

NOTE: This order is nonprecedential.

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

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

O R D E R

After consideration of the parties' responses to this court's order directing them to show cause whether Martin

Akerman's petition for review should be dismissed for lack of jurisdiction, we dismiss.*

The court received Mr. Akerman's petition for review identifying two Merit Systems Protection Board docket numbers—DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1—and specifically requesting review of a "Third Order" entered May 22, 2023. ECF No. 1-2 at 1. Attached to that petition is a May 22, 2023, decision from the administrative judge in DC-0752-23-0457-I-1 entitled "Third Order," which denies Mr. Akerman's motion for "Certification of Interlocutory Appeal" to the Board.

The court directed the parties to show cause because while 28 U.S.C. § 1295(a)(9) provides the court with jurisdiction over "an appeal from a final order or final decision of the Merit Systems Protection Board," the administrative judge's denial of Mr. Akerman's third request for an interlocutory appeal to the Board does not "end[] the litigation on the merits and leave[] nothing for the [tribunal] to do but execute the judgment," *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). Thus, it is not a "final" order or decision that can be immediately appealed to this court. Mr. Akerman asserts that the order is nonetheless appealable under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), but *Cohen's* collateral order doctrine is for only a "small class of collateral rulings that," among other things, "resolve important questions separate from the merits," *Kaplan v. Conyers*, 733 F.3d 1148, 1154 (Fed. Cir. 2013) (cleaned up). Here, the interlocutory order is not such an order; rather,

* Mr. Akerman appears to seek reconsideration of the court's July 31, 2023, order denying his request to consolidate this case with Appeal No. 2023-2216 (concerning Board No. DC-3443-22-0639-I-1), but that request is denied as moot given this dismissal. Mr. Akerman's request to modify the caption is also denied.

AKERMAN v. MSPB

3

Mr. Akerman appears to simply want expedited review of the “underlying . . . issues,” ECF No. 20 at 2, which is insufficient.

Moreover, we note that in DC-0752-23-0457-I-1, the administrative judge has since issued an initial decision, but Mr. Akerman’s petition here does not challenge that initial decision, and, in any event, that decision remains non-final because Mr. Akerman filed a timely petition for review with the Board, such that our review of that decision is premature. *See* 5 C.F.R. § 1201.113(a); *Weed*, 571 F.3d at 1361–63. Lastly, we note that Mr. Akerman’s submissions here have not reasonably identified any decision, final or otherwise, in DC-0752-23-0457-S-1 for this court to review. We therefore dismiss.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

October 13, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court