, the Clerk again sent Mr. Gossage a letter identical in substance to the previous letter, explaining he had no right to seek reconsideration of the Board’s March 24, 2009 final decision. Mr. Gossage then petitioned this court for review of the letter.

* It appears that on August 6, 2012 and February 7, 2013, Mr. Gossage filed a third

and fourth request for reconsideration making the same allegations, which were again met with a letter from the Clerk of the Board. Mr. Gossage also did not seek review of that letter.

II.

This court's jurisdiction to review decisions by the Board is limited. Pursuant to 28 U.S.C. §1295(a)(9), we may only hear "an appeal from a final order or final decision" of the Board. We conclude that the Clerk's letter denying Mr. Gossage's request to reconsider his appeal was not a final order or decision of the Board. In *Haines v. Merit Systems Protection Board*, 44 F.3d 998, 1000 (Fed. Cir. 1995), this court held that a form letter from the Clerk denying a repetitive motion to reopen was not a "final order or final decision" of the Board because it was not akin to an initial decision, a denial of a petition for review by the Board, or a Board decision disposing of an entire action. Rather, the Clerk's form letter was "merely an administrative response" to the petitioner's third request to reopen the appeal, and the Clerk "was performing only a ministerial function" within his delegated authority. *Id.*; see also *McCarthy v. Merit Sys. Prot. Bd.*, 809 F.3d 1365, 1370 (Fed. Cir. 2016).

As in *Haines*, the Clerk's April 2018 letter was simply an administrative response to a repetitive motion for reconsideration. We therefore dismiss.

Accordingly,

IT IS ORDERED THAT:

The stay of the briefing schedule is lifted.

The petition for review is dismissed.

All pending motions are denied.

Each side shall bear its own costs.

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

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