

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael A. Tulipat

PETITIONER,

vs.

United States

RESPONDENT(S).

On Application for an Extension of Time to File Petition for a Writ of Certiorari to
the United State Court of Appeals for the Federal Circuit

**PETITIONER'S APPLICATION TO EXTEND TIME TO FILE PETITION
FOR WRIT OF CERTIORARI**

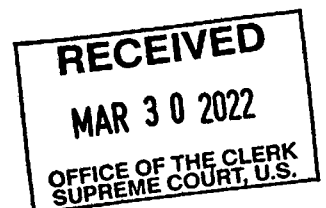
Michael A. Tulipat

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Pro Se



Petitioner's Statement

To the Honorable Clerks and Judges of the United States Supreme Court:
Pursuant to this Court's Rule 30, I, Petitioner, Michael A. Tulipat respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended 60 days up to and including April 13, 2022. On March 7, 2022, The United States Court of Appeals for the Federal Circuit mandated its opinion on January 13, 2022. (Appendix 1). If an extension of time is granted, the Petition for Writ of Certiorari would be due June 15, 2022. I am filing this Application more than ten days before April 13, 2022. See S. Ct. Rule 30.2 This Court would have jurisdiction over the judgment under Article III, Section II. Respondents take no position on my request.

Reasons For Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reason:

1. Petitioner is a Pro Se it takes longer time to comprehend the laws and put it down on paper.
2. Petitioner is a Peace Officer on April 13, 2022, I've been subpoenaed to a case I witnessed. On March 24th, 2022, I have in interview with State Investigators of another case I witnessed. Several other cases that might generate during my work week taking me away from preparing for this case.

3. I am one of the 22,600 servicemembers that was wrongfully discharged with personality disorder reported from the Department of Defense between 2002 to 2007.

Conclusion

For the foregoing reasons, Petitioner respectfully request that the time to file the Petition for a Writ of Certiorari in the matter be extended 60 days.

Respectfully submitted,



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March 19, 2022

21-2259

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

MICHAEL A. TULIPAT,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-2259

Appeal from the United States Court of Federal Claims
in No. 1:21-cv-01260-CFL, Senior Judge Charles F. Lettow.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

January 13, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This disposition is nonprecedential.

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

MICHAEL A. TULIPAT,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-2259

Appeal from the United States Court of Federal Claims
in No. 1:21-cv-01260-CFL, Senior Judge Charles F. Lettow.

Decided: January 13, 2022

MICHAEL A. TULIPAT, Las Vegas, NV, pro se.

SONIA MARIE ORFIELD, Commercial Litigation Branch,
Civil Division, United States Department of Justice, Wash-
ington, DC, for defendant-appellee. Also represented by
BRIAN M. BOYNTON, STEVEN JOHN GILLINGHAM, MARTIN F.
HOCKEY, JR.

Before DYK, PROST, and TARANTO, *Circuit Judges*.

PER CURIAM.

Michael A. Tulipat appeals the dismissal of his action by the Court of Federal Claims for failure to prosecute. We affirm.

BACKGROUND

Mr. Tulipat served in the U.S. Marine Corps from June 2001 to May 2002, at which time he was separated from the service with a “General (Under Honorable Conditions)” discharge on the basis of “Personality Disorder.” App’x 20–21, 24.¹ Mr. Tulipat later petitioned the Naval Discharge Review Board (“NDRB”) to upgrade his discharge to “Honorable,” change the basis of his separation, and remove two non-judicial punishments from his record that had been imposed on him for misconduct. App’x 21; *see* App’x 38. The NDRB, as well as the Board for Correction of Naval Records (“BCNR”), considered Mr. Tulipat’s requests and ultimately modified his narrative reason for separation from “Personality Disorder” to “Secretarial Authority” but declined to provide any further relief. *See* App’x 20–21 (BCNR decision).

Subsequently, in May 2020, Mr. Tulipat petitioned the U.S. Court of Appeals for the Ninth Circuit for review of the BCNR decision. App’x 1. The Ninth Circuit dismissed Mr. Tulipat’s case on April 16, 2021, on the basis that it did not have original jurisdiction to review a decision of the BCNR. App’x 44. In dismissing, the Ninth Circuit directed that Mr. Tulipat’s petition be transferred to the Court of Federal Claims “for whatever consideration that court deems appropriate.” App’x 44.

