

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

2006-3215

ROBERT J. DEIBEL,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

DECIDED: November 13, 2006

Before NEWMAN, MAYER, and BRYSON, Circuit Judges.

PER CURIAM.

Robert J. Deibel appeals the final decision of the Merit Systems Protection Board, which affirmed the reconsideration decision by the Office of Personnel Management (“OPM”) dismissing as untimely his application for disability retirement. Deibel v. Office of Pers. Mgmt., No. CH831E050806-I-1 (MSPB Feb. 1, 2006). We affirm.

Deibel retired from the Department of the Army on January 13, 1998, but did not apply for disability retirement until December 19, 2004. On January 28, 2005, he faxed a letter to OPM asserting that he was not mentally incompetent. OPM issued an Initial Decision on January 31, 2005, denying his request for disability retirement on the grounds that it was not timely filed and that, since he was not mentally incompetent, OPM did not have discretion to waive the one-year statute of limitations. OPM issued a final reconsideration decision on June 30, 2005, affirming its previous denial of Deibel's application for disability retirement. OPM's final reconsideration decision was affirmed by the Merit Systems Protection Board in an Initial Decision issued October 3, 2005, and became final on February 1, 2006, when the board denied Deibel's petition for reconsideration.

We review a decision of the board to determine whether it is "arbitrary, capricious, an abuse of discretion," or otherwise unlawful; procedurally improper; or "unsupported by substantial evidence." 5 U.S.C. § 7703(c). Pursuant to 5 U.S.C. § 8337(b), a claim for disability retirement will only be considered if it is filed with OPM no later than one year after the applicant separated from service. This one-year time limit may be waived by OPM, but only if the employee "at the date of separation from service or within 1 year thereafter [was] mentally incompetent." Id. Deibel's application for disability retirement was filed almost seven years after he retired from the Department of the Army. Further, he has asserted that he was not mentally incompetent, and no reason exists to find otherwise.