NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2778

NICOLE DUBOSE,
Appellant

v.

MORRISON HEALTHCARE

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:22-cv-04560)
District Judge: Honorable John F. Murphy

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 18, 2026

Before: MATEY, MONTGOMERY-REEVES, and NYGAARD, *Circuit Judges*

(Opinion filed: August 19, 2026)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Nicole Dubose appeals from the District Court's denial of her motion to vacate an arbitrator's award in favor of her former employer, which she identified in her complaint as Morrison Healthcare. We will affirm.

I.

Dubose filed a counseled complaint against Morrison asserting various claims of employment discrimination. Dubose later consented and proceeded to arbitration before the Honorable Thomas J. Reuter (Ret.), who ultimately granted summary judgment in Morrison's favor. The District Court then solicited the parties' positions on how it should dispose of the case. The parties advised the court that it should dismiss the case with prejudice, which the court did.

But a little over two months later, Dubose filed pro se a letter requesting reconsideration of the dismissal. She argued that her counsel requested dismissal without her consent and that she wanted to proceed with her claims. Following additional filings on these issues, the court held a conference and advised Dubose that it would give her a chance to file, either pro se or through counsel, a motion under 9 U.S.C. § 10 to vacate the arbitrator's award. (We view this decision as the functional equivalent of reopening the matter under Fed. R. Civ. P. 60(b) for purposes of entertaining a motion to vacate the award.) Dubose's counsel later filed a motion to withdraw, and the court granted that motion after a hearing. Dubose then filed pro se briefing on her motion to vacate the award. Morrison opposed the motion, and the court denied it. Dubose appeals pro se.[1]

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[1] We have jurisdiction under 28 U.S.C. § 1291 and 9 U.S.C. § 16(a)(3). *See George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 233-34 (3d Cir. 2024). We review de novo

II.

The court denied Dubose's motion on the independent grounds that it was untimely under 9 U.S.C. § 12 and lacked merit under 9 U.S.C. § 10. Dubose challenges both rulings, but we see no basis to disturb either one and will affirm.

A. Timeliness

"Notice of a motion to vacate . . . an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. Here, the District Court treated Dubose's motion for reconsideration docketed October 21, 2024, as her motion to vacate and held that it was untimely as measured from the date of the arbitrator's July 2, 2024 award. Dubose disputes the court's use of these precise dates, but she concedes that her motion was untimely under § 12 and it was.[2]

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legal issues presented by the denial of a motion to vacate an arbitration award. *See Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240, 250-51 (3d Cir. 2013).

[2] The three-month limitations period begins to run when the arbitration award is "filed or delivered." 9 U.S.C. § 12. The District Court used the July 2 date of the award, and some other courts have "imprecisely" done the same. *Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 572 & n.2 (7th Cir. 2007). Dubose argues that the limitations period did not begin to run until the day she actually received a copy of the award from her counsel, which she asserts was July 17, 2024. But counsel's letter enclosing the award is dated July 11, 2024, so counsel must have received the award by then. (ECF No. 32 at 4.) And counsel's receipt of the award is chargeable to Dubose for limitations purposes. *See Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 92-93 (1990). Thus, the award was "filed or delivered" by July 11, 2024, at the latest. Using that date, and counting three calendar months as the statute requires, the limitations period expired on October 11, 2024. *See NuVasive, Inc. v. Absolute Med., LLC*, 71 F.4th 861, 877 n.9 (11th Cir. 2023); *Stevens v. Jiffy Lube Int'l, Inc.*, 911 F.3d 1249, 1252 (9th Cir. 2018). As for the date of filing, Dubose argues that the court should have used the October 17, 2024, date on which she dated her motion for rather than the October 21 date on which the court received it. But the operative date is when the motion was "served." 9 U.S.C. § 12. Dubose makes no showing on that point, but her motion for reconsideration was dated October 17 and was

Dubose nevertheless argues that we should deem her motion to vacate timely for three reasons, but they lack merit. First, she argues that the court "waived" or was "judicially estopped" from raising the issue of timeliness because it advised her at the conference that it would give her a chance to make arguments under § 10 and that, "to the extent that there is an issue with the timing, I'll set that aside and hear what you have to say." (ECF No. 55 at 19.) But the doctrines of waiver and judicial estoppel apply to litigants, not courts, and the court's statement did not constitute a definitive ruling on the issue that might have been controlling under the law-of-the-case doctrine or otherwise.

Second, and similarly, Dubose argues that Morrison waived the issue of timeliness by agreeing with the court's proposal to let her file a challenge on the merits. But Morrison said nothing at the conference that might have waived or forfeited the issue of timeliness, and it instead raised timeliness as a defense in the District Court (ECF No. 64 at 3-5) and has done so again on appeal.

