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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID M. SHIPP, Plaintiff - Appellant, v. KATHLEEN SEBELIUS, Secretary, Department of Health and Human Services, Defendant - Appellee.	No. 09-35168 D.C. No. 2:08-cv-01460-RAJ MEMORANDUM [*]

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted February 16, 2010 [**]

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

GT/Research

David Matthew Shipp, a former federal employee, appeals pro se from the district court's judgment dismissing his action against the Department of Health and Human Services ("Department"). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for clear error the district court's factual findings relevant to its determination that it lacked subject matter jurisdiction, *Autery v. United States*, 424 F.3d 944, 956 (9th Cir. 2005), and review de novo the district court's legal determination, *see Washington v. Garrett,* 10 F.3d 1421, 1428 (9th Cir. 1993). We affirm.

The district court properly dismissed Shipp's action for lack of subject matter jurisdiction because Shipp sought review of a decision of the Merit System Protection Board ("MSPB") that did not adjudicate the merits of Shipp's discrimination claims against the Department. *See id.* ("[O]nly the Court of Appeals for the Federal Circuit can review MSPB decisions in cases that do not entail discrimination claims[.]"); *Sloan v. West*, 140 F.3d 1255, 1261-62 (9th Cir. 1998) (discussing importance of uniformity of MSPB-related case law).

Shipp's remaining contentions are unpersuasive.

We deny all pending motions.

AFFIRMED.