

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

05-3016

GARY D. SMITH,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

DECIDED: July 8, 2005

Before MAYER, RADER, and LINN, Circuit Judges.

PER CURIAM.

Gary D. Smith appeals the decision of the Merit Systems Protection Board, which dismissed his petition for review as untimely. Smith v. United States Postal Serv., DC3443030826-I-1 (MSPB Aug. 18, 2004). Because the board did not abuse its discretion by refusing to excuse Smith's untimely filing, we affirm.

Smith's complaint alleged that the United States Postal Service changed his assignment without accommodating his disability. The complaint was dismissed based on Smith's submission that he was abandoning the complaint because he had not

received a reduction in pay or grade. The administrative judge informed Smith that this decision would become final unless appealed to the board by November 19, 2003.

Smith, proceeding pro se, appealed the decision in February 2004, well outside the 35-day window prescribed by 5 C.F.R. § 1201.114(d). In an attempt to excuse the delay, Smith alleged that his health had precluded his timely filing; he failed, however, to submit documentation that corroborated this assertion. The board, after considering the length of his delay, his unsupported excuse, his lack of due diligence, his pro se status, and the possible existence of circumstances beyond his control, refused to extend the filing deadline and dismissed Smith's appeal as untimely. We discern no error in this decision. See Zamot v. Merit Sys. Prot. Bd., 332 F.3d 1374, 1377 (Fed. Cir. 2003) (“[T]he waiver of a regulatory time limit based on a showing of good cause ‘is a matter committed to the Board’s discretion and that this court will not substitute its own judgment for that of the Board.’” (quoting Mendoza v. Merit Sys. Prot. Bd., 966 F.2d 650, 653 (Fed. Cir. 1992) (en banc))).