OFFICE OF COMPLIANCE
LA 200, John Adams Building
110 Second Street, S.E.
Washington, D.C. 20540-1999

ELIZABETH PEREZ,	)	
APPELLANT,	)	
	)	
V.	)	**CASE NO. 04-HS-21 (CV, RP)**
	)	
OFFICE OF REPRESENTATIVE SHEILA JACKSON-LEE,	)	
APPELLEE.	)	
	)	

Before the Board of Directors: Susan S. Robfogel, Chair; Barbara L. Camens, Alan V. Friedman; Roberta L. Holzwarth; Barbara Childs Wallace, Members.

DECISION OF THE BOARD OF DIRECTORS

This case comes before the Board pursuant to Complainant Perez's appeal from the Order of the Hearing Officer granting Respondent Office of Representative Sheila Jackson-Lee's motion to dismiss her administrative Complaint. In her Complaint, Perez alleges that Representative Lee's Office discriminated against her on the basis of her race and sex in violation of section 201 of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1311. The Hearing Officer granted the motion of Respondent to dismiss based upon Perez's failure to file a timely request for counseling pursuant to section 402 of the CAA, 2 U.S.C. 1402; her failure to timely file her administrative Complaint pursuant to section 404 of the CAA, 2 U.S.C. 1404; and the absence of grounds for equitable tolling of the application of either time requirement in this case. Since this matter comes before the Board on procedural and jurisdictional grounds, we express no opinion regarding the merit or lack of merit of the underlying claims.

Standard of Review

Section 406 (c) of the CAA states:

> The Board shall set aside a decision of a hearing officer if the Board determines that the decision was -
> (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or
(3) unsupported by substantial evidence.

The Board applies that standard to this matter.

Procedural history of this case.

Complainant Perez was fired from her position as an assistant in the Congresswoman's Houston (Texas) district office on September 23, 2003. Perez's request for counseling was faxed to the Office of Compliance on June 14, 2004. Section 402(a) of the CAA states that "[a] request for counseling shall be made not later than 180 days after the date of the alleged violation." 2 U.S.C. 1402(a). Section 2.03(c) of the Procedural Rules of the Office of Compliance in effect at the time stated:

> A formal request for counseling: (1) shall be made not later than 180 days after the date of the alleged violation of the Act; (2) may be made to the Office in person, by telephone, or by written request; (3) shall be directed to: Office of Compliance, Adams Building, Room LA-200, 110 Second Street, S.E., Washington, D.C. 20540-1999; telephone (202) 724-9250; FAX (202) 426-1913; TDD (202) 426-1912.[1]

In this matter, the 180 day period began on September 24, 2003, and ended on Monday, March 22, 2004. (Pursuant to section 1.03(b) of the Procedural Rules, the time period is calculated by calendar days, and when, as here, the last day falls on a holiday or week end, the last day is the next following work day.) Perez filed a putative charge with the Equal Employment Opportunity Commission on April 1, 2004. The June 14, 2004 request for counseling in this matter was filed 83 days after the end of the 180 day period of limitation.

After the request for counseling was received by the Office, this matter proceeded through the counseling and mediation process of the Office. The mediation period in this case ended on October 15, 2004.

Section 404 of the CAA states in relevant part: "Not later than 90 days after a covered employee receives notice of the end of the period of mediation . . . such covered employee may . . . file a complaint with the Office . . . ." 2 U.S.C. 1404. (See also Procedural Rule 5.01(b)(1).) Perez's administrative Complaint was deemed filed with the Office on the day it was received, January 25, 2005. (Procedural Rule 1.03(a)(2)(i) clearly states that "if mailed, including express, overnight and other expedited delivery, a request for mediation or a complaint is deemed filed on the date of its receipt in the Office.") Perez's attorney acknowledged receipt of the notice of the

[1] This Procedural Rule was amended effective June 16, 2004. The amendments do not affect the 180 day filing period requirement.

end of the mediation period on October 19, 2004. Therefore, Perez's 90 day period in which to file her administrative Complaint in this matter ended on January 17, 2005. (The Hearing Officer miscalculated the last day of the period as January 18, 2005, a mistake which we do not view as material.) Therefore, the administrative Complaint in this matter was filed 8 days after the end of the period of limitation for the filing of a Complaint.

Applicability of the doctrine of equitable tolling.

