

NOTE: This order is nonprecedential.

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

MARILYN F. VAILATI,
Claimant-Appellant,

v.

**ERIC K. SHINSEKI, SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee.

2012-7154

Appeal from the United States Court of Appeals for
Veterans Claims in case no. 08-2454, Judge Lawrence B.
Hagel.

ON MOTION

Before *RADER, Chief Judge, LOURIE and SCHALL, Circuit
Judges.*

PER CURIAM.

ORDER

The Secretary of Veterans Affairs moves to dismiss
this appeal as untimely.

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On April 25, 2012, the United States Court of Appeals for Veterans Claims (Veterans Court) entered judgment in Marilyn F. Vailati's case. According to the Veterans Court's docket, the court received Vailati's notice of appeal on July 10, 2012, 76 days after the date of judgment.

To be timely, a notice of appeal must be filed with the Veterans Court within 60 days of the entry of judgment. See 38 U.S.C. § 7292(a); 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1). The statutory deadline for taking an appeal to this court is jurisdictional, mandatory, and cannot be waived. See *Bowles v. Russell*, 551 U.S. 205, 214 (2007).; see also *Henderson v. Shinseki*, 131 S. Ct. 1197, 1204-05 (2011) (the language of Section 7292(a) "clearly signals an intent" to impose the same jurisdictional restrictions on an appeal from the Veterans Court to the Federal Circuit as imposed on appeals from a district court to a court of appeals). Because Vailati's appeal as to the underlying judgment was filed outside of the statutory deadline for taking an appeal to this court, we must dismiss the appeal.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

/s/ Jan Horbaly

Jan Horbaly

Clerk

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