

NOTE: This disposition is nonprecedential.

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

PENNY J. REYNOLDS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2020-2021

Petition for review of the Merit Systems Protection Board in No. CH-0841-20-0198-I-1.

Decided: March 15, 2021

PENNY J. REYNOLDS, Jackson, KY, pro se.

KATHERINE MICHELLE SMITH, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by TRISTAN L. LEAVITT.

Before MOORE, SCHALL, and TARANTO, *Circuit Judges*.
PER CURIAM.

Penny Reynolds appeals a final decision of the Merit Systems Protection Board dismissing her appeal as untimely filed without a showing of good cause for the delay. *Reynolds v. Office of Pers. Mgmt.*, No. CH-0841-20-0198-I-1, 2020 WL 1915789 (M.S.P.B. Apr. 17, 2020). Ms. Reynolds argues that the Board failed to consider the merits of her case seeking recalculation of her income for purposes of receiving disability benefits. Because the Board did not abuse its discretion in considering whether Ms. Reynolds had good cause for her belated filing, we *affirm*.

BACKGROUND

On January 29, 2019, the Office of Personnel Management (OPM) sent Ms. Reynolds an initial decision letter informing her she was no longer eligible for her disability retirement benefits because she exceeded statutory income limits. OPM informed Ms. Reynolds that she had 30 days from the date of the initial decision letter to request reconsideration.

On April 5, 2019, Ms. Reynolds requested reconsideration, citing a variety of reasons for missing the 30-day deadline. OPM dismissed that request as untimely and informed Ms. Reynolds that she could appeal within 30 days.

Ms. Reynolds appealed to the Board on February 3, 2020. That same day, the Board issued a Timeliness Order giving Ms. Reynolds 10 days to file evidence or argument showing she appealed on time or had good cause for her delay. Ms. Reynolds never responded, so an administrative judge granted OPM's motion to dismiss. On May 22, 2020, the administrative judge's decision became the final Board decision. Ms. Reynolds appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

DISCUSSION

"We review the Board's good cause determination for abuse of discretion." *Kerr v. Merit Sys. Prot. Bd.*, 908 F.3d 1307, 1311 (Fed. Cir. 2018) (citing *Herring v. Merit Sys.*

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Prot. Bd., 778 F.3d 1011, 1013 (Fed. Cir. 2015)). “If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown.” 5 C.F.R. § 1201.22(c). To show good reason for delay, the appellant must show she exercised “diligence or ordinary prudence” under the circumstances. *Kerr*, 908 F.3d at 1311 (quoting *Mendoza v. Merit Sys. Prot. Bd.*, 966 F.2d 650, 653 (Fed. Cir. 1992) (en banc)).

We discern no abuse of discretion in the Board’s determination that Ms. Reynolds failed to show good cause for her delay in appealing OPM’s dismissal. Ms. Reynolds filed her appeal nine months late and never responded to the Board’s Timeliness Order requiring her to file evidence or argument showing good cause. The Board explained that “failure to follow straightforward instructions, and failure to file in accordance with such unambiguous instructions, constitute[d] failure to exercise due diligence or ordinary prudence.” S.A. 5. The Board did not abuse its discretion in dismissing Ms. Reynolds’ untimely appeal.

CONCLUSION

Accordingly, we *affirm* the decision of the Board.

AFFIRMED

COSTS

No costs.