NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

OLIVIA C. DAVIE, ON BEHALF OF HAROLD E. DAVIE,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-2318

Petition for review of the Merit Systems Protection Board in No. SF-0831-18-0327-I-1.

Decided: May 8, 2025

OLIVIA C. DAVIE, Apple Valley, CA, pro se.

KELLY WINSHIP, Office of the General Counsel, United States Merit Systems Protection Board, Washington, DC, for respondent. Also represented by ALLISON JANE BOYLE, KATHERINE MICHELLE SMITH.

Before MOORE, *Chief Judge*, CUNNINGHAM, *Circuit Judge*, and SCARSI, *District Judge*.[1]

PER CURIAM.

Olivia Davie appeals a final order of the Merit Systems Protection Board (Board) dismissing her late husband's appeal of an Office of Personnel Management (OPM) decision as untimely filed and denying her petition for review. For the following reasons, we *affirm*.

BACKGROUND

On December 7, 2017, OPM issued a final decision denying as untimely Harold Davie's request to elect a survivor annuity benefit for his wife, Mrs. Davie. S. Appx. 34–35.[2] OPM notified Mr. Davie of his right to appeal to the Board and explained an appeal must be filed within 30 calendar days after the date of the OPM decision, or 30 days after receipt of the decision, whichever was later. *Id.* at 35; 5 C.F.R. § 1201.22(b)(1). On December 13, 2017, Mr. Davie or someone at his address of record received the decision. S. Appx. 13.

On February 10, 2018, Mr. Davie appealed to the Board. S. Appx. 36–37. The administrative judge (AJ) issued an Order on Timeliness, noting Mr. Davie's appeal appeared to be untimely and ordering Mr. Davie to provide evidence and/or argument showing his appeal was timely filed or that there was good cause for the delay. S. Appx. 39–43. Mr. Davie did not respond to the Order. S. Appx. 12. OPM moved to dismiss, and the AJ issued an initial decision dismissing the appeal as untimely. *Id.* at 11–21.

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[1] Honorable Mark C. Scarsi, District Judge, United States District Court for the Central District of California, sitting by designation.

[2] "S. Appx." refers to the Supplemental Appendix attached to Respondent's Informal Brief.

In December 2018, Mrs. Davie filed a petition for review of the initial decision and a motion to substitute herself as the appellant because of Mr. Davie's death in June 2018. S. Appx. 3; S. Appx. 25; S. Appx. 45–48. The Board issued a final order substituting Mrs. Davie as the appellant, denying her petition for review, and affirming the initial decision. S. Appx. 1–9. Mrs. Davie appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(9) and 5 U.S.C. § 7703(b)(1)(A).

DISCUSSION

We must affirm final orders or decisions of the Board unless the Board's actions, findings, or conclusions are "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c).

Mrs. Davie argues Mr. Davie was late to elect a survivor annuity benefit after his remarriage to Mrs. Davie because money was improperly being sent to his ex-wife. Appellant's Informal Br. 2–3. While this argument is relevant to the timeliness of Mr. Davie's survivor annuity benefit election, it is irrelevant to the issue currently on appeal, which is whether the Board erred by dismissing as untimely Mr. Davie's appeal of OPM's final decision. Mr. Davie never submitted information on the timeliness of his appeal to the Board, nor does Mrs. Davie do so now. *Id.* at 1–3. Because the Board had no evidence or arguments that Mr. Davie's appeal was timely filed or that there was good cause for delay during the period between the date OPM issued its final decision (December 7, 2017) and the date Mr. Davie appealed OPM's final decision (February 10, 2018), its decision to dismiss the appeal as untimely is supported by substantial evidence and in accordance with the law. 5 C.F.R. § 1201.56(b)(2)(i)(B).

CONCLUSION

We have considered Mrs. Davie's remaining arguments and find them unpersuasive. Accordingly, we *affirm* the Board's dismissal of Mr. Davie's appeal as untimely.

AFFIRMED

COSTS

No costs.

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JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

May 8, 2025
Date

Jarrett B. Perlow
Clerk of Court

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

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Petition for review of the Merit Systems Protection Board in No. SF-0831-18-0327-I-1.

ON PETITION FOR PANEL REHEARING

Before MOORE, *Chief Judge*, CUNNINGHAM, *Circuit Judge*, and SCARSI, *District Judge*.[1]

PER CURIAM.

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[1] Honorable Mark C. Scarsi, District Judge, United States District Court for the Central District of California, sitting by designation.

ORDER

Olivia C. Davie filed a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

FOR THE COURT

June 27, 2025
Date

Jarrett B. Perlow
Clerk of Court

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

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PER CURIAM.

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[1] Honorable Mark C. Scarsi, District Judge, United States District Court for the Central District of California, sitting by designation.

ORDER

Olivia C. Davie filed a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

June 27, 2025
Date

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