

NOTE: This order is nonprecedential.

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

JIMMY JOHNSON,
Petitioner,

v.

SOCIAL SECURITY ADMINISTRATION
Respondent.

2012-3083

Petition for Review of the Merit Systems Protection
Board in case no. AT3330110477-I-1.

ON MOTION

Before LOURIE, SCHALL, and DYK, *Circuit Judges.*

PER CURIAM.

ORDER

Jimmy Johnson moves for leave to proceed in forma pauperis, which we treat as a motion for reconsideration of the court's April 9, 2012 order dismissing this petition for failure to pay the docketing fee. We also treat Johnson's previous submissions as a motion for reconsideration of the

court's earlier rejection of his petition for review as untimely.

On November 28, 2011, the Merit Systems Protection Board issued a final decision in Johnson's case, affirming the administrative judge's determination that Johnson's request for corrective action under the Veterans Employment Opportunities Act of 1998 should be denied because his complaint with the Department of Labor was not timely filed.

The Board's records reflect that Johnson was registered as an e-filer. Pursuant to the Board's regulations, an e-filer is deemed to receive a decision on the date it is served via electronic mail. See 5 CFR § 1201.14(m)(2) ("MSPB documents served electronically on registered e-filers are deemed received on the date of electronic submission"). Thus, Johnson is deemed to have received the Board's final decision on November 28, 2011. This court received Johnson's petition for review on January 30, 2012, 63 days later.

A petition for review must be received by this court "within 60 days after the date the petitioner received notice of the final order or decision of the Board." 5 U.S.C. § 7703(b)(1). This filing period is "statutory, mandatory, [and] jurisdictional." *Monzo v. Dept. of Transportation, Federal Aviation Administration*, 735 F.2d 1335, 1336 (Fed. Cir. 1984). Because Johnson's petition for review was received by the court more than 60 days after receipt of the Board's decision, Johnson's petition for review was untimely and must be dismissed.

IT IS ORDERED THAT:

(1) The motion for leave to proceed in forma pauperis is granted. The motion for reconsideration of the court's dismissal of the petition for review for failure to pay the docketing fee is granted. The mandate is recalled, the court's April 9, 2012 dismissal order is vacated, and the

petition for review is reinstated for purposes of determining the timeliness of the petition.

(2) The motion for reconsideration of the court's rejection of the petition for review as untimely is denied. The petition is dismissed as untimely filed.

FOR THE COURT

JUL 26 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Jimmy Johnson
Christopher L. Krafchek, Esq.
s25

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

JUL 26 2012

JAN HORBALY
CLERK