

NOTE: This disposition is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2006-3422

JOSEPH L. HERBERT,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Joseph L. Herbert, of Martinsburg, West Virginia, pro se.

Roger A. Hipp, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With him on the brief were Peter D. Keisler, Assistant Attorney General, Jeanne E. Davidson, Director, and Deborah A. Bynum, Assistant Director.

Appealed from: United States Merit Systems Protection Board

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DECIDED: July 16, 2007

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Before MAYER and LINN, Circuit Judges and ROBERTSON, District Judge.\*

PER CURIAM.

Joseph L. Herbert appeals the decision of the Merit Systems Protection Board disallowing his application for disability retirement annuity benefits because it was not timely filed. Herbert v. Office of Pers. Mgmt., No. PH-0831-06-0170-I-1 (MSPB Apr. 20, 2006). We affirm.

Claims for disability retirement must be filed with the Office of Personnel Management ("OPM") no later than one year after the claimant is separated from

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\* Honorable James Robertson, United States District Court for the District of Columbia, sitting by designation.

service. 5 U.S.C. § 8337(b). This requirement may be waived by OPM for a claimant “who at the date of separation from service or within 1 year thereafter is mentally incompetent, if the application is filed with [OPM] within 1 year from the date of restoration of the [claimant] to competency or the appointment of a fiduciary, whichever is earlier.” Id. Herbert separated from the postal service in January 1999. OPM did not receive his application for disability retirement until October 20, 2004, well beyond the standard one-year period of limitations. Although Herbert presented evidence of various medical conditions, we cannot say the board erred in finding that he was mentally competent during the relevant period.