

DEC 30 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DALE PENNIE,

Petitioner,

v.

BENEFITS REVIEW BOARD; et al.,

Respondents,

MID-COAST MARINE; SAIF
CORPORATION,

Real Parties in Interest.

No. 08-70121

BRB No. 07-0386

MEMORANDUM*

On Petition for Review of an Order of the
Benefits Review Board

Submitted December 15, 2009**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Dale Pennie petitions for review of the Benefits Review Board's order issued on October 19, 2007. The Board affirmed the Administrative Law Judge's order denying Pennie's request to modify an earlier award of compensation under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950.

We dismiss the petition for lack of jurisdiction.

Pennie's petition for review was received by this court more than sixty days after the Board's order issued. Accordingly, we lack jurisdiction to consider the petition. *See* 33 U.S.C. 921(c); *Felt v. Dir., Office of Workers' Comp. Programs*, 11 F.3d 951, 952-53 (9th Cir. 1993) (order) (explaining that section 921(c)'s sixty-day filing period is a "jurisdictional requirement," and equitable considerations are unavailing); *see also Stevedoring Servs. of Am. v. Dir., Office of Workers' Comp. Programs*, 29 F.3d 513, 516 (9th Cir. 1994) ("The policy requiring that appeals be timely taken is so strong that ministerial failures by a clerk cannot be allowed to overcome it.") (internal quotation marks omitted).

PETITION FOR REVIEW DISMISSED.