NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ROBERT O. IDAHOSA,
Petitioner

v.

DEPARTMENT OF THE ARMY,
Respondent

2025-1770

Petition for review of the Merit Systems Protection Board in No. AT-1221-19-0535-W-1.

Decided: September 10, 2026

ROBERT O. IDAHOSA, Columbus, GA, pro se.

STEPHANIE FLEMING, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent. Also represented by ELIZABETH MARIE HOSFORD, PATRICIA M. MCCARTHY, BRETT SHUMATE.

Before TARANTO, HUGHES, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

Robert O. Idahosa served as an Equal Employment Opportunity (EEO) specialist with the Department of the Army (agency) until 2018, when the agency removed him from his position. Mr. Idahosa sought relief from the Merit Systems Protection Board (Board), alleging that the agency took several adverse personnel actions against him, including his removal, in retaliation for his whistleblowing activities and disclosures protected under 5 U.S.C. § 2302(b)(8)–(9). The Board, while agreeing that Mr. Idahosa engaged in protected whistleblower activity, denied him relief for want of a *prima facie* case of retaliation, determining that the activity was not a factor contributing to the challenged personnel actions. *See Idahosa v. Department of the Army*, No. AT-1221-19-0535-W-1, 2024 WL 3373092 (M.S.P.B. July 10, 2024) (*Final Decision*).

Mr. Idahosa petitioned this court for review. But his petition was not received until several months after the 60-day statutory filing period. We now dismiss his petition as untimely. We also conclude that Mr. Idahosa has not shown error in the Board's determination of no whistleblower retaliation, so we would affirm the Board if we were not dismissing the petition.

I

A

In July 2016, the agency initiated an investigation into whether Mr. Idahosa engaged in the unauthorized practice of law or used his public office for private gain. S. Appx. 39–41; [1] *see* 5 C.F.R. § 2635.701 *et seq*. The investigating officer found that Mr. Idahosa committed both actions and recommended that he be fired. S. Appx. 44–46.

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[1] "S. Appx." refers to the supplemental appendix submitted with the Board's brief.

In February 2017, Mr. Idahosa's first-line supervisor placed him on paid administrative leave for insubordinate conduct. S. Appx. 51.

In March 2017, Mr. Idahosa filed a complaint with the Office of Inspector General, accusing his first-line supervisor of falsifying her own time-and-attendance records when stating that she worked for eight hours on certain days when she arrived at work after 8 A.M. S. Appx. 52–53. He also accused her of mismanaging agency resources. S. Appx. 53.

In April 2017, Mr. Idahosa's first-line supervisor submitted her annual performance appraisal of Mr. Idahosa, covering the rating period from November 2015 through October 2016. S. Appx. 54–55. In August 2017, she charged Mr. Idahosa with conduct unbecoming a federal employee and proposed his removal, S. Appx. 56–57, and the agency sustained the charge and removed him from his job effective February 6, 2018, S. Appx. 59–60.

Mr. Idahosa then filed a complaint with the Office of Special Counsel (OSC), alleging (as OSC recounted) that he was placed on administrative leave and removed in retaliation for his complaint to the Inspector General as well as complaints to his second-line supervisor and "EEO complaints." S. Appx. 63; *see* S. Appx. 62–64. He later amended his OSC complaint to allege other retaliatory acts by the agency (including denying him promotions and failing to provide performance evaluations covering a period after October 2016) and to allege that a complaint he filed with OSC in 2014 was a further basis for retaliation. *See*

Appx. 60–64.[2] OSC closed that inquiry in April 2019, determining that Mr. Idahosa had not provided a sufficient basis to support his allegations. S. Appx. 64–66.

B

In June 2019, Mr. Idahosa, then represented by counsel, filed an Individual Right of Action (IRA) appeal with the Board pursuant to 5 U.S.C. § 1221. S. Appx. 67–73.