This Board has previously indicated that principles of equitable tolling apply to the limitations periods included in the administrative dispute resolution procedure established in the CAA and further detailed in the Office's Procedural Rules. In *Commeree v. Office of the Architect of the Capitol,* Case No. 02-AC-30 (2003), we held:

> The Hearing Officer concluded that he lacked jurisdiction to entertain the complaint because the Complainant had not complied with the 180-day time limitation imposed by Section 402(a) of the Congressional Accountability Act, 2 U.S.C. 1402(a). Contrary to the Hearing Officer, we note that the 180-day time limitation is in the nature of a statute of limitations rather than a jurisdictional requirement. Accordingly, it is subject to equitable tolling, but only in extraordinary and carefully circumscribed instances.

In so finding, we cited, inter alia, to several CAA cases before district courts: *Thompson v. Capitol Police Board,* 120 F. Supp. 2d 78 (D.D.C. 2000); and *Halcomb v . Office of the Senate Sergeant-at-Arms,* 209 F. Supp. 2d 175 (D.D.C. 2002). (Parties have the option after mediation before the Office of Compliance to file either an administrative Complaint or an action in district court. The decisions in district or circuit courts of appeal resulting from such actions are not binding upon the Office or this Board. *See* section 404 of the CAA, 2 U.S.C. 1404.)

This Board has previously discussed the principle of equitable tolling in *Britton v. Office of the Architect of the Capitol,* Case No. 01-AC-346 (2004), and in *Hughes v. Office of the Senate Sergeant-at-Arms,* Case No. 98-SN-56 (1999).

In this case, the Hearing Officer correctly concluded that: "I am bound to apply established Board precedent which neither the Board nor the Supreme Court has reversed, notwithstanding contrary decisions by district courts or by courts of appeals. . . . The Board has clearly signaled its intent to and will apply the doctrine of equitable tolling to the CAA." Order of March 10, 2005. This Board is also bound by decisions of the Court of Appeals for the Federal Circuit issued pursuant to that Circuit's jurisdiction under section 407 of the CAA, 2 U.S.C. 1407.

The "contrary decisions by district courts or courts of appeals" to which the Hearing Officer below referred are several decisions by the district court and circuit court of appeal for the District of Columbia. In *Gibson v. Office of the Architect of the Capitol,* Civ. No. 00-2424, 2002 WL 3213321 (D.D.C. 11/19/02), the court found that:

> Two courts in this district have considered the applicability of the equitable tolling doctrine to cases brought under the CAA. *See Thompson*, 120 F. Supp. 2d at 82-83; *Halcomb*, 209 F. Supp. 2d at 179. The *Thompson* court determined that the principles of equitable tolling apply to the CAA based on an analysis of the Supreme Court's decision in *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393, 102 S.Ct. 1127, 71 L.Ed.2d 2234 (1982), which held that the timely filing of a charge of discrimination is not a prerequisite to a Title VII action, but rather a requirement that is subject to waiver, estoppel, and equitable tolling. *Thompson*, 120 F. Supp. 2d at 83. In *Thompson*, the court held that like the provision in Title VII examined in *Zipes*, the "CAA provision that specifies a time for filing charges appears in a separate section from the one covering jurisdiction, and does not make any mention of jurisdiction." (Citing 2 U.S.C. 1402(a), 1408(a)).
>
> This court, however, finds the reasoning of the *Halcomb* court to be more persuasive on this matter. The *Halcomb* court, instead of focusing on the similarities between the CAA and Title VII sections regarding administrative filings, examined the dissimilarities between the two statutes' jurisdictional provisions. Unlike CAA's Section 1408(a), "the provision granting district courts jurisdiction under Title VII, 42 U.S.C. 2000e-5(e) and (f) does not limit jurisdiction to those cases in which there has been a timely filing with the EEOC." *Halcomb*, 209 F. Supp. 2d at 179 (quoting *Zipes*, 455 U.S. at 393). As noted above, Section 1408(a) of the CAA allows access to the federal courts to those litigants who have "completed counseling under section 1402." 2 U.S.C. 1408.
>
> This distinction is significant. . . .