Third, Dubose argues that she was entitled to equitable tolling because her counsel "abandoned" her after the arbitration and did not advise her how to proceed. We do not appear to have addressed whether this deadline is subject to equitable tolling. At least two courts have held that it is. *See NuVasive*, 71 F.4th at 872-75; *Move, Inc. v. Citigroup Glob. Mkts., Inc.*, 840 F.3d 1152, 1156-58 (9th Cir. 2016). We will assume without deciding that it is because Dubose has not shown grounds for tolling in this case.

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notarized on October 18, so she could not have served it before then. In any event, even using Dubose's October 17 date her motion was at least six days late.

Dubose argues that her former counsel abandoned her, but counsel merely advised Dubose that counsel was terminating the representation at the same time that counsel sent her the award. Counsel did so soon after the award issued and with most or all of the limitations period remaining. And Dubose does not claim that counsel misled her about the deadline, let alone in an extraordinary way that prevented her from filing on time. *See Brown v. Shannon*, 322 F.3d 768, 773-74 (3d Cir. 2003). To the contrary, she concedes that she learned of the deadline with weeks remaining on September 22, 2024 (Appellant's Br. at 12), and she does not claim any extraordinary impediment to filing after that. *See Brown*, 322 F.3d at 773-74 (holding that equitable tolling was not warranted where a *prisoner* knew of the deadline with five days remaining). Thus, Dubose's motion was untimely and the court properly denied it on that basis.

B. The Merits

The court also properly denied Dubose's motion on the merits. "It is rare for us to disturb an arbitration award." *Freeman*, 709 F.3d at 251. In reviewing such an award, "we do not entertain claims that an arbitrator has made factual or legal errors." *Id.* (cleaned up). Instead, "[w]e will vacate an award only under the exceedingly narrow circumstances listed in 9 U.S.C. § 10(a)." *Id.* (cleaned up). Dubose raises two categories of arguments under § 10(a), but neither states a basis to vacate the award.

First, Dubose argues that the arbitrator was "guilty of misconduct in . . . refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(3). Such a refusal qualifies "only if it so prejudices the rights of a party that it denies the party a fundamentally fair hearing." *CPR Mgmt., S.A. v. Devon Park Bioventures, L.P.*, 19 F.4th

236, 245 (3d Cir. 2021) (cleaned up). But Dubose was able to take discovery and to present evidence and argument, *see id.* at 245-46, and she does not argue that the arbitration proceeding itself was otherwise fundamentally unfair.

Instead, Dubose directs most of her arguments on this point to the arbitrator's ruling that she did not suffer an adverse employment action as required for some of her claims because she voluntarily resigned and Morrison merely refused to accept her subsequent retraction. Dubose argues that her resignation was an "April fool's" joke and that the arbitrator could have reached his conclusion only by ignoring evidence. But her primary argument is based on evidence that it as best ambiguous and on a faulty legal premise.[3] Moreover, the arbitrator expressly acknowledged Dubose's argument and evidence and supported his ruling with numerous record and case citations. Even if Dubose were right that the arbitrator committed some error in doing so, which we do not

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[3] Dubose emailed her resignation to her supervisor, who promptly accepted it. Dubose claims that, when she tried to retract her resignation as an April-fool's joke just minutes later, her supervisor told her that he already had accepted her resignation and already had "filled her position." Dubose argues that it was impossible for her supervisor to have filled her position that quickly and that the arbitrator, in failing to acknowledge that point, refused to consider "irrefutable evidence of pretext." But the one-sentence email on which she relies does not expressly say that the supervisor filled her position, and the context suggests that he might have meant to say that he "filed" her resignation, not that he "filled" her position. (ECF No. 67-2 at 1) ("April fools or not I accepted and have filled it[.]"). Dubose also does not rely on any other evidence on this point, and her current argument appears inconsistent both with her deposition testimony about the posting and filling of her position (ECF No. 63-3 at 212-15) and with other evidence that the arbitrator cited. In any event, the issue of an adverse employment action that she claims the arbitrator wrongly decided is distinct from the issue of pretext that she claims this email shows.

decide, *see Freeman*, 709 F.3d at 251, she has not raised anything suggesting that any such error rose to the level of "misconduct."

Second, Dubose argues that the arbitrator's decision was so wrong that he "exceeded [his] powers." 9 U.S.C. § 10(a)(4). This theory requires her to show that the arbitrator's decision was "completely irrational" and had "absolutely no support at all in the record." *Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Account*, 618 F.3d 277, 296-97 (3d Cir. 2010) (cleaned up). Dubose has not made that showing. She argues that the arbitrator misapplied the law on the issue of an adverse employment action and in requiring her to show prejudice on her claims under the Family and Medical Leave Act. But once again, the arbitrator supported his decision with case law and evidence of record, and the question before us is not whether his decision was correct. *See id.* at 295-96. The question instead is merely whether his award was "completely irrational," and it was not for the reasons he explained.

III.

For the foregoing reasons, we will affirm the judgment of the District Court. Dubose's motion to expand the record on appeal is denied.