

NOTE: This order is nonprecedential.

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

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**SUSANA B. JAVILLONAR,**  
*Claimant-Appellant,*

v.

**ERIC K. SHINSEKI, SECRETARY OF VETERANS  
AFFAIRS,**  
*Respondent-Appellee.*

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2014-7062

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Appeal from the United States Court of Appeals for  
Veterans Claims in No. 10-4030, Judge Robert N. Davis.

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**ON MOTION**

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Before RADER, *Chief Judge*, NEWMAN and HUGHES, *Circuit  
Judges.*

PER CURIAM.

**O R D E R**

The Secretary of Veterans Affairs moves to file a response to this court's show cause order out of time and moves to dismiss.

This case originally arose out of a claim filed by Susana B. Javillonar seeking benefits from the Department of Veterans Affairs based on the service of her deceased husband, Felipe J. Javillonar. While Mrs. Javillonar's appeal was pending, the United States Court of Appeals for Veterans Claims ("Veterans Court") was informed that she had also died.

The Javillonars' son, Artemio B. Javillonar, subsequently filed a motion to substitute. The Veterans Court, however, denied that motion and entered judgment setting aside the underlying decision and dismissing the appeal. The Veterans Court issued its judgment on November 22, 2013.

Although Artemio's notice of appeal was originally received on or about December 24, 2013 by the Department of Veterans Affairs, Office of General Counsel, the Veterans Court did not receive the notice of appeal until February 7, 2014, 77 days after judgment.

To be timely, a notice of appeal must be received by 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). This statutorily-prescribed time for filing appeals from the Veterans Court to this court is mandatory and jurisdictional. *See Wagner v. Shinseki*, 733 F.3d 1343, 1348 (Fed. Cir. 2013). Thus, even in circumstances in which it would be equitable to do so, this court is without authority to waive the deadline for filing an appeal to this court from the Veterans Court. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Because Javillonar's appeal was filed past the statutory deadline for taking an appeal to this court, we must dismiss the appeal.

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Accordingly,

IT IS ORDERED THAT:

- (1) The Secretary's motion for leave to file his response out of time is granted.
- (2) The Secretary's motion to dismiss is granted. The appeal is dismissed.
- (3) Each side shall bear its own costs.

FOR THE COURT

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

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ISSUED AS A MANDATE: May 29, 2014