

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2009-3283

RODGER L. JONES,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

Petition for review of the Merit Systems Protection Board in  
PH0752020381-C-3.

ON MOTION

Before MICHEL, Chief Judge, SCHALL and LINN, Circuit Judges.

PER CURIAM.

## ORDER

Rodger L. Jones responds to the court's order directing him to respond and inform the court on what date he received a copy of the Board's final decision in Jones v. Department of Health and Human Servs., No. PH-0752-02-0381-C-3.

On April 22, 2009, the Merit Systems Protection Board issued a final decision in Jones v. Department of Health and Human Servs., No. PH-0752-02-0381-C-3, 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. In his submission, Jones states that he received the Board's decision on April 27, 2009. The court received Jones' petition for review 70 days later, on July 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").

Jones states that he faxed and mailed his petition to the court on June 25, 2009. However, a petition for review may not be filed by facsimile. See Fed. Cir. R. 25(b) ("No document other than a motion, response to a motion, reply to a response, or letter may be filed or served by facsimile transmission"). Further, documents other than briefs and appendices are not timely filed unless received by the clerk "within the time fixed for filing." See Fed. R. App. P. 26(a)(2)(A). Thus, Jones' petition was not filed until it was received by the clerk on July 6, 2009. Because Jones' petition for review was received by this court ten days late, this court must dismiss Jones' petition as untimely.

Accordingly,

IT IS ORDERED THAT:

Jones' motion for reconsideration of the clerk's rejection of his petition for review is denied. The petition for review is dismissed.

FOR THE COURT

DEC 18 2009

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Rodger L. Jones  
Sara B. Rearden, Esq.  
s17

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

DEC 18 2009

JAN HORBALY  
CLERK