

NOTE: This order is nonprecedential.

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

WENDY KING,
Claimant-Appellant

v.

**DENIS MCDONOUGH, Secretary of Veterans
Affairs,**
Respondent-Appellee

2023-2291

Appeal from the United States Court of Appeals for
Veterans Claims in No. 21-6310, Judge Joseph L. Falvey,
Jr.

Before PROST, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

In response to this court's September 20, 2023, show cause order, the Secretary of Veterans Affairs urges dismissal of the appeal as untimely. Wendy King responds, urging the court not to dismiss because she "told the attorney [she] wanted to continue but he did not respond," ECF No. 8 at 2.

The United States Court of Appeals for Veterans Claims entered judgment in this case on March 28, 2023. The Veterans Court received Ms. King's notice of appeal 115 days later on July 21, 2023.

To be timely, a notice of appeal must be received by the Veterans Court within 60 days of the entry of judgment. *See* 38 U.S.C. § 7292(a); *see also* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B); Fed. Cir. R. 1(a)(1)(D). Like appeals from district courts, the statutorily prescribed time for filing appeals from the Veterans Court to this court is mandatory and jurisdictional, meaning that we cannot take account of individual circumstances for the untimely filing. *See Wagner v. Shinseki*, 733 F.3d 1343, 1348 (Fed. Cir. 2013); *see also Henderson v. Shinseki*, 562 U.S. 428, 438–39 (2011) (indicating jurisdictional restrictions on the time for taking an appeal under section 7292(a)). Because Ms. King's notice of appeal was not filed within 60 days of the final judgment of the Veterans Court,* we must dismiss the appeal.

Accordingly,

* On June 30, 2023, Ms. King filed at the Veterans Court a motion for an extension of time, *see* ECF No. 9, but that court did not act on the extension motion, which was not filed within the time window in which such a motion could be granted. Fed. R. App. P. 4(a)(5)(A) (“The district court may extend the time to file a notice of appeal if . . . a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires.”); 28 U.S.C. § 2107(c); 38 U.S.C. § 7292(a) (providing that appeals from the Veterans Court “shall be obtained by filing a notice of appeal . . . within the time and in the manner prescribed for appeal . . . from United States district courts”).

KING v. MCDONOUGH

3

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

December 14, 2023
Date