

NOTE: This order is nonprecedential.

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

JOHN EDWARD PENN, JR.,
Petitioner,

v.

DEPARTMENT OF DEFENSE,
Respondent.

2014-3023

Petition for review of the Merit Systems Protection Board in No. AT3330120859-I-1.

PER CURIAM.

O R D E R

The parties have responded to this court's order directing them to show cause why this petition should not be dismissed as untimely.

On July 24, 2013, the Merit Systems Protection Board issued a final order in John Edward Penn, Jr.'s case. The court received his notice of appeal on September 24, 2013, which was 62 days after the Board issued its decision.

Our review of a Board decision or order is governed by 5 U.S.C. § 7703(b)(1), which provides in relevant part that

“[n]otwithstanding any other provision of law, any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.” 5 U.S.C. § 7703(b)(1)(A). Penn does not contest the timeliness of his petition but instead argues that equitable tolling applies. However, this filing period is “statutory, mandatory, [and] jurisdictional” and the court does not have the authority to waive the requirements. *Monzo v. Dep’t of Transp.*, 735 F.2d 1335, 1336 (Fed. Cir. 1984); *Pinat v. Office of Personnel Management*, 931 F.2d 1544, 1545 (Fed. Cir. 1991); *see also* Fed. R. App. P. 26(b)(2).

Because Penn’s petition concerning the Board’s final order was filed after the statutory deadline for filing a petition, we must dismiss the appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

/s/ Daniel E. O’Toole
Daniel E. O’Toole
Clerk of Court