

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD**

**2009 MSPB 193**

---

Docket No. DA-831E-08-0277-I-1

---

**Margaret A. Turner-Thompson,  
Appellant,**

**v.**

**Office of Personnel Management,  
Agency.**

OPM Claim No. CSA4077846

October 1, 2009

---

Margaret A. Turner-Thompson, Kendleton, Texas, pro se.

Charlretta T. McNeill, Washington, D.C., for the agency.

**BEFORE**

Neil A. G. McPhie, Chairman  
Mary M. Rose, Vice Chairman

**OPINION AND ORDER**

¶1 The appellant petitions for review of the initial decision that affirmed the Office of Personnel Management's (OPM) decision to dismiss her application for disability retirement. For the reasons set forth below, the Board DISMISSES the appellant's petition for review as untimely filed without a showing of good cause for the filing delay.

## BACKGROUND

¶2 OPM issued a reconsideration decision finding that the appellant's application for disability retirement was untimely filed. Initial Appeal File (IAF), Tab 4, Subtab IIA. The appellant appealed OPM's decision. IAF, Tab 1. In an initial decision issued on June 8, 2008, the administrative judge affirmed the reconsideration decision, finding that the appellant filed her application nearly 5 years after she separated from Federal employment and she did not show that she was eligible for waiver of the 1-year statutory time limit for filing a disability retirement application. IAF, Tab 7.

¶3 The appellant has filed an apparently untimely petition for review. Petition for Review File (RF), Tab 1. The agency has not responded to the petition.

## ANALYSIS

¶4 A petition for review must be filed within thirty-five days after the date of issuance of the initial decision. *Williams v. Office of Personnel Management*, [109 M.S.P.R. 237](#), ¶ 7 (2008); *Stribling v. Department of Education*, [107 M.S.P.R. 166](#), ¶ 7 (2007); [5 C.F.R. § 1201.114](#)(d). The Board will waive the filing deadline upon a showing of good cause for the delay in filing. *Williams*, [109 M.S.P.R. 237](#), ¶ 7; *Stribling*, [107 M.S.P.R. 166](#), ¶ 7; [5 C.F.R. § 1201.114](#)(f). To establish good cause for an untimely filing, a party must show that he exercised due diligence or ordinary prudence under the particular circumstances of the case. *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980). To establish good cause for untimely filing based on illness, an appellant must: (1) Identify the time period during which she suffered from the illness; (2) submit medical evidence showing that she suffered from the alleged illness during that time period; and (3) explain how the illness prevented her from timely filing her appeal or a request for an extension of time. *Lacy v. Department of the Navy*, [78 M.S.P.R. 434](#), 437 (1998).

¶5 Here, the initial decision was issued on June 6, 2008, and informed the appellant that, to be timely, a petition for review had to be filed by July 11, 2008. IAF, Tab 7. The appellant filed her petition for review in an envelope postmarked August 12, 2009, more than a year after the filing deadline. RF, Tab 1. The Clerk of the Board issued an Acknowledgement Letter, affording the appellant an opportunity to submit proof that her petition was filed on time or was filed late with good cause. RF, Tab 2. The Acknowledgement Letter and attachments included explicit information regarding the legal standard for establishing that illness affected her ability to meet the filing deadlines. RF, Tabs 2, 3; *see Lacy*, 78 M.S.P.R. at 437.

¶6 In her response to the Acknowledgement Letter, the appellant asserts that illness resulting from an automobile accident that occurred on January 30, 2002, prevented her from timely filing. RF, Tab 3. The appellant states that the automobile accident left her with physical injuries and loss of memory, and affected her ability to meet filing deadlines. *Id.* Attached to the appellant's petition is a copy of her application for insurance benefits as a result of the accident and a decision from the Social Security Administration, dated May 9, 2005, finding that the appellant was disabled under Social Security law effective January 30, 2002. *Id.*

¶7 We find that the appellant's evidence fails to establish that her medical conditions were severe enough to have prevented her from timely filing a petition for review. The appellant's submissions do not reference any medications that she is taking. Additionally, the appellant's evidence fails to account for her filing delay by explaining how her conditions prevented her from filing her petition for review or a request for an extension of time. *See Brenner v. U.S. Postal Service*, [80 M.S.P.R. 394](#), ¶ 7 (1998), *aff'd*, 215 F.3d 1346 (Fed. Cir. 1999) (Table).

¶8 Further, we find no basis for reconsidering or reopening the appeal. The Board has the authority to reopen and reconsider appeals in which it has rendered a final decision. [5 U.S.C. § 7701](#)(e)(1)(B); *Moss v. Department of the Air Force*,

[82 M.S.P.R. 309](#), ¶ 8, *aff'd*, 230 F.3d 1372 (Fed. Cir. 1999) (Table); [5 C.F.R. § 1201.118](#). In deciding whether to reopen a closed appeal, the Board will balance the desirability of finality against the public interest in reaching the right result and will exercise its authority to reopen only in unusual or extraordinary circumstances. *Moss*, [82 M.S.P.R. 309](#), ¶ 8. Generally, a request to reopen must be filed within a reasonable period of time, measured in weeks. *Gowdy v. Department of Justice*, [104 M.S.P.R. 592](#), ¶ 8 (2007). Here, the appellant filed her petition over 13 months after the initial decision became final. Moreover, the appellant's petition for review is untimely for the reasons set forth above, and the Board will not normally reopen an appeal to cure an untimely petition for review. *Id.*

#### ORDER

¶9 This is the final decision of the Merit Systems Protection Board concerning the timeliness of the appellant's petition for review. The initial decision remains the final decision of the Board affirming OPM's reconsideration decision. Title 5 of the Code of Federal Regulations, section 1201.113 ([5 C.F.R. § 1201.113](#)).

#### NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. 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 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose

to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 ([5 U.S.C. § 7703](#)). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov). Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's [Rules of Practice](#), and Forms [5](#), [6](#), and [11](#).

FOR THE BOARD:

---

William D. Spencer  
Clerk of the Board  
Washington, D.C.