

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-3080

LOUIS J. JUDD, JR.,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Petition for review of the Merit Systems Protection Board
in PH3330090523-I-1.

ON MOTION

Before MAYER, LOURIE, and BRYSON, Circuit Judges.

PER CURIAM.

ORDER

The court treats Louis J. Judd, Jr.'s letter, received on February 18, 2010, as a motion for reconsideration of the court's rejection of his petition for review as untimely. Judd also moves for leave to proceed in forma pauperis. The United States Postal Service moves to dismiss this petition for review.

The Administrative Judge (AJ) issued his initial decision dismissing Judd's appeal for lack of jurisdiction on October 15, 2009. That decision informed Judd that the initial decision would become final for purposes of appealing to this court on November 19, 2009 unless he filed a petition for review with the Board. Judd did not file a petition with the Board. Judd's petition seeking review by this court was received

by this court on January 26, 2010, 67 days after the date the AJ's decision became final.

Our review of a Board decision or order is governed by 5 U.S.C. § 7703(b)(1), which provides that "[n]otwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board." This filing period is "statutory, mandatory, [and] jurisdictional." Monzo v. Dep't of Transp., 735 F.2d 1335, 1336 (Fed. Cir. 1984); see also Bowles v. Russell, 551 U.S. 205 (2007) (the timely filing of a notice of appeal in a civil case is a jurisdictional requirement that cannot be waived). The petition must be received by this court on or before the due date. Pinat v. Office of Pers. Mgmt., 931 F.2d 1544, 1546 (Fed. Cir. 1991) (petition is filed when received by this court; court dismissed petition received nine days late); Fed. R. App. P. 25(a)(2)(A) ("filing is not timely unless the clerk receives the papers within the time fixed for filing").

Judd's petition was due no later than January 19, 2010. Because the petition was not timely received by the court, we must deny Judd's motion and dismiss this petition.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion for reconsideration is denied.
- (2) The motion to dismiss is granted.
- (3) The motion for leave to proceed in forma pauperis is granted.
- (4) Each side shall bear its own costs.

FOR THE COURT

APR 16 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Louis J. Judd, Jr.
David M. Hibey, Esq.

s19

ISSUED AS A MANDATE: APR 16 2010

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

APR 16 2010

JAN HORBALY
CLERK