United States Court of Appeals for the Federal Circuit

05-3240

LINDA M. OLLADO,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

_____

DECIDED: December 9, 2005
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Before NEWMAN, MAYER, and SCHALL, <u>Circuit Judges</u>.

PER CURIAM.

Linda M. Ollado appeals the final decision of the Merit Systems Protection Board that dismissed her petition for review as untimely filed without a showing of good cause for the delay. <u>Ollado v. Office of Pers. Mgmt.</u>, SE0831030274-I-3 (MSPB June 1, 2005). Because the board did not abuse its discretion or misapply the law, we <u>affirm</u>.

A petition for review by the board must be filed within thirty-five days of the administrative judge's initial decision unless good cause is shown for the delay. 5 C.F.R. §§ 1201.114(d), (f) (2004). In this case, the administrative judge issued an

initial decision on August 18, 2004. Ollado, however, did not file a petition for review until November 17, 2004, which was beyond the thirty-five day deadline. As such, the initial decision became the final decision of the board on September 22, 2004. See id. § 1201.113.

"To establish good cause for a filing delay, an appellant must show that the delay was excusable under the circumstances and that the appellant exercised due diligence in attempting to meet the filing deadline." Zamot v. Merit Sys. Prot. Bd., 332 F.3d 1374, 1377 (Fed. Cir. 2003) (citing Phillips v. United States Postal Serv., 695 F.2d 1389, 1391 (Fed. Cir. 1982)). In addition, "the waiver of a regulatory time limit based on a showing of good cause 'is a matter committed to the Board's discretion and . . . this court will not substitute its own judgment for that of the Board.'" Id. (quoting Mendoza v. Merit Sys. Prot. Bd., 966 F.2d 650, 653 (Fed. Cir. 1992) (en banc)). Ollado did not set forth any evidence establishing good cause for the delay; therefore, the board did not abuse its discretion.