The *Gibson* court cited *Block v. North Dakota, ex rel. Bd. of Univ. and Sch. Lands*, 461 U.S. 273, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983) for the proposition that waiver of sovereign immunity, such as is accomplished in the CAA, is to be narrowly construed so that limitations periods are absolute conditions to such a waiver. The *Gibson* district court concluded that there was no "clear indication" in the language of the CAA that Congress intended the waiver to include application of equitable estoppel. "To find otherwise, would be to 'extend the waiver' in the absence of any evidence that Congress intended a different result from the plain language of the provision."[2]

[2] The District of Columbia Circuit, in a short form, *per curiam* unpublished Order, stated: "[t]he district court correctly determined that . . . appellant failed to timely file a request for counseling . . . ," but did not comment on the issue of equitable tolling. *Gibson v. Office of the Architect of the Capitol*, No. 03-5031, 2003 WL 21538073 (D.C. Cir., 7/2/03).

More recently, in *Blackmon-Malloy v. United States Capitol Police Board*, 338 F. Supp. 2d. 97 (D.D.C. 2004), the district court cited to *Gibson* and concluded in another CAA Title VII case that the clear legislative history of the CAA to the effect "'that the anti-discrimination laws would apply to Congress as they have applied to private constituents . . .' does not "supply a waiver that does not appear clearly in the statutory text; the 'unequivocal expression' of elimination of sovereign immunity that [the Supreme Court] insist[s] upon is an expression in statutory text.' *Lane v. Pena*, 518 U.S. 187, 192, 116 S.Ct. 2092, 135 L.Ed.2d 486 (1996)." 338 F.Supp. 2d, at 103.

This Board finds the rationale of the district court in *Thompson*, that equitable tolling does apply under the CAA, to be persuasive but incomplete. The Board disagrees with the *Gibson* and *Blackmon-Malloy* courts that equitable tolling is not available under the CAA, in light of Supreme Court precedent on the subject of equitable tolling and waiver of sovereign immunity.

In *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990), the Supreme Court determined a statute of limitations question in a Title VII action brought by a discharged Government employee against the United States. After referencing its own earlier holding in *Zipes, supra*, that equitable tolling is available in a Title VII suit involving private parties, the Court reflected upon the fact that Congress had waived sovereign immunity by permitting Government employees to sue the United States under Title VII. The Court continued:

> Once Congress has made such a waiver, we think that making the rule of equitable tolling applicable to suits against the Government, in the same way that it is applicable to private suits, amounts to little, if any, broadening of the congressional waiver. Such a principle is likely to be a realistic assessment of legislative intent as well as a practically useful principle of interpretation. We therefore hold that the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States. Congress, of course, may provide otherwise if it wishes to do so. 498 U.S. at 95-6.

In the course of announcing a "general rule" regarding the rebuttable presumption of availability of equitable tolling in cases against the United States, the Court specifically criticized its earlier ruling in *Soriano v. United States*, 352 U.S. 270, 77 S.Ct. 269, 1 L.Ed.2d 306 (1957). In *Soriano* the Court had ruled that the language "every claim . . . shall be barred unless the petition . . . is filed . . . within six years . . ." foreclosed the application of equitable estoppel. *Id.*

The *Irwin* Court then proceeded to set out a broad test for the applicability of equitable tolling in cases proceeding from a congressional waiver of sovereign immunity:

> We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where

> the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. . . . [N]o more favorable tolling doctrine may be employed against the Government than is employed in suits between private parties. 498 U.S. at 96, footnotes omitted.

More recently, in *Young v. U.S.*, 553 U.S. 42, 122 S.Ct. 1036, 152 L.Ed.2d 79 (2002) the Court reiterated that "[i]t is hornbook law that limitations periods are 'customarily subject to "equitable tolling,"' *Irwin* . . . , unless tolling would be 'inconsistent with the text of the relevant statute,' *United States v. Beggerly*, 524 U.S. 38, 48, 118 S.Ct. 1862, 141 L.Ed.2d 32 (1998). . . . Congress must be presumed to draft limitations periods in light of this background principle." 535 U.S. at 49-50.

