

NOTE: This order is nonprecedential.

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

FAYE R. HOBSON,
Petitioner

v.

DEPARTMENT OF DEFENSE,
Respondent

2023-1258

Petition for review of the Merit Systems Protection Board in No. CH-1221-15-0470-W-1.

Before DYK, TARANTO, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Faye R. Hobson has filed a petition for review of the Merit Systems Protection Board's final October 4, 2022, decision. In response to this court's February 16, 2023, order to show cause, the Department of Defense urges dismissal as untimely. Faye R. Hobson opposes dismissal.

Under 5 U.S.C. § 7703(b)(1)(A), a petition to review a final decision by the Board must be filed "within 60 days after the Board issues notice of the final . . . decision," and this deadline is mandatory and jurisdictional, *Fedora v.*

Merit Sys. Prot. Bd., 848 F.3d 1013, 1016 (Fed. Cir. 2017). See ECF No. 1-2 at 20 (Board decision noting that the petition for review “must be received by th[is] court within **60 calendar days**” (emphases in original)). In this case, the deadline for Ms. Hobson to file her petition for review was December 5, 2022,* but her petition was not received by this court until December 7, 2022.

Ms. Hobson argues that her petition is timely because she mailed it before the deadline. She cites to 27 C.F.R. § 70.305 for the proposition that her “[t]imely mailing” should be “treated as [a] timely filing.” ECF No. 12 at 2. However, that regulation applies to the Alcohol and Tobacco Tax and Trade Bureau, not to filings with this court. For petitions filed under 5 U.S.C. § 7703(b)(1)(A), we have held (consistent with Federal Rule of Appellate Procedure 25(a)(2)(A)(i)) that “filing requires actual receipt by the court, not just timely mailing.” *Fedora*, 848 F.3d at 1016. Because Ms. Hobson’s petition was filed outside the statutory deadline, we dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) Each party shall bear its own costs.

FOR THE COURT

April 21, 2023

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

* Because the 60-day deadline fell on December 3, 2022, which was a Saturday, Ms. Hobson’s petition was due no later than Monday, December 5, 2022. See Fed. R. App. P. 26(a)(1).