

NOTE: This order is nonprecedential.

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

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**RASHID EL MALIK,**  
*Claimant-Appellant,*

v.

**ERIC K. SHINSEKI, SECRETARY OF VETERANS  
AFFAIRS,**  
*Respondent-Appellee.*

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2010-7131

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Appeal from the United States Court of Appeals for  
Veterans Claims in 08-3741, Chief Judge William P.  
Greene, Jr.

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Before LOURIE, GAJARSA, and LINN, *Circuit Judges.*

PER CURIAM.

**ORDER**

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and dismiss Rashid El Malik's appeal as untimely. In the alternative, the Secretary moves to summarily affirm the judgment of the United States Court of Appeals for Veterans Claims. El Malik submits a letter concerning his appeal.

The certified list of docket entries of the United States Court of Appeals for Veterans Claims in *El Malik v. Shinseki*, No. 08-3741, reflects that that court's judgment was entered on January 22, 2010. That court dismissed El Malik's appeal for lack of jurisdiction. El Malik filed a motion with the Court of Appeals for Veterans Claims for an extension of time to file a motion for reconsideration. The court granted El Malik's motion, and El Malik filed a motion for reconsideration within the extended period. On June 4, 2010, the court denied El Malik's motion and El Malik filed an additional motion for reconsideration or panel review. El Malik filed another motion for reconsideration on July 13, 2010. The court rejected the additional documents as untimely. The court issued its mandate on July 27, 2010. The Court of Appeals for Veterans Claims received El Malik's notice of appeal on August 9, 2010.

An appeal from a decision of the Court of Appeals for Veterans Claims must be filed within 60 days of entry of judgment. See 38 U.S.C. § 7292(a); Fed. R. App. P. 4(a)(1). In this case, the notice of appeal from the judgment was due no later than March 23, 2010, and any notice of appeal from the June 4, 2010 order denying his motion for reconsideration was due no later than August 3, 2010. Because El Malik's notice of appeal was filed with the Court of Appeals for Veterans Claims on August 9, 2010, it was untimely.

The requirement to timely file a notice of appeal is jurisdictional. See *Bowles v. Russell*, 551 U.S. 205, 214 (2007) (timely filing of notice of appeal is a jurisdictional requirement); *Marandola v. United States*, 518 F.3d 913 (Fed. Cir. 2008) ("An untimely appeal must be dismissed for lack of jurisdiction; the requirement cannot be waived, and is not subject to equitable tolling.").

Accordingly,

IT IS ORDERED THAT:

(1) The motion to dismiss is granted. Any other motions are denied as moot.

(2) Each side shall bear its own costs.

FOR THE COURT

FEB 09 2011

Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Rashid El Malik,  
Steven M. Mager, Esq.

s20

ISSUED AS A MANDATE: FEB 09 2011

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

FEB 09 2011

JAN HORBALY  
CLERK