

Dist.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ROGER J. ALLEYNE,
Appellant,

v.

UNITED STATES POSTAL SERVICE,
Agency.

DOCKET NUMBER
NYO7528910162

DATE: DEC 30 1991

Roger J. Alleyne, Miami, Florida, pro se.

Barbara Ashe, New York, New York, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

OPINION AND ORDER

This case is before the Board on the appellant's petition for review of an initial decision that dismissed his appeal for lack of jurisdiction. For the reasons set forth below, we DISMISS the petition as untimely filed.

BACKGROUND

The agency removed the appellant from his position of Mailhandler effective January 6, 1989, and he petitioned the Board's New York Regional Office for appeal. In an initial decision that became final on May 1, 1989, the administrative

judge dismissed the appeal for lack of jurisdiction. The administrative judge based his decision on his finding that the appellant failed to establish that he was a preference eligible employee, after the appellant failed to respond to the jurisdictional show-cause order.

On June 24, 1991, the appellant filed a petition for review of the initial decision, over two years after the expiration of the filing deadline. In his petition, the appellant states that he did not appeal the initial decision until now because he just recently discovered that the Board does have jurisdiction to consider his appeal. By letter to the appellant dated June 28, 1991, the Office of the Clerk noted the appellant's reason for the late filing and advised him that in order to establish good cause for the late filing he must submit an explanation in the form of an affidavit or statement made under penalty of perjury. In response, the appellant submitted an affidavit with an explanation of his untimely filing.

ANALYSIS

The Board may grant or deny the waiver of a time limit for filing an appeal, in the interest of justice, after considering all the facts and circumstances of a particular case. See *Shiflett v. U.S. Postal Service*, 839 F.2d 669, 670-74 (Fed. Cir. 1988). To establish good cause for the untimely filing of an appeal, a party must show that he exercised due diligence or ordinary prudence under the particular circumstances of the case. See *Alonzo v.*

Department of the Air Force, 4 M.S.P.R. 180, 184 (1980). In his affidavit regarding timeliness, the appellant states that "[A]bout a year ago" he found a paper that the union had sent him and he realized from the paper that he was a preference eligible employee entitled to appeal his removal to the Board. This reason does not explain the appellant's more than one year delay in filing his petition for review even after he acknowledged becoming aware of a possible basis for waiver.* See *Marchese v. U.S. Postal Service*, 43 M.S.P.R. 268, 270 (1990), *aff'd*, 909 F.2d 1495 (Fed. Cir. 1990)(Table).

In the absence of any evidence showing that the appellant exercised due diligence or ordinary prudence, we find that he has failed to show good cause for the untimely filing of his petition. See *Shiflett*, 839 F.2d at 670-74.

ORDER

This is the final order of the Merit Systems Protection Board concerning the timeliness of the appellant's petition for review. The initial decision will remain the final decision of the Board with regard to jurisdiction. 5 C.F.R. § 1201.113(c).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See

*Moreover, we note that although the appellant asserts that he did not know that a disabled veteran met the definition of "preference eligible," the agency's response to the administrative judge's order on jurisdiction so stated.

5 U.S.C. § 7703(a)(1). 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 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.