It is the *Irwin* rebuttable presumption standard which this Board applies to the issue of equitable tolling in the context of the CAA. We note that the CAA was passed by Congress five years after the Court issued *Irwin.* Consequently, Congress was on notice that the non-applicability of principles of equitable estoppel under the CAA needed to be preserved by clear language rebutting the presumption in favor of its application which the Court announced in *Irwin.* In *Cannon v. University of Chicago*, 441 U.S. 677, 699, 99 S.Ct. 1946, 1958 (1979), the Court stated "it is not only appropriate but also realistic to presume that Congress was thoroughly familiar with . . . important precedents from [the Supreme Court] . . . and other federal courts and that . . . [Congress] expected [its] enactment[s] to be interpreted in conformity with them." *See* also, *U.S. v. Wells,* 519 U.S. 482, 495, 117 S.Ct. 921, 929; *U.S. v. Landham* 251 F.3d 1072, 1085-86 (6th Cir. 2001); and *McNair v. Haley*, 97 F.Supp.2d 1270, 1282 (M.D. Ala. 2000).

Irwin has been consistently applied by the United States Court of Appeals for the Federal Circuit. For instance, in *Former Employees of Sonoco Products Co. v. Chao,* 372 F.3d 1291 (Fed. Cir. 2004), the Circuit reviewed the tolling of limitations in a NAFTA trade benefit claim before the Court of International Trade. The limitation language in the statute at issue in *Former Employees* requires that a "petition may challenge the agency's determination 'within sixty days after notice of such determination.'" 372 F.3d at 1293. In finding that such language does not serve to rebut the presumption of equitable tolling, the Circuit noted:

> In *Irwin*, the Supreme Court held that the mere presence of "shall be barred" language, although it makes a statement "more stringent" than it would be without such language, is not "enough to manifest a different congressional intent with respect to the availability of equitable tolling." 498 U.S. at 95 . . . . We perceive no error in the Court of International Trade's conclusion that there is no expressed congressional intent that the statutes at issue in this case should not be subject to equitable tolling. 372 Fed.3d at 1298.

In *Martinez v United States*, 333 F.3d 1295 (Fed. Cir. 2003), an *en banc* Circuit rejected the Government's continuing reliance upon the Supreme Court's 1957 *Soriano* decision which

was effectively disavowed by the Court in *Irwin.* After reviewing *Irwin* and *Young, supra,* the Court treated the several recent Supreme Court decisions holding that equitable tolling of limitations periods was not available under particular statutory language. In *United States v. Brockamp,* 519 U.S. 347, 117 S.Ct. 849, 136 L.Ed.2d 818 (1997), the Court found that the presumption in favor of equitable tolling was rebutted with regard to the time limit for filing for tax refunds under the Internal Revenue Code. This conclusion was based upon the "unusually emphatic" language of the limitations provision, which "sets forth its limitations in a highly detailed technical manner that . . . contained explicit exceptions to its basic time limits, which did not include equitable tolling." 333 F3d at 1317, citing 519 U.S. at 350-351.

In *United States v. Beggerly*, 524 U.S. 38, 118 S.Ct. 1862, 141 L.Ed.2d 32 (1998), the Court found that equitable tolling was not applicable to the 12 year limitation period under the federal Quiet Title Act, 28 U.S.C. 2409(g) because of the "'unusually generous' length of the limitations period, and the fact that the statute contained an express provision that the limitations period would not begin to run until the plaintiff 'knew or should have known of the claim of the United States,' which the Court characterized as already effectively allowing for equitable tolling." 333 F.3d at 1317-8, citing 524 U.S. at 48.

The Federal Circuit then reiterated in *Martinez* the statute-by-statute test which it uses for determining application of the presumption of equitable tolling in limitations periods regarding accrual of actions or proceedings against the United States:

> Following the Supreme Court's lead, we have determined that certain statutes of limitations are subject to equitable tolling and others are not, depending on the language and context of the particular limitation statute at issue. *See Jaquay v. Principi*, 304 F.3d 1276, 1286 (Fed. Cir. 2002) (en banc) (equitable tolling available in a veteran's claim case); *Bailey v. West*, 160 F.3d 1360, 1362-68 (Fed. Cir. 1998) (en banc) (same); *Brice v. Sec'y of Health and Human Servs.*, 240 F.3d 1367, 1370-71 (Fed. Cir. 2001) (equitable tolling not available in a compensation action under the National Childhood Vaccine Injury Act); *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1461-63 (Fed. Cir. 1998) (equitable tolling not available in a tax refund case). 333 F.3d 1318

(In *Martinez* the circuit declined to reach a final determination of the question whether equitable tolling applies to the six year limitation for Tucker Act claims for money from the United States, see 28 U.S.C. 2501, because it concluded that Martinez had not satisfied the factual predicate for application of the principle.)

