

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

2010 MSPB 79

Docket Nos. AT-0831-08-0445-I-1
AT-0831-08-0413-I-1
AT-0831-08-0414-I-1
AT-0831-08-0437-I-1

**Evelyn White-Jackson,
Perry White, Jr.,
Tariku H. Keira,
Regina Turner,
Appellants,**

v.

**Office of Personnel Management,
Agency.**

April 27, 2010

Tariku H. Keira, Lauderdale Lakes, Florida, for the appellants.¹

Kristine Prentice, Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

¹ As is discussed below, appellant Keira represents himself, Perry White, Jr., and Regina Turner.

OPINION AND ORDER

¶1 Appellant Keira has filed a petition for review of the May 21, 2008 initial decisions that dismissed the above-captioned appeals for lack of jurisdiction. For the reasons set forth below, we DISMISS the petition as deficient under the Board's regulations insofar as it seeks review of the initial decision in *White-Jackson v. Office of Personnel Management*, MSPB Docket No. AT-0831-08-0445-I-1. We DISMISS the petition for review as untimely filed insofar as it seeks review of the initial decisions in *White v. Office of Personnel Management*, MSPB Docket No. AT-0831-08-0413-I-1, *Keira v. Office of Personnel Management*, MSPB Docket. No. AT-0831-08-0414-I-1, and *Turner v. Office of Personnel Management*, MSPB Docket No. AT-0831-08-0437-I-1.

BACKGROUND

¶2 On various dates in March 2008, the appellants appealed reconsideration decisions in which the Office of Personnel Management (OPM) denied their requests for death benefits based upon the federal service of their brother on the ground that the benefits were payable to the decedent's children. *See* Initial Appeal File (IAF), Tab 19, Initial Decision (ID) at 1.² In May 2008, OPM advised the administrative judge to whom the appeals were assigned that it was rescinding those reconsideration decisions in order to make new determinations upon receipt of additional information. *See* IAF, Tab 13 at 1, 4. On May 21, 2008, the administrative judge dismissed those appeals, finding that the rescission had divested the Board of jurisdiction over them. IAF, Tab 19, ID at 1-2.

² Unless otherwise specified, references to the IAF are to the file in *White v. Office of Personnel Management*, MSPB Docket No. AT-3443-08-0413-I-1. All four appeals raise identical issues, namely, whether the appellants are entitled to benefits based on the decedent's death, and whether the Board has jurisdiction over these cases. The initial decisions in these cases are essentially identical, and are all based on the same analysis and arguments.

¶3 Almost a year later, on May 19, 2009, the appellants filed new appeals challenging OPM's action and asserting their entitlement to the death benefits. *See, e.g., White v. Office of Personnel Management*, MSPB Docket No. AT-3443-09-0688-I-1, slip op. at 1 (Initial Decision, Aug. 6, 2009). The administrative judge assigned to those appeals dismissed them for lack of jurisdiction, finding in four separate but substantively identical initial decisions that OPM had not issued a final or reconsideration decision in these matters, and stating that “[i]t is essential that OPM be allowed to gather all pertinent information to determine the proper payee, as it is difficult for OPM to recover any lump sum benefits paid erroneously.” *Id.* at 3. The Board subsequently denied the appellants' petitions for review of those appeals by final order. *E.g., White v. Office of Personnel Management*, [113 M.S.P.R. 26](#) (2009) (Table).

¶4 On January 19, 2010, appellant Keira, acting on his own behalf and purportedly as the representative of the other three appellants, filed a petition for review of the first set of initial decisions mentioned above, i.e., the May 21, 2008, initial decisions that dismissed their appeals for lack of jurisdiction. Petition for Review (PFR) File, Tab 1.³

¶5 On January 28, 2010, the Clerk of the Board issued a notice stating that there was no indication in the record that Mr. Keira had been designated as the representative of appellant Evelyn White-Jackson, that if Ms. White-Jackson wished to have Mr. Keira serve as her representative, then she must submit a properly executed designation of representative form, and that failure to properly complete and sign the form might result in the Board's dismissing her petition for

³ Because the appellants' petition for review also references *Keira v. Office of Personnel Management*, MSPB Docket No. AT-3443-09-0686-I-1, and *White v. Office of Personnel Management*, MSPB Docket No. AT-3443-09-0688-I-1, the Clerk of the Board also construed it as a request for reconsideration of those appeals, and by letter dated March 25, 2010, advised the appellants that there was no further right to review of those appeals by the Board.

review. PFR File, Tab 2 at 1. The notice included an enclosed “Designation of Representative” form. *Id.* at 8.

