

NOTE: This order is nonprecedential.

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

GEORGE ALCANTAR,
Petitioner,

v.

INTERNAL REVENUE SERVICE,
Respondent.

2011-3010

Petition for review of an arbitrator's decision in case no. NB2564 by Norman Brand.

ON MOTION

Before LOURIE, MAYER, and DYK, *Circuit Judges.*

PER CURIAM.

O R D E R

George Alcantar moves for leave to proceed in forma pauperis and submits correspondence requesting that the court accept his untimely petition for review. The court considers whether the petition should be dismissed.

On June 28, 2010, the arbitrator issued a final decision in *Alcantar v. Department of Veterans Affairs.*, No.

NB2564. In his petition for review, Alcantar states that he received the arbitrator's decision on June 30, 2010. The court received Alcantar's petition for review 63 days later, on September 1, 2010.

A petition for review of an arbitrator's decision must be filed within 60 days of receipt of the decision. *See* 5 U.S.C. §§ 7121(f), 7703(b)(1). The 60-day filing period is "statutory, mandatory, [and] jurisdictional." *Monzo v. Dept. of Transp.*, 735 F.2d 1335, 1336 (Fed. Cir. 1984); *see also Oja v. Department of the Army*, 405 F.3d 1349, 1360 (Fed. Cir. 2005) ("[c]ompliance with the filing deadline of 5 U.S.C. § 7703(b)(1) is a prerequisite to our exercise of jurisdiction").

Alcantar states that he mailed his petition to the court on August 23, 2010 and that he was informed by postal employees that "it would be received by the Court on Thursday, August 26, 2010." However, documents other than briefs and appendices are not timely filed unless received by the clerk "within the time fixed for filing." *See* Fed. R. App. P. 26(a)(2)(A). Thus, Alcantar's petition was not filed until it was received by the clerk on September 1, 2010. Because Alcantar's petition for review was received by this court three days late, this court must dismiss Alcantar's petition as untimely.

Accordingly,

IT IS ORDERED THAT:

(1) Alcantar's motion for reconsideration of the clerk's rejection of his petition for review is denied. The petition for review is dismissed.

(2) All pending motions are moot.

FOR THE COURT

DEC 08 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: George Alcantar
William P. Rayel, Esq.

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

DEC 08 2010

JAN HORBALY
CLERK