



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for February 17, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Laurence M. Fedora
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2015-3039](#)
MSPB Docket Number: SF-0752-13-0433-I-1
Issuance Date: February 16, 2017

Jurisdiction
Resignation/Retirement/Separation
Timely Filing
Equitable Tolling

On August 31, 2012, the petitioner retired from his position as a Mail Handler at the U.S. Postal Service. On April 27, 2013, he filed a Board appeal alleging that his retirement was involuntary. In an initial decision dated August 12, 2013, the administrative judge dismissed the appeal for lack of jurisdiction, finding that the petitioner failed to nonfrivolously allege that his retirement was involuntary. On August 15, 2014, the Board issued a final order that affirmed the initial decision and advised the petitioner that he had "the right to request review" of the decision "no later than 60 calendar days after the date of this order," citing 5 U.S.C. § 7703(b)(1)(A). The petitioner appealed to the court on October 20, 2014, six days after the 60-day filing period had

expired.

Holding: The court dismissed the petition for review for lack of jurisdiction.

1. Relying on certain U.S. Supreme Court decisions and its own precedent, the court found that it lacks jurisdiction over petitions for review that fail to comply with the timeliness requirement of 5 U.S.C. § 7703(b)(1)(A).
2. The court also found that, because the timeliness requirement of section 7703(b)(1)(A) is jurisdictional in nature, it is not subject to equitable tolling.
3. The court acknowledged the petitioner's claim that he relied on the court's own "Guide for Pro Se Petitioners and Appellants," which incorrectly advised that a petitioner could file a petition for review within 60 days of receipt of a Board decision, which he did, rather than within 60 days of the issuance date of a Board decision, as required by section 7703(b)(1)(A). The court reiterated, however, that it lacked the authority to equitably toll a statutory deadline. The court also recognized that the Board advised the petitioner of his proper review rights in its August 15, 2014 final order, specifically informing him that the 60-day filing period would commence on the date of the order and cautioning him to "be very careful to file on time."

Judge Plager issued a dissenting opinion, contending that the "conclusion does not do justice to the complexities of the issue [the petitioner] presents, is inconsistent with current Supreme Court guidance, and in my view probably results in a wrong conclusion that is based neither on good law nor fundamental fairness."

NONPRECEDENTIAL:

Sparks v. Office of Personnel Management, [No. 2016-2340](#) (Feb. 10, 2017) (MSPB Docket No. DA-0831-16-0264-I-1) (affirming the Board's decision, which affirmed the Office of Personnel Management's dismissal of the petitioner's request for reconsideration of its denial of disability retirement benefits as untimely filed).

Bain v. Office of Personnel Management, [No. 2016-1333](#) (Feb. 10, 2017) (MSPB Docket No. SF-0845-15-0579-I-1) (affirming, per Rule 36, the Board's decision, which affirmed the Office of Personnel Management's reconsideration decision

finding that the agency proved the existence and amount of an overpayment and that the petitioner was not entitled to a waiver of the overpayment or a further adjustment of the repayment schedule).

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