

NOTE: This order is nonprecedential.

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

LOURDES A. AYTONA,
Claimant-Appellant,

v.

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

2013-7131

Appeal from the United States Court of Appeals for
Veterans Claims in No. 11-3233, Judge William P.
Greene, Jr.

O R D E R

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

PER CURIAM.

Lourdes A. Aytona (“Aytona”) has appealed from a decision of the United States Court of Appeals for Veterans Claims (“Veterans Court”) denying entitlement to Dependents’ Educational Assistance for her adopted chil-

AYTONA v. SHINSEKI

2

dren. We consider whether Aytona's appeal must be dismissed for lack of jurisdiction.

On May 7, 2013, the Veterans Court entered judgment in Aytona's case. Her notice of appeal was received on August 2, 2013; 87 days after the date of judgment.

To be timely, a notice of appeal must be received by the Veterans Court within 60 days of the entry of judgment. 38 U.S.C. § 7292(a); 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1). Like appeals from district courts, the statutorily prescribed time for filing appeals from the Veterans Court to this court is mandatory and jurisdictional. *See Wagner v. Shinseki*, 733 F.3d 1343, 1348 (Fed. Cir. 2013); *see also Henderson v. Shinseki*, 131 S. Ct. 1197, 1204-05 (2011) (indicating jurisdictional restrictions on the time for taking an appeal under section 7292(a)). Accordingly, even in circumstances in which it would be equitable to do so, this court is without authority to waive the deadline for filing an appeal to this court from the Veterans Court. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Because Aytona'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 appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

/s/ Daniel E. O'Toole
Daniel E. O'Toole
Clerk of Court

3

AYTONA v. SHINSEKI

s26