

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2010-3064

KENYA MCQUERTER,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Petition for review of the Merit Systems Protection Board  
in case no. CH0831090561-I-1.

ON MOTION

Before MICHEL, Chief Judge, FRIEDMAN and LINN, Circuit Judges.

PER CURIAM.

### ORDER

The court treats the Kenya McQuerter's letter, received by the court on December 28, 2009, as a motion for reconsideration of the court's previous rejection of her petition for review as untimely. McQuerter also moves for leave to proceed in forma pauperis.

McQuerter filed an action at the Merit Systems Protection Board, challenging the Office of Personnel Management's determination that she was not entitled to a lump sum death benefit payment after the death of her father because she was not listed as a named beneficiary. The Administrative Judge issued an initial decision affirming OPM's determination. McQuerter petitioned the full Board for review. The full Board

denied review, and McQuerter received the Board's final order denying review on October 6, 2009.

The court initially received McQuerter's petition for review on December 8, 2009, or 63 days after her receipt of the Board's final order. A petition for review must be received by the court within 60 days of receipt of the Board's final order.\* 5 U.S.C. § 7703(b)(1). To be timely filed, the petition must be received by this court on or before the date that the petition is due. Pinat v. Office of Personnel Management, 931 F.2d 1544, 1546 (Fed. Cir. 1991) (petition is filed when received by this court; court dismissed petition received nine days late). Because McQuerter's petition was not timely received by this court, it must be dismissed. Bowles v. Russell, 551 U.S. 205 (2007) (the timely filing of a notice of appeal in a civil case is a jurisdictional requirement that cannot be waived).

Accordingly,

IT IS ORDERED THAT:

- (1) McQuerter's motion for reconsideration is denied and this petition for review is dismissed as untimely filed.
- (2) The motion for leave to proceed in forma pauperis is granted.

MAR 23 2010

Date

FOR THE COURT

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

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

MAR 23 2010

cc: Kenya McQuerter  
Jeffrey A. Regner, Esq.

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JAN HORBALY  
CLERK

\* Sixty days after October 6, 2009 would be December 5, 2009. However, because that date was a Saturday, the due date for the court to receive McQuerter's petition is the next business day, i.e., Monday, December 7, 2009. Fed. R. App. P. 26(a)(1)(C). Her petition for review was received by the court on Tuesday, December 8, 2009, one day beyond the due date.