

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JEFFERY S. MUSSELMAN,
Petitioner

v.

DEPARTMENT OF THE ARMY,
Respondent

2016-2522

Petition for review of the Merit Systems Protection Board in No. DA-1221-14-0499-W-3.

ON MOTION

Before TARANTO, CHEN, and HUGHES, *Circuit Judges*.
TARANTO, *Circuit Judge*.

O R D E R

Jeffery S. Musselman moves for an entry of judgment dismissing his petition for review as untimely. Mr. Musselman states that the Department of the Army does not oppose dismissal and will not file a response.

Mr. Musselman filed an individual right of action appeal at the Merit Systems Protection Board. On June

17, 2016, the Board issued its final order, denying Mr. Musselman's request for corrective action. This court received Mr. Musselman's petition for review on August 19, 2016, 63 days after the Board issued its final order.

The time for filing a petition for review from a Board decision or order is governed by 5 U.S.C. § 7703(b)(1), which provides in relevant part that "any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board." 5 U.S.C. § 7703(b)(1)(A). This court has held that the deadlines for appealing to this court from the Board are "mandatory" and "jurisdictional." *Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017).

In order to be timely, a petition for review must be received by the court within the filing deadline. *Pinat v. Office of Pers. Mgmt.*, 931 F.2d 1544, 1546 (Fed. Cir. 1991) (explaining that a petition is filed when received by this court); *see also* Fed. R. App. P. 25(a)(2)(A). Here, that means the petition had to be received by this court no later than August 16, 2016. The petition was not received, however, until August 19th. Under our precedent, as Mr. Musselman concedes, dismissal is required, as the filing deadline is not subject to equitable tolling.

Accordingly,

IT IS ORDERED THAT:

- (1) The stay of proceedings is lifted.
- (2) The motion is granted. The petition for review is dismissed.
- (3) Each side shall bear its own costs.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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ISSUED AS A MANDATE: October 13, 2017