

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3096

IROLENE F. WHITEHEAD,

Petitioner,

v.

DEPARTMENT OF DEFENSE,

Respondent.

Petition for review of the Merit Systems Protection Board in DC0752080376-I-1.

ON MOTION

Before NEWMAN, BRYSON, and DYK, Circuit Judges.

PER CURIAM.

ORDER

Irolene F. Whitehead moves for reconsideration of the court's previous rejection of her petition for review as untimely.

On October 5, 2008, the Merit Systems Protection Board issued a final decision in Whitehead v. Department of Defense, No. DC-0752-08-0376-I-1, specifying that its decision was final and that any petition for review must be received by this court within 60 calendar days of receipt of the Board's decision. The Board's records reflect that Whitehead received the Board's decision on October 17, 2008. The court received Whitehead's petition for review 63 days later, on December 19, 2008.

A petition for review of a Board decision must be filed within 60 days of receipt of the decision. See 5 U.S.C. § 7703(b)(1). The 60-day filing period is "statutory, mandatory, [and] jurisdictional." Monzo v. Dep't. of Transp., 735 F.2d 1335, 1336 (Fed. Cir. 1984); see also Oja v. Dep't of the Army, 405 F.3d 1349, 1360 (Fed. Cir. 2005)

("[c]ompliance with the filing deadline of 5 U.S.C. § 7703(b)(1) is a prerequisite to our exercise of jurisdiction").

Because Whitehead's petition for review was received by this court three days late, this court must dismiss Whitehead's petition as untimely.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is denied. The petition for review is dismissed as untimely.
- (2) Each side shall bear its own costs.
- (3) All pending motions are moot.

FOR THE COURT

MAR 06 2009

Date

cc: Irolene F. Whitehead
Ellen M. Lynch, Esq.

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/s/ Jan Horbaly

Jan Horbaly
Clerk

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

MAR 06 2009

JAN HORBALY
CLERK