

NOTE: This disposition is nonprecedential.

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

RICKY BRUCE TOBIAS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2026-1572

Petition for review of the Merit Systems Protection Board in No. DA-844E-25-1041-I-1.

Decided: September 11, 2026

RICKY BRUCE TOBIAS, Cypress, TX, pro se.

DEANNA SCHABACKER, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by KATHERINE MICHELLE SMITH.

Before MOORE, *Chief Judge*, PROST, *Circuit Judge*, and
BARKER, *District Judge*.¹

PER CURIAM.

Ricky Bruce Tobias petitions for review of a final decision of the Merit Systems Protection Board (Board) dismissing as untimely his appeal of an Office of Personnel Management (OPM) decision denying him disability retirement benefits. Because Mr. Tobias inexcusably filed his appeal with the Board 386 days late, we *affirm*.

BACKGROUND

On March 9, 2024, the United States Postal Service (USPS) unsuccessfully attempted to deliver to Mr. Tobias OPM's letter finally denying his application for disability retirement benefits. Appx. 5.² That letter explained Mr. Tobias' right to appeal the denial "within . . . 30 calendar days after *receipt* of this decision." Appx. 58 (emphasis added). The USPS left a notice for pickup on Mr. Tobias' door, explaining the letter was available at the post office the same day. Appx. 24–25, 28. When Mr. Tobias did not retrieve the letter, it was returned to OPM by April 12, 2024, more than thirty days after the attempted delivery. Appx. 24, 27.

Over a year later, Mr. Tobias made a request with OPM relating to his application for disability retirement benefits. Appx. 55. OPM responded on April 24, 2025 by sending a letter to Mr. Tobias at the same address to which it mailed the March 2024 final decision. *Id.* Construing his request as an appeal of its final decision, OPM referred

¹ Honorable J. Campbell Barker, District Judge, United States District Court for the Eastern District of Texas, sitting by designation.

² "Appx." refers to the appendix attached to Respondent's Brief.

Mr. Tobias to the Board. *Id.* Mr. Tobias received this letter, Pet'r's Br. 2; *see also* Appx. 6, which included a copy of the March 2024 final decision, and he subsequently filed the subject appeal with the Board on April 29, 2025, *see* Appx. 1; *see also* Appx. 52–54 (Appeal). He alleged OPM's April 2025 letter was the first actual notice he had received of the March 2024 final decision.

Following a conference, the administrative judge informed Mr. Tobias and OPM of the burdens of proof and applicable law regarding timeliness of appealing an agency decision, and she ordered both parties to brief the question with any supporting evidence. Appx. 3–4. Mr. Tobias submitted a photograph of one page of OPM's final decision, Appx. 30–34, and OPM submitted USPS tracking information corroborating USPS' attempted delivery of the final decision in 2024, Appx. 26–29. Mr. Tobias offered no response to OPM's evidence. Appx. 4. The administrative judge thereafter closed the record and dismissed the appeal as untimely because Board regulations deem an agency's decision received when it is sent to the appellant's address of record via postal mail. Appx. 5 (citing 5 C.F.R. § 1201.22(b)(3)). The administrative judge's decision became final on February 26, 2026, and Mr. Tobias timely petitioned for review. We have jurisdiction under 28 U.S.C. § 1295(a)(9) and 5 U.S.C. § 7703(b)(1)(A).

DISCUSSION

We affirm a decision of the Board unless 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). We review a petitioner's constitutional challenges “without deference to the Board's analysis.” *Briggs v. Merit Sys. Prot. Bd.*, 331 F.3d 1307, 1311 (Fed. Cir. 2003).

Mr. Tobias centers his petition on actual notice and due process. Pet'r's Br. 2–3. According to Mr. Tobias, “MSPB precedent and due process principles” require that an appeal deadline may not begin to run until the appellant receives *actual notice* of the agency’s final decision. Pet'r's Br. 2. Thus, Mr. Tobias claims, his time to appeal began on the day he received actual notice of the March 2024 final decision—allegedly when he received OPM’s April 2025 letter. *Id.* We do not agree.

Mr. Tobias cites no authority establishing an actual-notice rule. To the contrary, Board regulation, Board precedent, and due process principles all support the Board’s dismissal here.

To start, the Board’s regulation deems delivered an agency’s decision mailed via postal delivery to the appellant’s address of record. 5 C.F.R. § 1201.22(b)(3), Example A (“An appellant who fails to pick up mail delivered to his or her post office box may be deemed to have received the agency decision.”). That regulation provides that “an appellant may not avoid service of a properly addressed and mailed decision by intentional or negligent conduct which frustrates actual service.” *Id.* With ample opportunity to explain himself below, Appx. 7–8; Appx. 35–38; Appx. 47–50, and here, Pet'r's Br. 2–3, Mr. Tobias provides no explanation for his failure to go to the post office and pick up OPM’s letter.

Next, contrary to Mr. Tobias’ contention, the Board has applied its regulation in factually analogous situations. *See, e.g., Little v. U.S. Postal Service*, 2017 MSPB 5, 9 (2017) (applying § 1201.22(b)(3)) (“[T]he appellant constructively received the [agency decision] . . . the date it was delivered to his post office box.”).

Finally, to the extent Mr. Tobias purports to mount a constitutional challenge to the Board’s decision, it fails. Pet'r's Br. 3. “An elementary and fundamental require-

ment of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S. 306, 314 (1950). Here, we cannot say OPM’s conduct was not reasonably calculated to apprise Mr. Tobias of its decision and his right to appeal. Mr. Tobias does not dispute that OPM mailed its final decision to his address, the same place he received correspondence from OPM a year later. Nor does Mr. Tobias deny that notice of the mailing attempt was posted on his door. He gives no explanation for his delay of more than a year in following up with OPM. Thus, we conclude Mr. Tobias received constitutionally adequate notice and opportunity to respond.

Mr. Tobias raises an additional argument on appeal, namely that we should equitably toll his appeal deadline because he pursued his appeal diligently and in good faith after he received actual notice of OPM’s final decision. He does not explain how his circumstances warrant tolling a deadline 386 days passed. Accordingly, Mr. Tobias failed to carry his burden, and he is not entitled to equitable tolling as a matter of law. *Chitlik v. Sec’y of Health and Human Servs.*, 184 F.4th 1366, 1370 (Fed. Cir. 2026) (tolling proponent bears the burden to prove “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.”).

CONCLUSION

We have considered Mr. Tobias’ remaining arguments and find them unpersuasive. Accordingly, we *affirm*.

AFFIRMED

COSTS

No costs.