

NOTE: This order is nonprecedential.

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

ROBERT D. FRANKLIN,
Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent.

2014-3042

Petition for review of the Merit Systems Protection Board in No. AT0752120454-I-1.

Before PROST, O'MALLEY, and TARANTO, *Circuit Judges.*
PER CURIAM.

O R D E R

The parties have responded to this court's order concerning whether this petition should be dismissed as untimely.

On September 18, 2013, the Merit Systems Protection Board denied Robert D. Franklin's petition for review of an initial decision that sustained his removal due to misconduct. Franklin states in a submission to this court that he received the Board's final order on September 21, 2013. The court received his petition for review on De-

ember 2, 2013; which was 75 days after the Board issued its final order and 72 days after Franklin states that he received the Board's final order.

Our review of a Board decision or order is governed by 5 U.S.C. § 7703(b)(1), which provides in relevant part that “[n]otwithstanding any other provision of law, any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.” 5 U.S.C. § 7703(b)(1)(A). The filing period is “statutory, mandatory, [and] jurisdictional” and the court does not have the authority to waive the requirement. *Monzo v. Dep't of Transp.*, 735 F.2d 1335, 1336 (Fed. Cir. 1984); *Pinat v. Office of Pers. Mgmt.*, 931 F.2d 1544, 1545 (Fed. Cir. 1991); *see also* Fed. R. App. P. 26(b)(2).

The Department of Veterans Affairs argues that the petition should be dismissed because it was not timely received by the court. Franklin states that he timely placed his petition in the mail. The date of mailing does not determine the date of filing of the petition for review. Instead, filing occurs when the petition is received by the court. *Pinat*, 931 F.2d at 1546. Because his petition seeking review of the final order was received past the statutory deadline for filing the petition, we must dismiss the petition.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

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