

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition  
is not citable as precedent. It is a public record.

## United States Court of Appeals for the Federal Circuit

04-3394

FLOYD W. STEADLEY,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

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DECIDED: January 18, 2005

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Before LOURIE, SCHALL, and PROST, Circuit Judges.

PER CURIAM.

### DECISION

Floyd W. Steadley petitions for review of the final decision of the Merit Systems Protection Board (“Board”) that dismissed as untimely filed his appeal of the action of the United States Postal Service (“agency”) removing him from his position as a PS-04 Mail Handler on August 2, 2001. Steadley v. U.S. Postal Serv., No. PH-0752-03-0134-I-1 (June 25, 2004). We reverse and remand.

## DISCUSSION

### I.

Mr. Steadley appealed his August 2, 2001 removal by the agency on January 23, 2003. In an initial decision dated May 22, 2003, the administrative judge (“AJ”) to whom the case was assigned dismissed the appeal as untimely filed. Steadley v. U.S. Postal Serv., No. PH-0752-03-0134-I-1 (May 22, 2003). The AJ determined that Mr. Steadley’s filing was 16 months late and that he had not shown good cause for the late filing. The AJ’s initial decision became the final decision of the Board on June 25, 2004, after the Board denied Mr. Steadley’s petition for review for failure to meet the criteria for review set forth at 5 C.F.R. § 1201.115(d). This appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(9).

### II.

On appeal, the Board forthrightly confesses error in this case. It acknowledges that, in light of the pertinent facts, its decision that Mr. Steadley failed to establish good cause for the untimely filing of his appeal was reversible error under our decision in Shiflet v. U.S. Postal Service, 839 F.2d 669 (Fed. Cir. 1988). The Board states: “The totality of the circumstances supports a finding of good cause for Mr. Steadley’s failure to file a timely appeal.” Accordingly, it asks us to reverse its decision dismissing Mr. Steadley’s appeal as untimely filed and to remand the case to it for further proceedings.

For the foregoing reasons, the final decision of the Board dismissing Mr. Steadley’s appeal as untimely filed is reversed. The case is remanded to the Board for further proceedings consistent with this opinion.