

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

LUZONICA M. BAUTISTA,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2022-1500

Petition for review of the Merit Systems Protection Board in No. SF-0831-21-0221-I-1.

ON MOTION

Before LOURIE, TARANTO, and HUGHES, *Circuit Judges*.

PER CURIAM.

ORDER

Luzonica M. Bautista moves for leave to proceed *in forma pauperis*. The Merit Systems Protection Board moves to dismiss this matter as untimely. Ms. Bautista has not responded to the Board's motion.

Ms. Bautista appealed to the Board from the agency's decision denying her application for an annuity. On

November 10, 2021, an administrative judge issued a decision dismissing Ms. Bautista's appeal as untimely and, alternatively, affirming the agency's decision. That decision became the final decision of the Board on December 15, 2021, by operation of the fact that Ms. Bautista did not timely seek further review at the Board. This court received Ms. Bautista's petition for this court's review 69 days later, on February 22, 2022.

Section 7703(b)(1)(A) of title 5 of the U.S. Code states that a petition for review from the Board "shall be filed within 60 days after the Board issues notice of the final order or decision of the Board." 5 U.S.C. § 7703(b)(1)(A). This court has held that section 7703(b)(1)(A)'s statutory deadline is jurisdictional and not subject to equitable tolling. *See Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017). Thus, we may only consider whether the petition for review was timely filed. Ms. Bautista's petition here was received outside of the 60-day filing deadline, and we therefore must dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The Board's motion to dismiss is granted. The petition for review is dismissed.
- (2) Each side shall bear its own costs.
- (3) Ms. Bautista's motion is denied as moot.

FOR THE COURT

May 26, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

ISSUED AS A MANDATE: May 26, 2022