¶6 The Clerk’s notice also informed the appellants that their petition for review appeared to be untimely because it should have been filed on or before June 25, 2008, that the Board’s regulations require an untimely filed petition for review to be accompanied by a motion to accept the petition as timely filed and/or to waive the filing time limit for good cause, and that the motion must be accompanied by an affidavit or statement signed under penalty of perjury setting forth good cause for the untimely filing. PFR File, Tab 2 at 1-2. The Clerk also enclosed a copy of the Board’s “Motion to Accept Filing as Timely and/or to Ask the Board to Waive or Set Aside the Time Limit.” *Id.* at 6-7. In the notice, the Clerk ordered the appellants to file their motion and an affidavit or other statement setting forth good cause for the untimely filing on or before February 12, 2010. *Id.* at 2.

¶7 The appellants have not responded to the Clerk’s notice.

ANALYSIS

The petition for review, insofar as it seeks review of the initial decision in *White-Jackson*, MSPB Docket No. AT-0831-08-0445-I-1, is deficient due to the absence of a written designation of representative.

¶8 The Board’s regulations require all submissions relating to a petition for review to contain the signature of the party or of the party’s designated representative. *See* [5 C.F.R. § 1201.114](#)(a). An appellant must designate her representative, if any, in a signed submission, submitted as a pleading. *See* [5 C.F.R. § 1201.31](#)(a). Because Ms. White-Jackson has neither signed the petition for review nor submitted a pleading designating Mr. Keira as her representative, the petition is deficient as it concerns Ms. White-Jackson. *See Bell v. Department of Veterans Affairs*, [48 M.S.P.R. 145](#), 146-47 (1991).

The petition for review, insofar as it seeks review of the initial decisions in *White*, MSPB Docket No. AT-0831-08-0413-I-1, *Keira*, MSPB Docket No. AT-0831-08-0414-I-1, and *Turner*, MSPB Docket No. AT-0831-08-0437-I-1, is untimely filed without a showing of good cause for the delay in filing.

¶9 A petition for review must be filed within 35 days after the administrative judge issued the initial decision or, if the decision was received more than 5 days after the date of issuance, within 30 days after receipt. *Garside v. Office of Personnel Management*, [109 M.S.P.R. 65](#), ¶ 5 (2008); *Roberts v. Department of Commerce*, [106 M.S.P.R. 674](#), ¶ 4 (2007); *Smith v. Department of the Army*, [105 M.S.P.R. 433](#), ¶ 4 (2007); [5 C.F.R. § 1201.114\(d\)](#). Because the appellants have not shown that their receipt of the initial decisions was delayed, the deadline for filing their petition for review was June 25, 2008. Because the appellants did not file their petition for review until January 19, 2010, the petition is nearly 18 months late. PFR File, Tab 1.

¶10 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 Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980). To determine whether an appellant has shown good cause, the Board will consider the length of the delay, the reasonableness of his excuse and his showing of due diligence, whether he is proceeding pro se, and whether he has presented evidence of the existence of circumstances beyond his control that affected his ability to comply with the time limits or of unavoidable casualty or misfortune which similarly shows a causal relationship to his inability to timely file his petition. *Moorman v. Department of the Army*, [68 M.S.P.R. 60](#), 62-63 (1995), *aff'd*, 79 F.3d 1167 (Fed. Cir. 1996) (Table).

¶11 As we have indicated above, appellants Keira, White, and Turner have failed to file a motion to accept the petition as timely filed and/or to waive the filing time limit for good cause, and they have failed to submit an affidavit or statement signed under penalty of perjury setting forth good cause for the

untimely filing. We therefore find that they have failed to demonstrate good cause for the untimeliness of their petition for review.

¶12 Accordingly, we DISMISS the petition for review.

ORDER

¶13 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) ([5 C.F.R. § 1201.113\(c\)](#)).

NOTICE TO THE APPELLANTS 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. 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.