On April 21, 2021, the Court of Federal Claims issued a “Notice” to the parties that acknowledged receipt of the

¹ “App’x” refers to the appendix filed with the government’s response brief.

record from the Ninth Circuit and provided specific instructions to Mr. Tulipat regarding how to proceed, as a pro se litigant or otherwise. App'x 45–46. In particular, the Notice informed Mr. Tulipat that he was required “[to] file a transfer or amended complaint” with the Court of Federal Claims “[w]ithin 28 days after service of the Notice.” App'x 46. The Notice also cautioned that “failure to comply with the enclosed instructions, within the time provided, may result in the case being dismissed for failure to prosecute.” App'x 45 (emphasis removed and capitalization normalized). Mr. Tulipat’s case was then randomly assigned to Judge Charles F. Lettow. App'x 47.

On July 27, 2021, over three months after the case had been transferred from the Ninth Circuit, the Court of Federal Claims dismissed the case sua sponte under Rule 41(b) of the Rules of the Court of Federal Claims “for failure to prosecute.” App'x 48. The court explained that Mr. Tulipat had failed to file a complaint even though “[i]nformation regarding the transfer and further instructions were served on [Mr. Tulipat] via United States mail on April 21, 2021,” with those instructions including a requirement that Mr. Tulipat file his complaint “on or before May 19, 2021.” App'x 48.

Mr. Tulipat appealed. We have jurisdiction to consider this appeal under 28 U.S.C. § 1295(a)(3).

DISCUSSION

In relevant part, Rule 41(b) of the Rules of the Court of Federal Claims provides that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, the court may dismiss on its own motion.” We review a Rule 41(b) dismissal for an abuse of discretion. *Claude E. Atkins Enters., Inc. v. United States*, 899 F.2d 1180, 1183 (Fed. Cir. 1990). Under this standard, “the trial court’s exercise of discretion will not be disturbed on appeal unless . . . we are left with a definite and firm conviction that the

court below committed a clear error of judgment.” *Id.* (cleaned up).

Mr. Tulipat does not contest that he received the trial court’s Notice, which required him to file a complaint with the trial court by a certain date. Instead, he argues that the trial court should have provided him with “[a] warning that [his] case was *about* to be dismissed and time to respond.” Appellant’s Br. 2 (emphasis added). In support, Mr. Tulipat contends that he “was in a stressful position as a [recruit] in police academy” and that the trial court dismissed his case without “understand[ing] the totality of the circumstances.” Appellant’s Br. 2.

Recognizing that Mr. Tulipat was and is proceeding pro se, we nonetheless conclude that the trial court acted within its discretion in dismissing Mr. Tulipat’s case sua sponte. The trial court clearly and specifically warned Mr. Tulipat that failure to file his complaint in a timely fashion could result in dismissal of his case. And at the time of dismissal, over two months had elapsed since the deadline to file a complaint. Further, at the time of dismissal, Mr. Tulipat had not offered any explanation for his untimeliness. Nor had he sought an extension of time. Indeed, after the case was transferred from the Ninth Circuit, Mr. Tulipat made no filings whatsoever with the trial court until his notice of appeal to this court. On this record, the trial court did not abuse its discretion in dismissing under Rule 41(b).

Mr. Tulipat separately argues that the trial court’s decision was wrong because Judge Lettow “served in the U.S. Army” and “may have bias towards individuals” suing the government. Appellant’s Br. 2. We reject this argument at least because Mr. Tulipat fails to cite any evidence indicating bias in the record.

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CONCLUSION

We have considered Mr. Tulipat's remaining arguments but find them unpersuasive. For the reasons above, we affirm the decision of the Court of Federal Claims dismissing this action.

AFFIRMED

COSTS

No costs.

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

MICHAEL A. TULIPAT,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-2259

Appeal from the United States Court of Federal Claims
in No. 1:21-cv-01260-CFL, Senior Judge Charles F. Lettow.

MANDATE

In accordance with the judgment of this Court, entered
January 13, 2022, and pursuant to Rule 41 of the Federal
Rules of Appellate Procedure, the formal mandate is
hereby issued.

FOR THE COURT

March 7, 2022

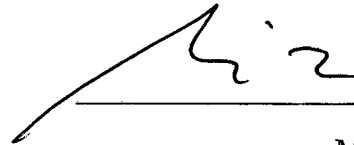
Date

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

CERTIFICATE OF SERVICE

A copy of this application was served by U.S. mail to counsel listed below in accordance with Supreme Court Rule 30.3:

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 3/19/2022

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