

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2009-3122

MICHAEL W. HARLSTON, SR.,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Petition for review of the Merit Systems Protection Board in  
CH831E080043-B-1.

Before MAYER, SCHALL, and MOORE, Circuit Judges.

PER CURIAM.

## ORDER

Michael W. Harlston, Sr. moves for reconsideration of the court's February 2, 2009 order returning his petition for review as untimely.

On November 14, 2008, the Merit Systems Protection Board issued its final decision on Harlston's petition. Harlston indicates that he received the Board's decision on December 1, 2008. The court received Harlston's petition on February 2, 2009, 63 days after Harlston received the Board's decision.

Our review of a Board decision or order is governed by 5 U.S.C. § 7703(b)(1), which provides that "[n]otwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the board." This filing period is "statutory, mandatory, [and] jurisdictional." Monzo v. Dep't of Transportation, 735 F.2d 1335, 1336 (Fed. Cir. 1984);

see also Bowles v. Russell, 551 U.S. 205 (2007) (the timely filing of a notice of appeal in a civil case is a jurisdictional requirement that cannot be waived).

Because Harlston's petition was not received within 60 days of the date he received the Board's decision, we must dismiss his petition as untimely.

Accordingly,

IT IS ORDERED THAT:

- (1) Harlston's motion is denied. His petition is dismissed.
- (2) All sides shall bear their own costs.

FOR THE COURT

**MAR 27 2009**

\_\_\_\_\_  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

cc: Michael W. Harlston, Sr.  
Michael D. Austin, Esq.

**MAR 27 2009**

**JAN HORBALY  
CLERK**

s19

**MAR 27 2009**

ISSUED AS A MANDATE: \_\_\_\_\_