

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

MICHAEL J. O'FARRELL, JR.,
Appellant,

DOCKET NUMBER
DE-4324-14-0013-I-1

v.

DEPARTMENT OF DEFENSE,
Agency.

DATE: September 15, 2016

Michael J. O'Farrell, Jr., Hill Air Force Base, Utah, pro se.
Daniel W. Moebs, Richmond, Virginia, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Mark A. Robbins, Member

ORDER

¶1 The appellant has filed a petition for review of the initial decision, which denied his request for corrective action under the Uniformed Services Employment and Reemployment Rights Act of 1994 (codified at [38 U.S.C. §§ 4301-4335](#)) (USERRA). The two Board members cannot agree on the disposition of the petition for review. Therefore, the initial decision now becomes the final decision of the Merit Systems Protection Board in this appeal.* Title 5 of the Code of Federal Regulations, section 1200.3(b) ([5 C.F.R.](#)

* On review, the appellant requested permission to submit evidence that was inadvertently omitted below. Petition for Review (PFR) File, Tab 7 at 3. Because the Board members cannot agree on the applicable legal standard, we need not address whether it would be appropriate to accept additional evidence at this time.

[§ 1200.3\(b\)](#)). This decision shall not be considered as precedent by the Board in any other case. [5 C.F.R. § 1200.3\(d\)](#).

**NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS**

You have the right to request review of the final decision by the U.S. Court of Appeals for the Federal Circuit. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after the date of this order. See [5 U.S.C. § 7703\(b\)\(1\)\(A\)](#) (as rev. eff. Dec. 27, 2012). If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. See *Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the Federal law that gives you this right. It is found in title 5 of the U.S. Code, section 7703 ([5 U.S.C. § 7703](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the U.S. Code, at our website, <http://www.mspb.gov/appeals/uscode/htm>. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's [Rules of Practice](#), and [Forms 5](#), [6](#), and [11](#).

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation

for Merit Systems Protection Board appellants before the Federal Circuit. The Merit Systems Protection Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

FOR THE BOARD:

Jennifer Everling
Acting Clerk of the Board

Washington, D.C.