

NOTE: This order is nonprecedential.

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

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**ROBERT W. MCMILLAN,**  
*Claimant-Appellant,*

v.

**Eric K. Shinseki, SECRETARY OF VETERANS  
AFFAIRS,**  
*Respondent-Appellee.*

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2013-7102

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Appeal from the United States Court of Appeals for  
Veterans Claims in No. 11-3003, Judge Robert N. Davis.

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**ON MOTION**

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Before RADER, *Chief Judge*, BRYSON and WALLACH, *Circuit Judges*.

PER CURIAM.

**ORDER**

The Secretary of Veterans Affairs moves to dismiss this appeal as untimely.

On March 22, 2013, the United States Court of Appeals for Veterans Claims (Veterans Court) entered

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judgment in Robert W. McMillan's case. According to the docket of the Veterans Court, the court received McMillan's notice of appeal on May 22, 2013, 61 days after the date of judgment.

To be timely, a notice of appeal must be filed with the Veterans Court within 60 days of the entry of judgment. *See* 38 U.S.C. § 7292(a); 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1). The statutory deadline for taking an appeal from the Veterans Court to this court is jurisdictional and mandatory. *Henderson v. Shinseki*, 131 S. Ct. 1197, 1204-05 (2011) (the language of Section 7292(a) "clearly signals an intent" to impose the same jurisdictional restrictions on an appeal from the Veterans Court to the Federal Circuit as imposed on appeals from a district court to a court of appeals); *see also Bowles v. Russell*, 551 U.S. 205, 209-210 (2007). Because McMillan's appeal as to the underlying judgment was filed outside of the statutory deadline for taking an appeal to this court, we must dismiss the appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

/s/ Daniel E. O'Toole  
Daniel E. O'Toole  
Clerk

ISSUED AS A MANDATE: August 2, 2013

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