In February 2020, the Board-assigned administrative judge (AJ) denied Mr. Idahosa's request for corrective action, ruling on the basis of the submitted written evidence, as Mr. Idahosa did not request a hearing. *See Idahosa v. Department of the Army*, No. AT-1221-19-0535-W-1, 2020 WL 698409 (M.S.P.B. Feb. 7, 2020) (*Initial Decision*); S. Appx. 21–37. Relevantly, the AJ determined that Mr. Idahosa had exhausted his administrative remedies only with respect to the disclosure associated with his removal. *Initial Decision*, at 5 (S. Appx. 25).[3] The AJ concluded, however, that Mr. Idahosa failed on the merits twice over: He had not made a protected disclosure under 5 U.S.C. § 2302(b)(8) in his complaint to the Inspector General; and even if the relied-on disclosure was protected, he did not establish that it was a contributing factor in his removal. *Id.* at 6–8 (S. Appx. 26–28).

Mr. Idahosa then petitioned the full Board to review the matter and to reject, in part, the AJ's evaluation of the evidence. S. Appx. 78–84. On July 10, 2024, the Board

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[2] "Appx." refers to the appendix that, with Mr. Idahosa's opening brief, is docketed at ECF No. 13. We cite the page numbers at the top of the pages of ECF No. 13.

[3] For the *Initial Decision*, we cite the native page numbers on the document at S. Appx. 21–37 (along with the corresponding S. Appx. number). For the *Final Decision*, we give the Westlaw page numbers.

denied his petition for review and affirmed the *Initial Decision*, albeit with modifications. *Final Decision*, at *1. The Board found that Mr. Idahosa exhausted his administrative remedies with OSC not only with respect to his removal but also with respect to three other actions or omissions by the agency—placing him on administrative leave, failing to provide performance evaluations for his work after October 2016, and not selecting him for promotions. *Id.* at *3. The Board further modified the *Initial Decision* to conclude that Mr. Idahosa's complaint to the Inspector General was a protected activity under 5 U.S.C. § 2302(b)(9)(C) but that none of his other complaints were protected. *Id.* at *4–5. The Board, reviewing the submitted evidence, determined that the complaint to the Inspector General was not a contributing factor to any personnel action. *Id.* at *5–6.

Mr. Idahosa petitioned this court for review under 5 U.S.C. § 7703(b). We received his petition on May 12, 2025, nearly a year after the Board issued and mailed the *Final Decision* to Mr. Idahosa. ECF. No. 1; S. Appx. 85. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

II

Relief in Mr. Idahosa's favor is foreclosed on two independent grounds. First, we dismiss the petition for review to us as having been untimely filed. Second, we conclude that, if we were to reach the merits, Mr. Idahosa has not shown reversible error in the Board's ruling. We may set aside the Board's decision only if it is "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c).

A

The agency argues that we should dismiss Mr. Idahosa's petition for review as untimely. Board Response Br. at 10–14. We agree.

The governing statute provides that "any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board." 5 U.S.C. § 7703(b)(1)(A). This filing period "begin[s] on the date the Board . . . issues notice, not the date the petitioner receives notice or could receive notice of the decision," and "the date on which the [Board] 'issues notice' is the date on which it sends the final decision, whether electronically, by regular mail, or by other means." *Federal Education Association - Stateside Region v. Department of Defense, Domestic Dependents Elementary and Secondary Schools*, 898 F.3d 1222, 1224–25 (Fed. Cir. 2018), *overruled on other grounds by Harrow v. Department of Defense*, 601 U.S. 480, 489–90 (2024). What must occur within the 60-day period is a filing: a petition for review must be "filed." 5 U.S.C. § 7703(b)(1)(A); *see also* Fed. R. App. P. 15(a)(1) ("Review of an agency order is commenced by filing, within the time prescribed by law. . . ."). Crucially, for a petitioner who files by mail, the "filing [of papers] is not timely unless the clerk [of this court] *receives* the papers within the time fixed for filing." Fed. R. App. P. 25(a)(2)(A)(i) (emphasis added); *see Pinat v. Office of Personnel Management*, 931 F.2d 1544, 1546 (Fed. Cir. 1991) ("[A]n appeal is filed when it is received at the court, not when it was signed by an appellant."). In the present matter, this court therefore had to receive a petition from Mr. Idahosa within 60 days after July 10, 2024 (or the first business day after that 60 days). But we did not receive Mr. Idahosa's petition until May 12, 2025, which was 245 days late.

