

APPENDIX A-1

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

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HENRY E. GOSSAGE, Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT, Respondent

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2021-1026

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Petition for review of the Merit Systems Protection Board  
in No. SE-0731-01-0261-L-3.

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PER CURIAM.

**O R D E R**

Having considered the parties' responses to the court's November 3, 2020 order to show cause, we dismiss.

By way of background, Henry E. Gossage previously filed an appeal at the Merit Systems Protection Board challenging the Office of Personnel Management (OPM)'s decision disqualifying him from a position with the Occupational Safety and Health Administration and disbaring him from federal government employment. While those proceedings were pending, OPM withdrew its disbarment but sustained OSHA's request to disqualify Mr. Gossage. After additional proceedings, the Board issued a final decision in March 2009 sustaining that

determination. Since then, Mr. Gossage has made several unsuccessful attempts to reopen that Board decision.

On September 9, 2020, Mr. Gossage filed a petition for review at this court, which identified a May 8, 2020 letter from the Board's regional office informing him that his request to reopen a suitability appeal was being forwarded to the Office of the Clerk of the Board for consideration. The Clerk of the Board informs this court that no further action by the Board was taken on that repetitive request.

Mr. Gossage's response to this court's show cause order further suggests that he may also be attempting to seek this court's review of a December 27, 2004 notation on an OPM form stating that Mr. Gossage's "[e]ligibility [was] reinstated during MSPB appeal." Pet'r's Resp. at Ex. B.

We agree with OPM that Mr. Gossage has not shown that this court has jurisdiction over his petition. To begin, the May 2020 letter identified in the petition is merely an administrative response to Mr. Gossage's submission forwarding the letter to the Board. It is not "a final order or decision" of the Board that is subject to our review under 28 U.S.C. § 1295(a)(9). *See McCarthy v. Merit Sys. Prot. Bd.*, 809 F.3d 1365, 1370 (Fed. Cir. 2016). As to OPM's December 2004 notation, Mr. Gossage insists that "[n]o decision on the MERITS from OPM's December 27, 2004 New and Final determination has been adjudicated by the MSPB and Federal Circuit." Pet'r's Resp. at 3. However, even if this were true and not subject to the finality of the March 2009 decision, we would still lack jurisdiction because we have no authority to directly review OPM decisions. *See In re McAfee*, 65 F. App'x 292 (Fed. Cir. 2003).

Accordingly,

IT IS ORDERED THAT:

- (1) The petition is dismissed.
- (2) Each side shall bear its own costs.
- (3) All other pending motions are denied.

December 18, 2020

Clerk of Court

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\* Circuit Judge Hughes did not participate.