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## United States Court of Appeals for the Federal Circuit

06-3142

LUTHER E. ALOP,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

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DECIDED: August 8, 2006

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Before NEWMAN, MAYER, and RADER, Circuit Judges.

PER CURIAM.

Luther E. Alop appeals the final decision of the Merit Systems Protection Board, affirming the Office of Personnel Management's denial of his application for a deferred retirement annuity under the Civil Service Retirement Act ("CSRA"). Alop v. Office of Pers. Mgmt., SF0831050477-I-1 (MSPB Dec. 6, 2005). We affirm.

We must affirm the board's decision unless it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule or regulation having been followed; or unsupported by substantial

evidence. See 5 U.S.C. § 7703(c) (2000). In order to qualify for a retirement annuity under the CSRA, Alop must prove by a preponderance of the evidence, 5. C.F.R. § 1201.56(a)(2), that, inter alia, “at least one of [his] two years of service prior to separation [was] ‘subject to’ the CSRA, i.e., covered service.” Rosete v. Office of Pers. Mgmt., 48 F.3d 514, 516 (Fed. Cir. 1995) (citing 5 U.S.C. § 8333(b)). The record establishes that all of his service occurred in either “indefinite” or “intermittent” positions. Because these positions are excluded from coverage under the CSRA, see 5 C.F.R. 831.201(a), he is not entitled to a retirement annuity.