

NOTE: This order is nonprecedential.

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

---

**OSCAR JOHNSON,**  
*Claimant-Appellant*

v.

**DENIS MCDONOUGH, Secretary of Veterans Af-  
fairs,**  
*Respondent-Appellee*

---

2021-1773

---

Appeal from the United States Court of Appeals for  
Veterans Claims in No. 19-2840, Judge Joseph L. Toth.

---

PER CURIAM.

**O R D E R**

The Secretary of Veterans Affairs responds to the court's April 16, 2021 show cause order and urges dismissal. Oscar Johnson opposes dismissal.

On May 26, 2020, the United States Court of Appeals for Veterans Claims entered judgment in this case. The Veterans Court received Mr. Johnson's notice of appeal on

February 8, 2021, 258 days after entry of judgment.\* Mr. Johnson's response states that he "waited on [the] final decision, but it never came." Resp. at 2.

To be timely, a notice of appeal must be received by the Veterans Court within 60 days of the entry of judgment. *See* 38 U.S.C. § 7292(a); *see also* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). That statutorily prescribed deadline is jurisdictional. *See Wagner v. Shinseki*, 733 F.3d 1343, 1348 (Fed. Cir. 2013). As such, where, as here, a notice of appeal is received outside of the deadline, we must dismiss the appeal regardless of the personal circumstances for why it was late. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007) (finding "no authority to create equitable exceptions to jurisdictional requirements").

We are also unable to treat Mr. Johnson's notice of appeal as a motion to reopen the time to appeal pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure. Such motions must be filed no later than 180 days of the judgment. *See* Fed. R. App. P. 4(a)(6) (allowing trial court to reopen the time to appeal when party did not timely receive judgment but only if request was filed "within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice . . . of the entry, whichever is earlier"). And here, Mr. Johnson's notice was also filed outside of that deadline.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Each side shall bear its own costs.

---

\* He filed a second notice of appeal on March 2, 2021.

JOHNSON v. MCDONOUGH

3

FOR THE COURT

June 29, 2021  
Date

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

s28