

NOTE: This order is nonprecedential.

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

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**LOUIS KERLINSKY,**  
*Claimant-Appellant,*

v.

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

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2012-7118

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Appeal from the United States Court of Appeals for  
Veterans Claims in case no. 09-1934, Judge Frank Q.  
Nebeker.

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**ON MOTION**

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Before PROST, MAYER, and REYNA, *Circuit Judges.*  
PER CURIAM.

**ORDER**

The Secretary of Veterans Affairs moves to dismiss  
this appeal as untimely. Louis Kerlinsky responds.

On March 31, 2011, the United States Court of Ap-  
peals for Veterans Claims entered judgment in Ker-

linsky's case. The court received Kerlinsky's notice of appeal on May 10, 2012, 406 days after the date of judgment.

To be timely, a notice of appeal must be filed with the Court of Appeals for Veterans Claims within 60 days of the entry of judgment. *See* 38 U.S.C. § 7292(a); 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1); *see also Henderson v. Shinseki*, 131 S. Ct. 1197, 1204-05 (2011) (the language of Section 7292(a) "clearly signals an intent" to impose the same jurisdictional restrictions on an appeal from the Veterans Court to the Federal Circuit as imposed on appeals from a district court to a court of appeals). The statutory deadline for taking an appeal to this court is jurisdictional and thus mandatory. *See Bowles v. Russell*, 551 U.S. 205 (2007). Because Kerlinsky's appeal as to the underlying judgment was filed 346 days outside of the statutory deadline for taking an appeal to this court, we must dismiss the appeal.

To the extent that Kerlinsky is seeking review of the Veterans Court's April 25, 2012, denial of his motion to vacate judgment, Kerlinsky has presented no explanation in his brief or response as to why the mandate should be recalled and we discern no error in the Veterans Court's holding that recalling mandate was not warranted under the circumstances. We therefore summarily affirm the decision. *See Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (summary affirmance of a case "is appropriate, *inter alia*, when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists").

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted-in-part.

(2) The appeal of the March 31, 2011, Veterans Court decision is dismissed.

(3) The Veterans Court's April 25, 2012, denial of motion to vacate judgment is summarily affirmed.

(4) Each side shall bear its own costs.

FOR THE COURT

AUG 13 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Louis Kerlinsky  
Renee Gerber, Esq.

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Issued As A Mandate: AUG 13 2012

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

**AUG 13 2012**

**JAN HORBALY**  
**CLERK**