

NOTE: This disposition is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2008-3005

MELVIN L. BURL,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Melvin L. Burl, of Birmingham, Alabama, pro se.

Calvin M. Morrow, Attorney, Office of the General Counsel, Merit Systems Protection Board, of Washington, DC, for respondent. With him on the brief were B. Chad Bungard, General Counsel, and Rosa M. Koppel, Deputy General Counsel.

Appealed from: Merit Systems Protection Board

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2008-3005

MELVIN L. BURL,

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v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board in AT0752070579-I-1.

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DECIDED: February 12, 2008

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Before SCHALL, BRYSON, and GAJARSA, Circuit Judges.

PER CURIAM.

### DECISION

Melvin L. Burl petitions for review of the final decision of the Merit Systems Protection Board (“Board”) that dismissed as untimely his appeal from the decision of the Department of Veterans Affairs (“agency”) denying his discrimination complaint. Burl v. Dep’t of Veterans Affairs, AT-0752-07-0579-I-1 (M.S.P.B. Sept 10, 2007). We affirm.

## DISCUSSION

### I.

Mr. Burl received the decision of the agency denying his discrimination complaint on September 30, 2002. Pursuant to 5 C.F.R. § 1201.154(b)(1), if Mr. Burl wished to appeal that decision to the Board, he was required to do so by October 30, 2002. However, Mr. Burl did not appeal to the Board until April 7, 2007, well over four years later. The Board dismissed Mr. Burl's appeal after it determined that he had failed to show good cause for his delay in filing, as required by 5 C.F.R. § 1201.22(c). This appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(9).

### II.

Our scope of review in an appeal from a decision of the Board is limited. Specifically, we must affirm the Board's decision unless we find it to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. 5 U.S.C. § 7703(c); Kewley v. Dep't of Health and Human Servs., 153 F.3d 1357, 1361 (Fed. Cir. 1998).

On appeal, as was the case before the Board, Mr. Burl makes no attempt to demonstrate good cause for the lengthy delay in the filing of his appeal to the Board. Rather, he argues matters that are pertinent only to the merits of his challenge to the agency's decision on his discrimination complaint. However, these matters are in no way relevant to the issue of whether there was good cause for Mr. Burl's untimely filing before the Board. In short, Mr. Burl has given us no reason to disturb the decision of the Board.

For the foregoing reasons, the final decision of the Board dismissing Mr. Burl's appeal as untimely is affirmed.