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Proskauer Prevails at the Supreme Court

Proskauer For Good on **May 30, 2024**

Last week, Proskauer prevailed at the U.S. Supreme Court on behalf of our client, Stuart Harrow, in an appeal that determined that the statutory deadlines for appealing administrative decisions are not automatically jurisdictional and do not prevent claims challenging a furlough from being heard in the Federal Circuit. Following a furlough in 2013, Department of Defense employee Stuart Harrow appealed to the Merits Systems Protection Board (MSPB), an independent agency established to adjudicate federal employment disputes, for a hardship exemption. He argued that he was prevented from finding other work due to a discontinuous six-day furlough and, as a result, should receive lost pay. After waiting several years for a decision, during which time the MSPB lost its quorum and temporarily stopped deciding cases, Mr. Harrow's claim was eventually denied. Even then, it took some time for Mr. Harrow to learn of this decision, as it was sent to a DOD email address that had been deactivated.

When Mr. Harrow later learned of the decision, he appealed to the Federal Circuit, but the court dismissed his appeal as untimely, finding the statutory filing deadline in 5 U.S.C. § 7703(b)(1)(A) to be jurisdictional and not able to be extended.

The Supreme Court accepted the case for review in 2023, at which time Proskauer joined Mr. Harrow's legal team to argue that the statutory filing deadline was not jurisdictional.

In March, Mr. Harrow traveled to Washington, D.C. with his wife, daughter, and close family friend to attend the oral argument. On their first visit to the Supreme Court, Mr. Harrow and his family expressed the significance of having this decade-long fight heard by the Court and recognized by the legal system. While waiting for his case to be heard, Mr. Harrow made sure to share the importance of the moment with other as well, telling his story to several college students who had traveled to hear the case. During oral argument, several justices were openly sympathetic to Mr. Harrow's position and the difficulty of waiting several years for a decision, just to have his appeal denied for lateness as a result of circumstances outside of his control.

On May 16, 2024, the Supreme Court unanimously ruled that the deadline imposed on Mr. Harrow was not jurisdictional because Congress had not spoken with a clear statement to overcome the presumption that time bars are non-jurisdictional and open to equitable tolling. The statute granting jurisdiction to the Federal Circuit lists the types of cases the Federal Circuit can hear, including appeals "pursuant to" § 7703(b)(1)(A). Despite the long line of Federal Circuit precedents treating § 7703(b)(1)(A)'s deadline as jurisdictional, Proskauer helped convince the Court that this deadline should be treated like other statutory deadlines that are merely claims-processing rules.

This decision extends the Supreme Court's rulings over the past two decades to define the type of clear statement necessary for deadlines to be jurisdictional. The Supreme Court vacated the judgment and remanded the case back to the Federal Circuit, where Mr. Harrow can again pursue his claim.

The Proskauer team was led by partners Mark Harris and John E. Roberts and associate Isaiah D. Anderson (Appellate). Proskauer acted as co-counsel for Mr. Harrow alongside Josh Davis of Berger Montague PC and Scott Dodson of the Center for Litigation and Courts at the University of California College of the Law, San Francisco. For more insight on the case and comments from the Proskauer team, please see the coverage on Law360.

View original.

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