In a series of decisions including *Jaquay, supra,* the Claims Court and Federal Circuit have applied equitable tolling to claims for veterans' benefits. *See, e.g. Barrett v. Principi*, 363 F.3d 1316 (Fed. Cir. 2004); *Santana-Venegas v. Principi*, 314 F.3d 1293 (Fed. Cir. 2002); and *Leonard v. Gober*, 223 F.3d 1374 (Fed. Cir. 2000). In *Jaquay*, the en banc Circuit compared the veterans' benefit claims with statutes other than Title VII enabling employees to sue their employer. Citing to *Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 428, 85 S.Ct. 1050, 13 L.Ed. 2d 941 (1965) regarding claims brought against railroad employers under the Federal

Employers' Liability Act (FELA) the Circuit noted that "[t]he Supreme Court [held] . . . that equitable tolling was appropriate in order to 'effectuate[] the basic congressional purposes in enacting this humane and remedial Act, as well as those policies embodied in the Act's limitation provision. . . . The Court concluded that the 'humanitarian purpose of the FELA makes clear that Congress would not wish a plaintiff deprived of his rights when no policy underlying a statute of limitations is served in doing so.' [380 U.S.] . . . at [427-8,] 434." 304 F.3d at 1285.

Like FELA, each of the statutes applied to Congress and its Instrumentalities by the CAA was enacted by Congress for the purpose of providing civil rights, veterans rights and basic employment fairness requirements to employees across this country. When the CAA was enacted to apply those laws in Congress, its purpose was equally clear. Primary House of Representatives sponsor Rep. Christopher Shays of Connecticut stated on the floor of the House:

> In the whole process of deliberation on this bill, Mr. Speaker, we had 3 guiding principles that [Rep.] Dick Swett and I worked on with so many other Members. If a law is right for the private sector, it is right for Congress. Congress will write better laws when it has to live by the same laws it imposes on the private sector and the executive branch . . . . Cong. Rec. House, p. H-94 (January 4, 1995).

In the Senate, primary sponsor Senator Grassley stated:

> When we pass this bill, we begin to restore the American people's faith in Congress. We do so in five respects. First, we ensure that Members of Congress will know firsthand the burdens that the private sector lives with. . . . The second benefit . . . concerns future social legislation: If Congress knows that it will be bound by what it passes, Congress will be more careful in the future to respect the liberties of others.
>
> Third, passage of the bill will mean that congressional employees will have the civil rights and social legislation that has ensured fair treatment of workers in the private sector. Congress is the last plantation. It is time for the plantation workers to be liberated. . . .
>
> The fourth general result of this legislation will be a public recognition that Congress has again discovered that it is subject to the will of the people, not the other way around. . . .
>
> And fifth, Members of Congress will learn themselves of the litigation explosion that is choking small business in the country. . . . Cong. Rec. Senate, p. S-441, (January 5, 1995).

The CAA passed the House of Representatives unanimously, and with just one dissent in the Senate. It is absolutely clear that in enacting the CAA Congress desired to be treated like the rest of the employers in the country to the greatest extent possible.

Turning to the language of the CAA itself at issue in this matter, section 402(a) of the

CAA, 2 U.S.C. 1402(a) states in relevant part: "[t]o commence a proceeding, a covered employee . . . shall request counseling. . . . A request for counseling shall be made not later than 180 days after the date of the violation." Section 404 of the CAA states in relevant part: "Not later than 90 days after a covered employee receives notice of the end of the period of mediation, . . . such covered employee may . . . file a complaint with the Office. . . ." 2 U.S.C. 1404. Furthermore, the district court "jurisdictional" language in the CAA which appears at section 408(a) of the CAA refers to no time limits, but requires that the employee have "*completed* counseling under section 1402 of this title and mediation under section 1403 of this title." 2 U.S.C. 1408(a), emphasis added. The district court in *Gibson* found this language to be "significant." We agree, but find that the significance supports application of equitable tolling. The use of the word "complete" rather than another concept such as "file" or "initiate" suggests further that Congress was not as interested in technical time limits as it was in the substantive completion of the alternative dispute resolution process in advance of resort to district court.