The § 7703(b)(1)(A) time limit is not a "jurisdictional" rule, *see Harrow*, 601 U.S. at 482–89, but as with statutes of limitations generally, dismissal is proper when the filing

is made beyond the time limit—unless "equitable tolling" is legally available for the § 7703(b)(1)(A) time limit *and* is shown by the tardy filer to be justified in the particular case. As to the legal-availability requirement, the Supreme Court has explained that "nonjurisdictional [timing rules] are *presumptively* subject to equitable tolling." *Boechler, P.C. v. Commissioner*, 596 U.S. 199, 209 (2022) (emphasis added); *see Harrow*, 601 U.S. at 489–90. The Supreme Court, however, has not decided whether the presumption is overcome for § 7703(b)(1)(A), and our pre-*Harrow* precedent indicates that the presumption *is* overcome for § 7703(b)(1)(A). *See Oja v. Department of Army*, 405 F.3d 1349, 1357–58 (Fed. Cir. 2005) (holding that the rebuttable presumption of equitable tolling has been rebutted with respect to § 7703(b)(1)(A)); *see also* Fed. R. App. P. 26(b)(2) (explaining that the court "may not extend the time to file . . . a notice of appeal from . . . an order of an administrative . . . board . . . unless specifically authorized by law"). We need not resolve the issue here. Assuming without deciding that equitable tolling is available under § 7703(b)(1)(A), we conclude that Mr. Idahosa has not shown entitlement to equitable tolling in this particular case, as he has not carried the burden of demonstrating "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" and prevented timely filing. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *see also Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151 (1984) ("One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence.").

Mr. Idahosa, who has not been a registered electronic filer and who filed by mail with both the Board and this court, contends that he could not satisfy the 60-day requirement because he did not timely receive the *Final Decision*. Idahosa Reply Br. at 3–4. On July 10, 2024, the Board mailed Mr. Idahosa the *Final Decision* to the address on record, but the United States Postal Service was

unable to deliver it and returned it to the Board on September 23, 2024. S. Appx. 20, 85; Returned Final Order, *Idahosa v. Department of the Army*, No. AT-1221-19-0535-W-1 (M.S.P.B. Sept. 23, 2024), PFR Tab No. 7. Mr. Idahosa asserts that he had filed a change of address form with the postal service and then mailed a copy of it to both the Board and the agency. Idahosa Reply Br. at 4. In February 2025, the Board's Office of the Clerk emailed Mr. Idahosa requesting a mailing address to resend the *Final Decision*, and Mr. Idahosa replied the same day. S. Appx. 85. The Office of the Clerk mailed the *Final Decision* to Mr. Idahosa on March 3, 2025, *id.*, and Mr. Idahosa confirms receiving it that month, Idahosa Reply Br. at 4. Even so, this court did not receive Mr. Idahosa's petition to this court until May 12, 2025.

Even if equitable tolling is available, Mr. Idahosa has not met his burden to show that equitable tolling is justified. First, before March 2025, he had an obligation to apprise the Board of any new address, but he does not provide evidence of when and how he did so—in particular, that he did so before the 60-day statutory period ended—nor is any such communications apparent from the Board's docket. *See* 5 C.F.R. § 1201.26(a)(2) ("The parties and their representatives must notify the appropriate Board office and one another, in a pleading, of any changes in their address."); *see also id.* §§ 1201.4(b), 1203.13(d). The Board informed Mr. Idahosa of this obligation in the Form he filled out to initiate his appeal to the Board (*i.e.*, before any AJ proceedings) and in the Board's acknowledgment of his petition for review following the AJ's *Initial Decision*. S. Appx. 67 (statement accompanying question 2); Acknowledgment of Petition for Review, *Idahosa v. Department of the Army*, No. AT-1221-19-0535-W-1 (M.S.P.B. Feb. 14, 2024), PFR Tab No. 2, at 2. Second, once the Board received the correct address and remailed its *Final Decision* on March 3, 2025, Mr. Idahosa does not demonstrate any extraordinary circumstance or diligent efforts that account for why we did

not receive his notice of appeal until May 12, 2025, which was 70 days, and not within 60 days, from when the Board remailed the *Final Decision*.

