

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

GREGORY A. BRYANT,
Appellant,

v.

DEPARTMENT OF THE NAVY,
Agency.

DOCKET NUMBER
SF0752930252I1

DATE: SEP 22 1993

Gregory A. Bryant, Long Beach, California, pro se.

Ken Boria and Bob Ellis, Long Beach, California, for the
agency.

BEFORE

Ben L. Erdreich, Chairman
Jessica L. Parks, Vice Chairman
Antonio C. Amador, Member

OPINION AND ORDER

The appellant has petitioned for review of the February 8, 1993 initial decision. For the reasons set forth below, the Board DISMISSES the petition as untimely filed.

BACKGROUND

The appellant filed an appeal from the agency action removing him from his position as Production Controller. On February 8, 1993, the administrative judge issued an initial decision affirming the agency's removal action.

In his initial decision, the administrative judge notified the appellant that the initial decision would become final on March 15, 1993, unless he filed a petition for review with the Clerk of the Board by March 15, 1993.¹ See Initial Appeal File, Tab 3. On June 14, 1993, the Board received a petition for review, filed on June 9, 1993, regarding this matter. The untimely petition was not served on the other parties. See Petition for Review File (PFRF), Tab 1.

Accordingly, the Clerk of the Board notified the appellant by letter, dated June 24, 1993, of the above deficiencies. See PFRF, Tab 2. The Clerk advised the appellant that, if he wanted the Board to consider his petition for review, he must refile a corrected petition, with a certificate of service attached, along with either an affidavit or a statement signed under penalty of perjury as to why there was good cause for the late filing. See *id.* The Clerk's notice further advised the appellant that such a corrected petition would have to be filed within 15 days of the June 24 notice, or by July 9, 1993.

On July 6, 1993, the appellant filed a corrected petition for review. See PFRF, Tab 3. He also submitted a notarized unsworn statement that he had sent out the original petition for review in early March, but that it was "lost in the regular mail." See PFRF, Tab 3. He did not specifically

¹ See 5 C.F.R. §§ 1201.113(a) and 1201.114(d) (a petition for review must be filed within 35 days after the issuance of an initial decision).

state on what date he filed it, nor did he proffer any evidence concerning his alleged timely filing.

ANALYSIS

An appellant's general statement, without more, that his petition was lost in the mail is not sufficient to show timeliness. See *Robinson v. Office of Personnel Management*, 56 M.S.P.R. 325, 327, *aff'd*, No. 93-3222 (Fed. Cir. Aug. 10, 1993) (Table); *Kurant v. Department of Transportation, Federal Aviation Administration*, 16 M.S.P.R. 454, 454-55 (1983). In the absence of any statement from the appellant as to the specific date on which he ostensibly filed his petition for review, or any other evidence tending to show that he timely filed his initial petition, we find that he has not made such a showing.

The Board's regulatory time limit for filing a petition for review may be waived upon a showing of good cause under 5 C.F.R. § 1201.114(f). In *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980), the Board set forth factors for determining whether good cause for the untimely filing of an appeal has been shown, including whether a party has exercised due diligence or ordinary prudence under the circumstances of the case.

The appellant does not allege any circumstances beyond his control that affected his ability to timely file his petition or otherwise show that he exercised due diligence or

ordinary prudence under the circumstances.² Accordingly, we conclude that he has not established good cause for his untimeliness. See *Alonzo*, 4 M.S.P.R. at 184.

ORDER

This is the final order of the Merit Systems Protection Board concerning the timeliness of the petition for review. The initial decision will remain the final decision of the Board with regard to the merits of the appeal. 5 C.F.R. § 1201.113.

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:

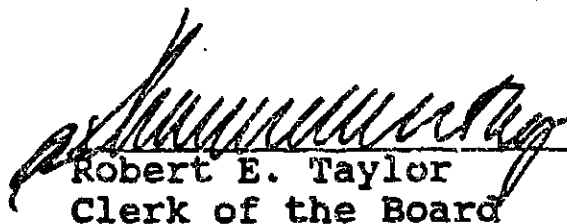
United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your

² We note that the appellant states that he was "under stress" because of "the way this process was handle[d]." PFRF, Tab 3 at 2. However, a general unsupported allegation that an appellant is under stress does not establish good cause for an untimely filing. See *Robinson*, 56 M.S.P.R. at 327. Moreover, an appellant's unverified statements do not constitute good cause for an untimely filing. See *Sornito v. Office of Personnel Management*, MSPB Docket No. SE0831920334-I-1, slip. op. at 4 (Aug. 16, 1993).

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.