

NOTE: This order is nonprecedential.

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

FRANCINE NESBARY,
Petitioner,

v.

DEPARTMENT OF THE TREASURY,
Respondent.

2014-3046

Petition for review of the Merit Systems Protection Board in No. CH-0752-13-0588-I-1.

ON MOTION

Before PROST, O'MALLEY, and TARANTO, *Circuit Judges.*

PER CURIAM.

ORDER

The Department of the Treasury moves to dismiss this petition for review as untimely. Francine Nesbary submits a response opposing the motion to dismiss.

A September 11, 2013 initial Merit Systems Protection Board decision dismissed Nesbary's appeal for lack of jurisdiction. Nesbary did not request full Board review

and the decision became final on October 16, 2013. The court received her petition for review on December 17, 2013, which was 62 days after the Board decision became final. Because the due date for the petition, December 15, fell on a Sunday, the petition would have been timely if received on or before December 16.

To be timely, the court must receive the petition for review no later than 60 calendar days after the date the initial decision becomes final. *See* 5 U.S.C. § 7703(b)(1)(A); 5 C.F.R. § 1201.113. 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, 1546 (Fed. Cir. 1991); *see also* Fed. R. App. P. 26(b)(2).

Because Nesbary’s petition for review as to the underlying decision was filed past the statutory deadline, we must dismiss the petition.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is granted. The petition is dismissed.
- (2) All other pending motions are denied as moot.
- (3) Each side shall bear its own costs.

FOR THE COURT

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

s26

ISSUED AS A MANDATE: March 27, 2014