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## United States Court of Appeals for the Federal Circuit

06-3094

DENISE P. THOMAS,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

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DECIDED: October 10, 2006

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Before MAYER, Circuit Judge, CLEVINGER, Senior Circuit Judge, and BRYSON, Circuit Judge.

PER CURIAM.

Denise P. Thomas appeals from a final decision of the Merit Systems Protection Board, which dismissed as untimely her appeal of the Office of Personnel Management's ("OPM") disallowance of her application for disability retirement. Thomas v. Office of Pers. Mgmt., MSPB Docket No. CH844E050583-I-1 (Oct. 7, 2005). We reverse and remand.

On March 14, 2005, OPM issued a reconsideration decision affirming its previous denial of Thomas' application for disability retirement. Thomas received OPM's final decision via certified mail on March 28, 2005, and she appealed to the board in a filing that was postmarked April 26, 2005. The administrative judge dismissed her appeal as untimely, and Thomas filed a petition for review with the full board on July 7, 2005. The board denied her petition, and Thomas appeals.

We review a decision of the board to determine whether it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 7703(c). Here, both parties agree that the board's decision to dismiss Thomas' appeal as untimely was not supported by substantial evidence and not in accordance with the law. Thomas had 30 days from the date on which she received the OPM's final decision, i.e., March 28, 2005, to file her appeal. 5 C.F.R. § 1201.22(b)(1). Both the record and the administrative judge agree that the appeal was filed on April 26, 2005, which was clearly within 30 days from the date on which she received OPM's final decision. The administrative judge, however, incorrectly calculated the filing deadline by using the date on which the decision was issued rather than the date on which Thomas received the decision via certified mail. Therefore, her decision to dismiss Thomas' appeal as untimely was neither supported by substantial evidence nor in accordance with law. Accordingly, the decision of the Merit Systems Protection Board is reversed and the case is remanded for further proceedings.