

NOTE: This order is nonprecedential.

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

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**MARILYN F. VAILATI,**  
*Claimant-Appellant,*

v.

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

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2012-7154

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Appeal from the United States Court of Appeals for  
Veterans Claims in case no. 08-2454, Judge Lawrence B.  
Hagel.

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**ON MOTION**

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Before *RADER, Chief Judge, LOURIE and SCHALL, Circuit  
Judges.*

PER CURIAM.

**ORDER**

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

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On April 25, 2012, the United States Court of Appeals for Veterans Claims (Veterans Court) entered judgment in Marilyn F. Vailati's case. According to the Veterans Court's docket, the court received Vailati's notice of appeal on July 10, 2012, 76 days after the date of judgment.

To be timely, a notice of appeal must be filed with the Veterans Court 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). The statutory deadline for taking an appeal to this court is jurisdictional, mandatory, and cannot be waived. See *Bowles v. Russell*, 551 U.S. 205, 214 (2007).; 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). Because Vailati's appeal as to the underlying judgment was filed outside of the statutory deadline for taking an appeal to this court, we must dismiss the appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted.
- (2) The appeal is dismissed.
- (3) Each side shall bear its own costs.

FOR THE COURT

/s/ Jan Horbaly

Jan Horbaly

Clerk

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