

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SHIRLEY D. HILL,
Appellant,

v.

DEPARTMENT OF THE AIR FORCE,
Agency.

DOCKET NUMBER
AT07529010544

DATE: JUN 0 1 1992

Shirley D. Hill, Burkville, Alabama, pro se.

Captain Robert J. Drone, Maxwell Air Force Base, Alabama,
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 issued on November 19, 1990, that sustained the agency's removal action. For the reasons set forth below, the Board DISMISSES the petition as untimely filed.

BACKGROUND

The appellant appealed to the Board's Atlanta Regional Office from the agency's action removing her from her position. In the initial decision, the administrative judge notified the appellant that the decision would become final on December 24, 1990, unless a petition for review was filed by

that date or the Board reopened the case on its own motion. See Initial Decision (I.D.) at 13. The appellant filed her petition for review on December 21, 1991, almost a year late.

Her petition included an unsworn statement requesting a waiver of the filing deadline. As reasons for the request, she alleged that at the time the petition [was due], she was "threatening a nervous breakdown", and trying to save her marriage and pregnancy. See Petition For Review (PFR) File, Tab 1. Subsequently, the Clerk of the Board issued a show-cause order that advised the appellant that under Board regulations she was required to submit a motion accompanied either by an affidavit or a sworn statement setting forth why there is good cause for the delay. See PFR File, Tab 11. She replied to the show-cause order in a timely manner in a sworn statement. In her response, she states as reasons for the delay that her physician advised her that her most important priority should be her health and that she had been in a deep depression. See PFR File, Tab 13.

ANALYSIS

The appellant has failed to show good cause exists for waiving the regulatory time limit for filing her petition for review.

The Board may extend the time limit for filing a petition for review where good cause is shown for the untimeliness. 5 C.F.R. § 1201.113(d). 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). The initial decision clearly notified the appellant that any petition for review was required to be filed by December 24, 1990. See I.D. at 13. The appellant filed the petition for review, however, almost a year late.

A mere assertion that illness prevented an appellant from timely filing a petition for review is insufficient to establish good cause for delay. *DeAgcaoili v. Office of Personnel Management*, 43 M.S.P.R. 296, 299 (1990). To establish good cause for the untimely filing, the appellant must establish how her illness prevented her from meeting the Board's filing requirements, and she must submit corroborating medical evidence. *Id.* Because of the lengthy delay in filing and because the appellant has submitted no medical or other evidence in support of claimed illness, we find that she has failed to establish good cause for her untimely filing.* Accordingly, we dismiss her petition for review as untimely filed.

In light of this finding, we need not determine whether the agency showed good cause for the untimely filing of its response to the appellant's petition for review.

*The record also fails to show when the appellant recovered from her alleged illness. Thus, even if her claim of illness were supportable, the Board could not determine if she acted diligently upon her recovery.

ORDER

This is the final order of the Merit Systems Protection Board concerning the timeliness of the appellant's petition for review. 5 C.F.R. § 1201.113(c). The initial decision remains the final decision of the Board on the merits of the appeal.

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:


Robert E. Taylor
Clerk of the Board

Washington, D.C.