We therefore dismiss Mr. Idahosa's petition.

B

Even if we entertained Mr. Idahosa's challenge on its merits, we would deny relief.

1

To secure relief from the Board in an IRA appeal relating to a claim of whistleblowing reprisal, the appellant (in the Board) must have exhausted his administrative remedies before OSC. *See* 5 U.S.C. §§ 1221(e)(1), 1214(a)(3); *see also Cahill v. Merit Systems Protection Board*, 821 F.3d 1370, 1373 (Fed. Cir. 2016). The appellant also must prove that (1) he made a protected disclosure covered by 5 U.S.C. § 2302(b)(8) or engaged in a protected activity covered by § 2302(b)(9) and (2) his protected disclosure or activity was a contributing factor to the agency's decision to take a personnel action covered by 5 U.S.C. § 2302(a). *See Cahill*, 821 F.3d at 1373; *Hessami v. Merit Systems Protection Board*, 979 F.3d 1362, 1367–70 (Fed. Cir. 2020). To establish the contributing-factor element, the appellant may rely on the "knowledge/timing" test, *i.e.*, prove the decisionmaker's knowledge of the whistleblowing disclosure or activity and a given temporal relationship of the disclosure or activity to the personnel action. *See* 5 U.S.C. § 1221(e)(1); *Kewley v. Department of Health and Human Services*, 153 F.3d 1357, 1361–62 (Fed. Cir. 1998). In the present case, the Board determined that (a) Mr. Idahosa exhausted his administrative remedies regarding his complaint to the Inspector General, (b) that complaint was a protected activity, but (c) that complaint was not a contributing factor to his adverse personnel actions. *See Final Decision*, at

*1, *3–4. (The Board did not need to reach any agency defense, under 5 U.S.C. § 1221(e)(2), that it would have taken the same actions regardless of the whistleblowing.)

Mr. Idahosa does not present any sufficient reason to disturb the Board's determination that he failed to meet the contributing-factor requirement by way of the knowledge/timing test. *See* Idahosa Opening Br. at 15–16. Mr. Idahosa waived his right to a hearing, and the Board appropriately relied on the declaration of his first-line supervisor, whose knowledge was key, as more convincing than the submission of his attorney, who lacked direct personal knowledge of any relevant decisionmaker's knowledge. *Final Decision*, at *2, *5–6. And the declaration of the first-line supervisor, who served as the proposing official of Mr. Idahosa's removal, stated that she was unaware of either his 2014 OSC complaint or Inspector General complaint when she recommended that Mr. Idahosa be removed, noting that the second-line supervisor had not informed her of those complaints. S. Appx. 76–77.

Mr. Idahosa now contends that the Board further erred by not considering declarations of either a co-worker or his second-line supervisor. Idahosa Opening Br. at 10–11; *see* Appx. 29–39, 88–106. But Mr. Idahosa has not persuasively shown what statement by either individual could reasonably alter the Board's knowledge/timing basis for its decision; neither one was either the proposing or deciding official to remove him or directly involved in his other adverse personnel actions. *See* S. Appx. 56–60. Mr. Idahosa's argument that the adverse personnel actions were retaliatory is, at best, a request for us to reweigh the evidence on appeal, which we may not do. *See Jones v. Department of Health and Human Services*, 834 F.3d 1361, 1369 (Fed. Cir. 2016).

2

Mr. Idahosa's remaining assertions of Board error are not persuasive.

Mr. Idahosa claims that the Board failed to consider whether he exhausted his administrative remedies with regard to certain additional alleged adverse personnel actions. *See* Idahosa Opening Br. at 8–10. He has not shown, however, that several of the additional actions are within the definition of a personnel action as protected from retaliation under 5 U.S.C. § 2302(a)(2)(A), including his allegations that his first-line supervisor fraudulently applied his signature, he was denied access to his office, he was accused of breaking into another supervisor's office, and he endured harassment. Moreover, others that do come within § 2302(a)(2)(A) were nevertheless properly excluded because Mr. Idahosa did not first raise them to OSC, and the Board's jurisdiction in an IRA appeal is "limited to those issues that have been previously raised with OSC." *McCarthy v. Merit Systems Protection Board*, 809 F.3d 1365, 1374 (Fed. Cir. 2016) (internal citation and quotation marks omitted); *see* Idahosa Opening Br. at 4–5 (Mr. Idahosa depicting what was raised to OSC); S. Appx. 63–64; *Final Decision*, at *2.

