

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

WILLIAM A. BOLMEIER,
Appellant,

v.

DEPARTMENT OF THE TREASURY,
Agency.

DOCKET NUMBER
DC04329110627

DATE: FEB 13 1992

William A. Bolmeier, Arlington, Virginia, pro se.

Virginia Coffre, Esquire, Washington, D.C., for the
agency.

BEFORE

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

OPINION AND ORDER

The appellant has petitioned for review of the June 19, 1991 initial decision that dismissed his appeal because he withdrew it. For the reasons discussed below, we DISMISS the petition as untimely filed.

BACKGROUND

Effective May 24, 1991, the agency removed the appellant because of his alleged unacceptable performance. The appellant filed a petition for appeal with the Board's Washington, D.C. Regional Office on June 13, 1991. See

Initial Appeal File (IAF), Tab 1. By a letter hand-delivered to the regional office on June 17, 1991, he withdrew his appeal. See IAF, Tab 2. In a June 19, 1991 initial decision, the administrative judge found that the appellant's withdrawal divested the Board of jurisdiction over the matter, and he thus dismissed the appeal. See IAF, Tab 3.

On November 12, 1991, the appellant filed a petition for review. Although he admits that he withdrew his appeal below, he appears to assert that he has now changed his mind. See Petition for Review (PFR) File, Tab 1 at 5.

Because the petition for review was untimely by several months, the Clerk of the Board issued a November 21, 1991 notice directing the appellant to provide an affidavit or a statement, signed under penalty of perjury, showing good cause for the late filing of his petition for review. See PFR File, Tab 2. In response to the Clerk's notice, the appellant has submitted a statement which says in its entirety, "I swear under the penalty of perjury, the facts set forth concerning waiver of time limit for petition for review are true." See PFR File, Tab 3. The agency has responded in opposition to the petition. See PFR File, Tab 4.

ANALYSIS

A petition for review must be filed within 35 days after the initial decision is issued. 5 C.F.R. § 1201.114(d). The time limit for filing a petition for review may be waived upon a showing of good cause for the delay. To establish good cause for the untimely filing of a petition for review, a

party must show that he exercised due diligence or ordinary prudence under the particular circumstances of the case. See, e.g., *Baugh v. Office of Personnel Management*, 49 M.S.P.R. 58, 61 (1991); *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980).

In the instant case, because the initial decision was issued on June 19, 1991, the appellant's petition for review was due on July 24, 1991. See Initial Decision at 2. Thus, his petition, filed on November 12, 1991, is over 3 months untimely.

The appellant has submitted a petition for review and sworn statement which offer no explanation for the delay in filing the petition. Although he concedes that his petition is untimely, see PFR File, Tab 1 at 2, he has not advanced any reasons for that untimeliness. Therefore, he has failed to offer any reasons which would permit the Board to conclude that good cause existed which prevented him from filing his petition for review within the time limit. See *Ornopia v. Office of Personnel Management*, MSPB Docket No. SE08319110099, slip op. at 2-3 (Nov. 25, 1991); *Curry v. United States Postal Service*, 23 M.S.P.R. 389, 390 (1984); *Alonzo*, 4 M.S.P.R. at 184.

Accordingly, the Board DISMISSES the petition for review as untimely filed without a showing of good cause.

ORDER

This is the Board's final order on the timeliness of the petition for review. 5 C.F.R. § 1201.113(c). The initial

decision remains the final decision of the Board with regard to the dismissal of the appeal as withdrawn.

NOTICE TO APPELLANT

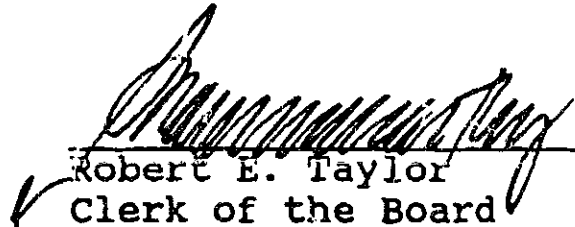
You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

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:

Washington, D.C.


Robert E. Taylor
Clerk of the Board