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NOTE: This order is nonprecedential.

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

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**LAWRENCE E. MATTISON,**  
*Petitioner*

v.

**DEPARTMENT OF VETERANS AFFAIRS,**  
*Respondent*

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2024-1982

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Petition for review of the Merit Systems Protection  
Board in No. DC-0752-16-0350-B-1.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before MOORE, *Chief Judge*, LOURIE, LINN<sup>1</sup>, DYK,  
PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL,  
CUNNINGHAM, and STARK, *Circuit Judges*.<sup>2</sup>

PER CURIAM.

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<sup>1</sup> Circuit Judge Linn participated only in the decision on the petition for panel rehearing.

<sup>2</sup> Circuit Judge Newman did not participate.

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**ORDER**

On December 17, 2024, Lawrence E. Mattison filed a combined petition for panel rehearing and rehearing en banc [ECF No. 24]. The petition was referred to the panel that issued the order, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

January 27, 2025  
Date

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NOTE: This order is nonprecedential.

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

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**LAWRENCE E. MATTISON,**  
*Petitioner*

v.

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2024-1982

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PER CURIAM.

**ORDER**

In response to this court's August 26, 2024 order directing the parties to show cause, the Department of Veterans Affairs ("DVA") urges transfer while Lawrence E. Mattison argues in favor of this court's jurisdiction.

In February 2016, the DVA terminated Mr. Mattison, and he appealed his removal to the Merit Systems Protection Board alleging, *inter alia*, discrimination on the basis of gender and race. The Board affirmed. Mr. Mattison then filed this petition seeking review of that decision.

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Mr. Mattison indicates that he now wishes to abandon his claims of discrimination and proceed before this court. ECF No. 20.<sup>1</sup> However, he previously filed a complaint in the United States District Court for the Eastern District of Virginia against the Secretary of Veterans Affairs alleging wrongful termination based on “race/sex” discrimination. See *Mattison v. Wilkie*, No. 4:19-cv-00018, Dkt. No. 3 at ¶ 2 (E.D. Va. Mar. 12, 2019) (emphasis omitted). The district court dismissed that complaint for failure to state a claim, finding, as relevant here, that Mr. Mattison “fail[ed] to allege facts sufficient to establish plausible claims of race or sex discrimination under Title VII or [42 U.S.C.] § 1981.” *Mattison v. Wilkie*, No. 4:19-cv-00018, 2020 WL 13691771, at \*5 (E.D. Va. Feb. 10, 2020). Mr. Mattison appealed the dismissal to the United States Court of Appeals for the Fourth Circuit, which affirmed.

Federal district courts, not this court, have jurisdiction over “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” 5 U.S.C. § 7703(b)(2), which involve an allegation of an action appealable to the Board and an allegation that a basis for the action was covered discrimination, 5 U.S.C. § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). A petitioner does not bring a “[c]ase[] of discrimination” when he has abandoned his discrimination claims, *Harris v. SEC*, 972 F.3d 1307, 1318 (Fed. Cir. 2020), however “Congress did not direct or contemplate bifurcated review” by this court of the personnel action and by the district court of discrimination claims raised before the Board, *Williams v. Dep’t of the Army*, 715 F.2d 1485, 1490 (Fed. Cir. 1983); see *Punch v. Bridenstine*, 945 F.3d 322, 330 (5th Cir. 2019) (“When federal employees have

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<sup>1</sup> The court understands ECF No. 20 to supersede the earlier-filed corrected versions of Mr. Mattison’s Statement Concerning Discrimination (ECF Nos. 16-2 and 17-2) such that no action is taken on those earlier versions.

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discrimination and non-discrimination claims arising from 'the same or related facts,' every court of appeals to consider the question has prohibited bifurcation.").

Under the present circumstances, because this court's review would result in that prohibited bifurcation, we agree with the DVA that this case belongs in district court for that court to adjudicate Mr. Mattison's challenge to the Board's final decision. We therefore transfer to the Eastern District of Virginia. See 28 U.S.C. § 1631.

Accordingly,

IT IS ORDERED THAT:

This matter and all case filings are transferred to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

December 11, 2024  
Date

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NOTE: This order is nonprecedential.

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

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**LAWRENCE E. MATTISON,**  
*Petitioner*

v.

**DEPARTMENT OF VETERANS AFFAIRS,**  
*Respondent*

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2024-1982

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Petition for review of the Merit Systems Protection Board in No. DC-0752-16-0350-B-1.

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**ON MOTION**

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PER CURIAM.

**ORDER**

Lawrence E. Mattison moves for leave to proceed *in forma pauperis* and to file an appendix. The court considers its jurisdiction over this petition for review.

Mr. Mattison appeals from the Merit Systems Protection Board's final decision affirming his removal from federal employment. In his Statement Concerning Discrimination, Mr. Mattison indicates that he wishes to

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abandon the discrimination claims he raised before the Board, but also indicates that he filed, inter alia, a civil action in federal district court challenging his removal.

Although this court has authority to review certain Board decisions, that jurisdiction is limited in a way that may apply here. District courts, not this court, have jurisdiction over “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” § 7703(b)(2), which involve an allegation of an action appealable to the Board and an allegation that a basis for the action was covered discrimination, 5 U.S.C. § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). Although “a petitioner’s explicit waiver of [his] discrimination claims . . . effectively converts the case to a standard appeal of the adverse personnel action—providing this court with jurisdiction to review the Board’s decision (without considering any discrimination claims),” *Harris v. SEC*, 972 F.3d 1307, 1318 (Fed. Cir. 2020), “Congress did not direct or contemplate bifurcated review,” *Williams v. Dep’t of Army*, 715 F.2d 1485, 1490 (Fed. Cir. 1983) (en banc); see also *Punch v. Bridenstine*, 945 F.3d 322, 331 (5th Cir. 2019) (holding that an employee cannot split claims in mixed cases). Where we lack jurisdiction, we shall, if it is in the interest of justice, transfer the case to an appropriate court. 28 U.S.C. § 1631.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Within 30 days from the date of entry of this order, the parties are directed to address this court’s jurisdiction, including whether this petition for review should be dismissed or transferred, and, if transferred, identify an appropriate court.

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(2) These proceedings otherwise are stayed, and Mr. Mattison's motions are held in abeyance.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

August 26, 2024  
Date

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