

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-3081

JACKIE L. HENDERSON,

Petitioner,

v.

DEPARTMENT OF DEFENSE,

Respondent.

Petition for review of the Merit Systems Protection Board in
SF0752090244-I-1.

ON MOTION

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

PER CURIAM.

ORDER

The court treats Jackie L. Henderson's correspondence concerning the timeliness of her petition for review as a motion for reconsideration of the court's previous rejection of her petition for review as untimely.

On November 3, 2009, the Merit Systems Protection Board issued a final decision in Henderson v. Department of Defense, No. SF-0752-09-0244-I-1, specifying that its decision was final and that any petition for review must be received by this court within 60 calendar days of receipt of the Board's decision. The Board's records reflect that Henderson received the decision on November 10, 2009. The court received Henderson's petition for review 64 days later, on January 13, 2010.

A petition for review of a Board decision must be filed within 60 days of receipt of the decision. See 5 U.S.C. § 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”).

Henderson states that she faxed her petition to the court on January 6, 2010. However, a petition for review may not be filed by facsimile. See Fed. Cir. R. 25(b) (“No document other than a motion, response to a motion, reply to a response, or letter may be filed or served by facsimile transmission”). Further, 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, Henderson’s petition was not filed until it was received by the clerk on January 13, 2010. Because Henderson’s petition for review was not timely filed, this court must dismiss the petition.

Accordingly,

IT IS ORDERED THAT:

Henderson’s motion for reconsideration of the clerk’s rejection of her petition for review is denied. The petition for review is dismissed.

FOR THE COURT

MAR 23 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Jackie L. Henderson
Austin M. Fulk, Esq.
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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAR 23 2010