

NOTE: This order is nonprecedential.

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

JOSE M. SOTO,
Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent.

2011-3071

Petition for review of the Merit Systems Protection Board in case no. DA0831100545-I-1.

ON MOTION

Before GAJARSA, MAYER, and PROST, *Circuit Judges.*
PER CURIAM.

O R D E R

The Office of Personnel Management (OPM) moves to dismiss Jose M. Soto's petition for review as untimely.

On October 22, 2010, an administrative judge issued an initial decision, affirming OPM's denial of Soto's

claims, and notifying Soto that, absent an appeal to the Board, the decision would become final on November 26, 2010. The Board further informed Soto that any petition for review must be received by this court within 60 calendar days of the date the initial decision became final. Soto did not appeal the initial decision to the Board. Soto's petition for review was received by the court on January 27, 2011, 62 days after the Board's decision became final on November 26.

A petition for review must be received by the court within 60 days of receipt of notice of the Board's final order. 5 U.S.C. § 7703(b)(1). To be timely filed, the petition must be received by this court on or before the date that the petition is due. *Pinat v. Office of Personnel Management*, 931 F.2d 1544, 1546 (Fed. Cir. 1991) (petition is filed when received by this court; court dismissed petition received nine days late).

Because Soto's petition was not timely received by this court, it must be dismissed based on controlling precedent of this court. See *Oja v. Dep't of the Army*, 405 F.3d 1349, 1360 (Fed. Cir. 2005) ("Seeing no specific authorization for the equitable tolling of section 7703(b)(1), we find that the congressionally approved statements of Rules 15(a)(1) and 26(b)(2) require the conclusion first reached in *Monzo* and herein followed. Compliance with the filing deadline for 5 U.S.C. § 7703(b)(1) is a prerequisite to our exercise of jurisdiction over this case.").

Accordingly,

IT IS ORDERED THAT:

- (1) OPM's motion to dismiss is granted.
- (2) Each side shall bear its own costs.

FOR THE COURT

JUL 12 2011

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 12 2011

cc: Edward P. Fahey, Jr., Esq.
Douglas G. Edelschick, Esq.

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JAN HORBALY
CLERK

Issued As A Mandate: JUL 12 2011