

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3181

JACQUELINE MCEACHIN,

Petitioner,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Petition for review of the Merit Systems Protection Board in
DC0432080740-I-1.

ON MOTION

Before MICHEL, Chief Judge, LOURIE and BRYSON, Circuit Judges.

PER CURIAM.

ORDER

The court treats Jacqueline McEachin's correspondence concerning the timeliness of her petition for review as a motion for reconsideration of the court's previous rejection of her petition for review as untimely.

On March 6, 2009, the Merit Systems Protection Board issued a final decision in McEachin v. Department of Health and Human Servs., No. DC-0432-08-0740-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 court received McEachin's petition for review on May 6, 2009.

The Board's records reflect that McEachin was registered as an e-filer. Pursuant to the Board's regulations, an e-filer is deemed to receive a decision on the date it is

served via electronic mail. See 5 CFR § 1201.14(m)(2) ("MSPB documents served electronically on registered e-filers are deemed received on the date of electronic submission"). Thus, McEachin is deemed to have received the Board's decision on March 6, 2009. McEachin's petition for review seeking review of the Board's decision was received by the court 61 days later, on May 6, 2009.

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. Dept. of Transp., 735 F.2d 1335, 1336 (Fed. Cir. 1984); see also Oja v. Department 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 McEachin's petition for review was received on May 6, one day late, this court must dismiss McEachin'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.

FOR THE COURT

JUL 02 2009

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Jacqueline McEachin
Joseph Keller, Esq.

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

JUL 02 2009

JAN HORBALY
CLERK