

NOTE: This order is nonprecedential.

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

DAREK J. KITLINSKI,
Petitioner

v.

DEPARTMENT OF JUSTICE,
Respondent

2023-1961

Petition for review of the Merit Systems Protection Board in No. SF-4324-15-0088-M-1.

ON MOTION

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

PER CURIAM.

ORDER

The Department of Justice moves to dismiss the petition for review as untimely. Darek J. Kitlinski opposes. We grant the motion and dismiss.

Mr. Kitlinski appealed to the Merit Systems Protection Board alleging a violation of his rights under the

Uniformed Services Employment and Reemployment Rights Act of 1994. On March 23, 2023, the Board issued notice of its final decision dismissing Mr. Kitlinski's appeal. ECF No. 5 at 60. On May 19, 2023, Mr. Kitlinski mailed his petition for review, ECF No. 12 at 8, which was not received by the court until May 24, 2023, ECF No. 1-2 at 1 (stamped receipt date); *see* ECF No. 12 at 7.

Under 5 U.S.C. § 7703(b)(1)(A), “a petition to review a final order or final decision of the Board . . . shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.” “[F]iling requires actual receipt by the court, not just timely mailing,” and this timeliness requirement is jurisdictional, which “precludes equitable exceptions.” *Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017); *see* Fed. R. App. P. 25(a)(2)(A). Because Mr. Kitlinski's petition was not filed within the 60-day statutory deadline, we must dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is granted. The petition for review is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

July 10, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court