None of this language bears any resemblance to the language at issue in *Martinez, supra*: the "unusually emphatic" language of the limitations provision, which "sets forth its limitations in a highly detailed technical manner that . . . contained explicit exceptions to its basic time limits, which did not include equitable tolling." 333 F3d at 1317, citing 519 U.S. at 350-351. Neither does this "plain vanilla" limitation language compare with that in *Beggerly, supra*: the "'unusually generous' length of the limitations period, and the fact that the statute contained an express provision that the limitations period would not begin to run until the plaintiff 'knew or should have known of the claim of the United States,' which the Court characterized as already effectively allowing for equitable tolling." 333 F.3d at 1317-8, citing 524 U.S. at 48. Indeed, this language is of the same character as that directly at issue in *Irwin*: "that an employment discrimination complaint against the Federal Government under Title VII must be filed '[w]ithin thirty days of receipt of notice of the final action taken' by the EEOC." 498 U.S. at 92.

In *Irwin*, the Supreme Court concluded: "Once Congress has made . . . a waiver [of sovereign immunity], we think that making the rule of equitable tolling applicable to suits against the Government, in the same way that it is applicable to private suits, amounts to little, if any, broadening of the congressional waiver." 498 U.S. at 95. There is nothing in the legislative language or history of the CAA rebutting the presumption of applicability of equitable tolling announced in *Irwin*. The Board finds that the purposes, language, and legislative history of the Congressional Accountability Act of 1995 demonstrate clearly that the presumption of equitable tolling is properly applied to the limitations periods for the filing and processing of administrative proceedings maintained under the statute.

Application of Equitable Tolling in this case.

The Hearing Officer concluded that the facts in this case did not satisfy the standard for tolling the limitation period either in the late filing of the request for counseling or the late filing of the administrative Complaint. Because we agree with the Hearing Officer's conclusion regarding the late filing of the request for counseling, we do not need to address his finding regarding the late filing of the Complaint.

As we have explained, the principal grounds for application of equitable tolling were described in *Irwin*: ". . . where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. . . ." 498 U.S. at 96, footnotes omitted.[3]

As the Hearing Officer found in this case, Perez was not tricked or actively misled by either the respondent Office of Representative Sheila Jackson-Lee or its attorneys. Moreover, Perez was represented by counsel. While Perez did correspond with Respondent regarding her claims during the 180 day period, and complained to the League of United Latin American Citizens, she did not file any claim or pleading in any official forum during that period. Her claim with the EEOC was filed on April 1, 2004, 10 days after the limitations period under the CAA had ended on March 22nd.

ORDER

For the reasons set forth in this Decision, and those additionally set forth in the Order of the Hearing Officer, we affirm the Hearing Officer's dismissal of the administrative Complaint in this matter due to complainant Perez's failure to file her request for counseling within the limitations period stipulated at section 402(a) of the CAA, 2 U.S.C. 1402(a), and section 2.03(c) of the Procedural Rules of the Office of Compliance.[4]

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[3]The Board is aware that there are other possible grounds for the application of equitable tolling than those specifically set forth in *Irwin.* For instance, in *Barrett v. Principi*, 363 F.3d 1316, 1319 (Fed. Cir. 2004), the Circuit discussed the effect of mental illness on equitable tolling, noting that "[e]quitable tolling . . . is therefore available in more than just the two circumstances described in *Irwin* . . . ." No such additional circumstances for tolling appear in the record of this case.

[4] Respondent Office of Representative Sheila Jackson-Lee has requested that the Board not publish this decision on the Office of Compliance web site. The Board's long-standing policy

It is so ordered.

Issued, Washington, D.C., June 29, 2005.

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is to publish all final decisions. See Section 316(f) of the CAA, 2 U.S.C. 1416(f). Respondent has also requested that sanctions be imposed upon Perez. We deny that request, as well.

CERTIFICATE OF SERVICE

I, the undersigned employee of the Office of Compliance, certify that the foregoing *Decision of the Board of Directors* was served by first-class mail, postage-prepaid, upon Mr. John C. Cunningham, and transmitted by facsimile of the cover letter and first page of the Decision upon each of the following parties below. The Decision was picked up by a representative of House Employment Counsel on this date.

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For Pick Up on 6/29/05

Signed in Washington, D.C. this 29th day of June, 2005.

_____
Selviana B. Bates
Office of Compliance