Mr. Idahosa also asserts, in several different arguments, that the Board did not properly assess evidence supporting the charge for conduct unbecoming a federal employee. These assertions focus on whether the investigator had a conflict of interest, Mr. Idahosa's computer use was de minimis, he used his official time for personal gain, he claimed he could practice law, and the adverse personnel action may have been different had the agency followed its own policies. Idahosa Opening Br. at 10–12, 14, 16. In so doing, Mr. Idahosa fails to appreciate that the jurisdiction of an IRA appeal does not include evaluating the merits of the agency's personnel action but instead is "limited to resolving the claim(s) of reprisal for whistleblowing or other protected activity." 5 C.F.R. § 1209.2(d)(2); *see* 5 U.S.C. § 1221(e)(1); *Cahill*, 821 F.3d at 1373. Mr. Idahosa's argument that the Board erred by not considering the factors outlined in *Douglas v. Veterans Administration*, 5

M.S.P.R. 280, 305–06 (1981), which concern the reasonableness of the adverse personnel actions, is similarly unavailing. *See* Idahosa Opening Br. at 12–13.

Mr. Idahosa further argues that his 2017 complaint is a protected disclosure under 5 U.S.C. § 2302(b)(8) and not exclusively a protected activity under § 2302(b)(9). Idahosa Opening Br. at 17. He does not demonstrate, however, how that classification issue could reasonably have altered the Board's conclusion on the knowledge/timing test. *See id.* Further, a showing of a protected disclosure required facts giving rise to a reasonable belief that the disclosure evidenced "any violation of any law, rule, or regulation, or . . . gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." 5 U.S.C. § 2302(b)(8)(A); *see Cahill*, 821 F.3d at 1373; *Hessami*, 979 F.3d at 1370. "Whether an individual has such a reasonable belief is determined by an objective test: whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the [individual] would reasonably conclude that the actions of the government evidence wrongdoing as defined by the Whistleblower Protection Act." *Young v. Merit Systems Protection Board*, 961 F.3d 1323, 1328 (Fed. Cir. 2020). As the AJ here determined, Mr. Idahosa's allegations of time-card fraud based on what time his first-line supervisor arrived at work do not satisfy the objective test: Without information about what time that supervisor stopped working on each of the days in question, a disinterested observer could not reasonably conclude that she worked less than her required eight hours. *See Initial Decision*, at 6–7 (S. Appx. 26–27).

Mr. Idahosa seems to complain that he did not have a hearing before the Board. Idahosa Opening Br. at 15. He has not shown error. Mr. Idahosa waived his right to a hearing while represented by counsel. *See* Withdrawal of Hearing Request, *Idahosa v. Department of the Army*,

No. AT-1221-19-0535-W-1 (M.S.P.B. Sept. 12, 2019), IA Tab No. 22; *see also Final Decision*, at *2.

Mr. Idahosa's final challenges pertain to the Board's treatment of the factors in *Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999). Idahosa Opening Br. at 18–19. The Board did not abuse its discretion by not analyzing the *Carr* factors to assess whether the agency would have taken the same adverse personnel actions in the absence of his protected activity (the Inspector General complaint) because the Board need not reach this issue unless Mr. Idahosa's protected activity were a contributing factor to the adverse personnel actions the agency took. *See Rickel v. Department of the Navy*, 31 F.4th 1358, 1364 (Fed. Cir. 2022). Because we see no reversible error in the Board's determination that his protected activity was not a contributing factor, it did not abuse its discretion. *See Final Decision*, at *7.

III

We have considered Mr. Idahosa's remaining arguments and find them unpersuasive. The petition is dismissed as untimely.

The parties shall bear their own costs.

DISMISSED