

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3213

LAWRENCE V. WILDER, SR.,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board
in DC3443080535-I-1.

ON MOTION

Before MAYER, CLEVINGER, and RADER, Circuit Judges.

PER CURIAM.

ORDER

Lawrence V. Wilder, Sr. moves for reconsideration of the court's previous rejection of his petition for review. Wilder also moves for leave to proceed in forma pauperis.

On December 17, 2008, the Merit Systems Protection Board denied Wilder's petition for review and informed Wilder 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 served its decision on Wilder via electronic mail on December 17, 2008. Pursuant to the Board's regulations, "MSPB documents served electronically on registered e-filers are deemed received on the date of electronic submission," i.e., December 17 in this case. 5 CFR § 1201.14(m)(2). The court

received Wilder's petition for review on May 27, 2009, or 161 days after Wilder received the Board's final order.

A petition for review must be received by the court within 60 days of receipt of the Board's final order. 5 U.S.C. § 7703(b)(1). To be timely filed, the petition must be received by this court on or before the date that the petition is due. Pinat v. Office of Personnel Management, 931 F.2d 1544, 1546 (Fed. Cir. 1991) (petition is filed when received by this court; court dismissed petition received nine days late). Because Wilder's petition was not timely received by this court, it must be dismissed. Bowles v. Russell, 551 U.S. 205 (2007) (the timely filing of a notice of appeal in a civil case is a jurisdictional requirement that cannot be waived).

Accordingly,

IT IS ORDERED THAT:

- (1) Wilder's motion for reconsideration is denied and the petition for review is dismissed as untimely filed.
- (2) Wilder's motion for leave to proceed in forma pauperis is granted.
- (3) Each side shall bear its own costs.

FOR THE COURT

JUL 31 2009

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Lawrence V. Wilder, Sr.
Stephanie Conley, Esq.

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

JUL 31 2009

JAN HORBALY
CLERK