



# U.S. Merit Systems Protection Board

CASE REPORT

DATE: April 17, 2009

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## BOARD DECISIONS

- **Appellant: John D. Wightman**  
**Agency: Department of Veterans Affairs**  
**Decision Number: [2009 MSPB 55](#)**  
Docket Number: DE-0752-07-0485-A-1  
DE-0752-08-0090-A-1  
Issuance Date: April 15, 2009  
Appeal Type: Adverse Action by Agency  
Action Type: Attorney Fee Request

### **Attorney Fees - Reasonableness**

The appellant petitioned for review of an initial decision that awarded him attorney fees and costs in the amount of \$82,768.91, arguing that the administrative judge (AJ) improperly excluded \$2,460 (12.3 hours of work) in attorney fees.

**Holdings: The Board granted the appellant's petition for review (PFR) and affirmed the initial decision as modified, increasing the amount awarded to \$85,228.91. The Board found that the hours in question were not spent on the appellant's petition with the EEOC, as the AJ found, but were spent on research and preparation of the attorney fees motion in these appeals, and are reasonable.**

- **Appellant: Stephen Boyd**  
**Agency: Department of Veterans Affairs**  
**Decision Number: [2009 MSPB 56](#)**  
Docket Number: CH-0752-08-0732-I-1  
Issuance Date: April 16, 2009  
Appeal Type: Adverse Action by Agency  
Action Type: Removal

**Timeliness - PFA**

The appellant petitioned for review of an initial decision that dismissed his appeal as untimely filed without good cause shown. The agency issued its decision removing the appellant from his position as an Information Technology Specialist on July 18, 2008, making the removal effective the same date. The agency argued that the appellant constructively received the decision letter when it was delivered on July 21 by Federal Express, making the appellant's appeal, filed August 21, one day late. The appellant contended, however, that the decision letter was delivered to his daughter's address, and that he did not receive it until July 23, and that he calculated the filing deadline to be August 22. Without conducting a hearing, the AJ found that the appeal was filed one day late, and that the appellant failed to establish good cause for the one-day delay in filing.

**Holdings: The Board granted the appellant's PFR, reversed the initial decision, and remanded the case for adjudication on the merits. Even assuming that the appellant should be deemed to have received the decision on July 21, the one-day delay was minimal, and the appellant's miscalculation of the filing deadline was reasonable because he did not receive adequate notice of how to calculate the deadline.**