

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

05-3095

MANOLITO C. FALLORE,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

DECIDED: April 6, 2006

Before MAYER, LOURIE, and BRYSON, Circuit Judges.

PER CURIAM.

Manolito C. Fallore appeals the final decision of the Merit Systems Protection Board, affirming the Office of Personnel Management's ("OPM") dismissal of his request for reconsideration as untimely. Fallore v. Office of Personnel Mgmt., 97 M.S.P.R. 680 (2004). We affirm.

In an October 19, 2001, initial decision, OPM denied Fallore's request for a survivor annuity. Fallore requested reconsideration in January 2003, arguing that he was prevented from filing within the required 30 days, see 5 C.F.R. § 831.109(e)(1), because he did not receive notice until December 27, 2002 because the initial decision

was “missent.” OPM denied his request as untimely, finding that Fallore did not set forth sufficient reasons to justify a filing extension. On appeal to the board, the administrative judge (“AJ”) affirmed OPM’s dismissal, stating that Fallore “did not show that he was not notified of the time limit, or that circumstances beyond his control prevented him from making a timely request.” Fallore v. Office of Personnel Mgmt., SE0831030364-I-1 (MSPB Oct. 30, 2003) (applying 5 C.F.R. § 831.109(e)(2)). In considering Fallore’s petition for review, the two reviewing board members disagreed on the disposition of the petition, and the AJ’s decision became final.

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). Even if Fallore received notice of OPM’s initial decision thirteen months late, the record supports the finding that the delay was caused by Fallore’s failure to notify OPM of his change of address or to take other reasonable steps to ensure that he received his mail. Because he failed to exercise appropriate diligence, the board properly affirmed OPM’s dismissal of his petition for reconsideration.