

NOTE: This disposition is nonprecedential.

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

GARY S. SCHNELL,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2016-2496

Petition for review of the Merit Systems Protection Board in Nos. CH-1221-12-0770-W-3, CH-0752-13-0056-I-3.

Decided: January 27, 2017

GARY S. SCHNELL, Sparta, WI, pro se.

SARA B. REARDEN, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by BRYAN G. POLISUK.

Before NEWMAN, MOORE, and WALLACH, *Circuit Judges*.

Opinion for the court filed PER CURIAM.

Dissenting opinion filed by *Circuit Judge* MOORE.

PER CURIAM.

Petitioner Gary S. Schnell appeals a final order of the Merit Systems Protection Board (“MSPB”), which denied his petitions for review of an administrative judge’s (“AJ”) initial decisions. *See Schnell v. Dep’t of the Army*, Nos. CH-1221-12-0770-W-3, CH-0752-13-0056-I-3, 2016 WL 3752331, at ¶ 1 (M.S.P.B. July 13, 2016). In separate initial decisions, the AJ had dismissed Mr. Schnell’s appeals as untimely refiled. Resp’t’s App. 11, 18.

“If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown.” 5 C.F.R. § 1201.22(c) (2015). The MSPB has identified several factors that it considers in determining whether good cause warrants waiving a refiling deadline. *See, e.g., Gaddy v. Dep’t of the Navy*, 100 M.S.P.R. 485, 489 (2005). Of these factors, Mr. Schnell argues that the MSPB erred in its analysis of his *pro se* status, his confusion over the refiling deadline, and the arbitrariness of that deadline. *See* Pet’r’s Br. 2.

We review the MSPB’s decision not to waive a refiling deadline for abuse of discretion. *See, e.g., Mendoza v. Merit Sys. Prot. Bd.*, 966 F.2d 650, 653 (Fed. Cir. 1992) (en banc). Having reviewed the briefs and the record before us, we conclude that the MSPB abused its discretion in dismissing Mr. Schnell’s refiled appeals as untimely. On remand, the MSPB must consider Mr. Schnell’s appeals on the merits. Accordingly, the Final Order of the Merit Systems Protection Board is

VACATED AND REMANDED

COSTS

Each party shall bear its own costs.

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MOORE, *Circuit Judge*, dissenting.

Having reviewed the record evidence, and given the significant length of the delay, I cannot conclude the MSPB abused its discretion and would affirm the MSPB's denial of Mr. Schnell's petition as untimely refiled without good cause.