

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

04-3371

WESLEY C. JONES,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

DECIDED: December 17, 2004

Before BRYSON, Circuit Judge, PLAGER, Senior Circuit Judge, and PROST, Circuit Judge.

PER CURIAM.

The petitioner, Wesley C. Jones, requests that this court review a final decision of the Merit Systems Protection Board (“the Board”) denying his petition for review. Jones v. Office of Pers. Mgmt., Docket No. AT844E030516-I-1 (June 25, 2004) (“Jones II”). Because the Board’s decision is supported by substantial evidence, we affirm.

DISCUSSION

In its initial decision, the Board denied Mr. Jones’s request for disability annuity benefits under the Federal Employees’ Retirement System (“FERS”). The Board’s administrative judge denied the petitioner FERS benefits because the record in this case establishes that the petitioner only worked as an employee of the Department of

Veterans Affairs for three and one half months. Jones v. Office of Pers. Mgmt., Docket No. AT844E030516-I-1, slip op. at 1 (June 2, 2003) ("Jones I"). Under the FERS statute, an employee must have completed at least 18 months of service in order to qualify for disability retirement benefits. 5 U.S.C. § 8451(a)(1)(A) (2004). Because the petitioner could not establish that he had served at least 18 months in the Department of Veterans Affairs, his appeal from the Office of Personnel Management's denial of disability benefits was dismissed for failure to state a claim upon which relief can be granted. Jones I, at 1.

The full Board denied the petitioner's petition for review of the administrative judge's initial decision because no new evidence that had been previously unavailable was presented to the Board. Jones II, at 1.

We can only set aside a Board decision if it is:

1. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. obtained without procedures required by law, rule, or regulation having been followed; or
3. unsupported by substantial evidence.

5 U.S.C. § 7703(c) (2004).

In his petition to this court, Mr. Jones does not allege that the Board's decision is covered by 5 U.S.C. § 7703(c)(1)-(2). To the extent that he argues that the Board's decision is not supported by substantial evidence, we disagree. The evidence in the record clearly establishes that Mr. Jones began his employment at the Department of Veterans Affairs on November 22, 1987 and resigned on March 9, 1988. Accordingly, the Board's decision is affirmed.