

1 allowed to excuse the untimely appeal as the appeal was only one day late, that the
2 Government would not be prejudiced by allowing the appeal, and that the Social Security
3 Administration itself took an exorbitant amount of time to actually issue their final decision
4 in relation to the underlying administrative proceedings. Nonetheless, as the Report and
5 Recommendation points out, these circumstances are insufficient to excuse the untimely
6 appeal as equitable tolling only applies in extraordinary circumstances. There is an
7 abundance of case law cited in the Report and Recommendation reflecting that a garden
8 variety miscalculation of an appeal deadline by an attorney, which are the circumstances in
9 this case, does not trigger equitable tolling. While disallowing the appeal certainly seems
10 harsh as the appeal was only one day late, the law unfortunately is not on Plaintiff's side in
11 regards to equitable tolling, and Plaintiff cites no authority showing that equitable tolling
12 applies under the circumstances in this case. Plaintiff's objection is denied.

13 Accordingly, IT IS HEREBY ORDERED as follows:

- 14 (1) Magistrate Judge Guerin's Report and Recommendation (Doc. #19) is **accepted and**
15 **adopted.**
16 (2) The Government's motion to dismiss (Doc. #13) is **granted.**
17 (3) This case is **dismissed and the Clerk of the Court shall enter judgment accordingly**
18 **and close the file in this case.**

19 DATED this 13th day of August, 2009.

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23 FRANK R. ZAPATA
24 United States District Judge
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