

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1505

SARAH M. MITCHELL,

Appellant,

v.

John E. Potter, POSTMASTER GENERAL,

Appellee.

Appeal from the United States Postal Service Board of Contract Appeals
in case no. 6173.

ON MOTION

Before RADER, CLEVINGER, and DYK, Circuit Judges.

PER CURIAM.

ORDER

The Postmaster General moves to dismiss Sarah M. Mitchell's appeal as untimely filed.

In a decision dated March 25, 2009, The United States Postal Service Board of Contract Appeals denied in part and dismissed in part Mitchell's claims related to a medical agreement. According to a certified mail receipt, counsel for Mitchell received the Board's decision on March 30, 2009. On August 14, 2009, this court received Mitchell's notice of appeal seeking review of the Board's decision.

An appeal from a decision of the Postal Service Board of Contract Appeals must be filed within 120 days of receipt of the decision. See 41 U.S.C. § 607(g)(1)(A). Mitchell did not file her notice of appeal until August 14, 2009, or 137 days after her

counsel's receipt of the Board's decision. Because Mitchell's appeal was untimely filed, it must be dismissed. Placeway Constr. Co. v. United States, 713 F.2d 726, 727-28 (Fed. Cir. 1983) (appeal must be received by court within 120 days of the appellant's receipt of the Board's decision; court has no authority to waive statutory deadline).

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

NOV 10 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Paul W. Madgett, Esq.
Sarah M. Mitchell
Scott Thomas Palmer, Esq.

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NOV 10 2009

ISSUED AS A MANDATE: _____

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

NOV 10 2009

JAN HORBALY
CLERK