

No. _____

In the SUPREME COURT OF THE UNITED STATES

HENRY E. GOSSAGE, Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD (MSPB),

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

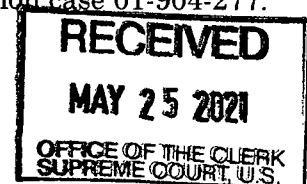
AFFADAVIT AND MOTION FOR LEAVE TO PROCEED AS A VETERAN

I, Henry E. Gossage, is a wartime Veteran Petitioner in the above-entitled case (USCA 2021-1559). Petitioner respectfully request, in support of my Motion to proceed without fees or costs, pursuant to Supreme Court Rule 40 and USERRA from Federal Circuit Court of Appeals 2021-1559. This case is intertwined with Two separate OPM 5 C.F.R. § 731 et seq. suitability inapposite decisions (May 16, 2001 and December 27, 2004) from OPM Investigation Case 01-904-277 and OPM May 16, 2001, negative suitability determination

Petitioner is entitled to proceed as a Veteran in this Court without fees or costs as a Veteran. Petitioner under 38 U.S.C. § 4323(h) and Supreme Court Rule 40, exempting from payment of filing fees and costs in OPM investigation case 01-904-277.

The following documents is submitted in support of this motion:

1. DD 214 Honorable Discharge;



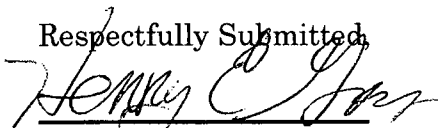
2. OSH-00-87-01/S-1 Certificate of Eligibles CPS Veteran;
3. November 30, 2000-Pass Over authorization of preference veteran;
4. May 16, 2001-OPM Negative Suitability Determination, debarment, and employment disqualification;
5. December 27, 2004-OPM VACATED Karen McCue's May 16, 2001, Negative Suitability Determination, reinstating Petitioner's Veteran rights to initial Federal Employment.

Petitioner was denied initial federal employment, as a preference eligible veteran under USERRA. Petitioner's USERRA, VEOA, 5 U.S.C. § 3318, 5 C.F.R. § 300.104 and 5 U.S.C. § 2302 rights were violated in OPM Investigation Case 01-904-277. OPM implemented a separate veteran "suitability" employment, and concealment policy and practice under 5 U.S.C. § 2302(b)(13) and 5 C.F.R. § 300.104, from Lead Specialist Kim Truckley's December 27, 2004, Final OPM 5 C.F.R. § 731 et seq. suitability decision, amending/vacating OPM's Karen McCue's May 16, 2001, negative suitability determination. Based on OPM new, material, and Final December 27, 2004, decision, Henry E. Gossage submitted a new USERRA/VEOA appeal to the MSPB, MSPB SE-0731-01-0261-I-2 and Federal Circuit Court of Appeals (2021-1559), in OPM Investigation Case 01-904-277.

For the above reasons, Petitioner respectfully request the Court accept this petition without costs under Supreme Court Rule 40 and/or 38 U.S.C. § 4323(h).

DATED: May 20, 2021

Respectfully Submitted,



Henry E. Gossage, Pro se Veteran
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APPENDIX A-1

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

HENRY E. GOSSAGE,

Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent

2021-1559

Petition for review of the Merit Systems Protection
Board in No. SE-0731-01-0261-M-1.

ON MOTION

PER CURIAM.

O R D E R

In response to the court's February 24, 2021 order to show cause, the Merit Systems Protection Board urges dismissal of this petition for review as untimely. Henry E. Gossage opposes dismissal.

Mr. Gossage's petition filed at this court indicates that he seeks judicial review of an August 25, 2006 decision of an administrative judge of the Merit Systems Protection Board in SE-0731-01-0261-M-1, which on September 29, 2006 became the Board's final decision in that matter.

Section 7703(b)(1)(A) of title 5 of the U.S. Code states that a petition for review from the Board “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). In his response to this court’s show cause order, Mr. Gossage argues that the cause of his untimeliness and delay in seeking judicial review was the result of misconduct on the part of the Office of Personnel Management.

This court has held that section 7703(b)(1)(A)’s deadline is jurisdictional and not subject to equitable tolling. *See Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017) (confirming that § 7703(b)(1)(A)’s deadline is jurisdictional). Thus, we may only consider whether the petition for review was timely filed at this court and can not toll the deadline based on Mr. Gossage’s personal circumstances. Because the petition here was received outside of the 60-day filing deadline, we must dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) All pending motions are denied as moot.
- (3) Each side shall bear its own costs.

April 20, 2021
DATE

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FOR THE COURT

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

**Additional material
from this filing is
available in the
Clerk's Office.**