

NOTE: This order is nonprecedential.

**United States Court of Appeals for the Federal Circuit**  
2009-3238

STEPHEN W. GINGERY,

Petitioner,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

Petition for review of the Merit Systems Protection Board in  
CH3443080256-B-1.

Before RADER, CLEVINGER, and DYK, Circuit Judges.

PER CURIAM.

ORDER

The court treats Stephen W. Gingery's correspondence concerning the timeliness of his petition for review as a motion for reconsideration of the court's previous rejection of his petition for review as untimely.

On May 14, 2009, the Merit Systems Protection Board issued a final decision in Gingery v. Department of the Treasury, No. CH-3443-08-0256-B-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 Gingery's petition for review on July 14, 2009.

The Board's records reflect that Gingery 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, Gingery is deemed to have received the Board's decision on May 14, 2009. Gingery's petition for review seeking review of the Board's decision was received by the court 61 days later, on July 14, 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 Gingery's petition for review was received on July 14, one day late, this court must dismiss Gingery'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

**NOV 09 2009**

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

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

cc: Stephen W. Gingery  
Devin A. Wolak, Esq.

**NOV 09 2009**

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**JAN HORBALY  
CLERK**

\* Gingery argues that the Board gave him an incorrect zip code, 20439, for the filing of a petition for review in this court. Gingery states that according to the United States Postal Service (USPS) the court's zip code is 20005-7700. Gingery submits a printout from the zip code finder on the USPS website; however, in his query, Gingery appears to have transposed two digits and typed "24039" rather than "20439." In any event, the court's correct zip code is 20439, which is the zip code that Gingery concedes the Board provided to him.