

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2006-3394

RUBEN TAVAREZ, JR.,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Ruben Tavarez, Jr., of Visalia, California, pro se.

Brian T. Edmunds, 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, David M. Cohen, Director, and Todd M. Hughes, Assistant Director.

Appealed from: United States Merit Systems Protection Board

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DECIDED: January 16, 2007

Before BRYSON, GAJARSA, and LINN, Circuit Judges.

PER CURIAM.

Ruben Tavarez, Jr., (“Tavarez”) appeals from a decision of the Merit Systems Protection Board (“Board”), Tavarez v. OPM, No. SF-831E-06-0271-I-1 (M.S.P.B. May 4, 2006) (“Initial Decision”), which became the final decision of the Board after the Board denied Tavarez’s petition for review, Tavarez v. OPM, No. SF-831E-06-0271-I-1 (M.S.P.B. Aug. 2, 2006). In the initial decision, the administrative judge (“AJ”) affirmed a denial of Tavarez’s application for disability benefits by the Office of Personnel Management (“agency”). Because the Board’s decision is in accordance with law and does not otherwise contain reversible error, we affirm.

We are without authority to review the substantive merits of disability determinations or the factual underpinnings of such determinations; rather, our review is

limited to determining “whether there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error ‘going to the heart of the administrative process.’” Lindahl v. OPM, 470 U.S. 768, 791 (1985) (quoting Scroggins v. United States, 397 F.2d 295, 297 (Ct. Cl. 1968)). Tavarez’s argument that the AJ failed to consider medical evidence submitted by his doctor is not supported by the record or by the AJ’s decision, which clearly addressed such evidence but found it unpersuasive. Initial Decision, slip op. at 3-6. Tavarez’s arguments that he is disabled and that his supervisor’s testimony lacked credibility are factual determinations not within our statutory authority to review. 5 U.S.C. § 8347(c). Furthermore, because this appeal concerns Tavarez’s entitlement to disability benefits, and not his removal, Tavarez’s request for reinstatement is not properly before this court. See Thomas v. Gen. Servs. Admin., 794 F.2d 661, 666 (Fed. Cir. 1986) (an issue “not properly raised before the presiding official or the full Board” cannot be presented here). Accordingly, we affirm.

COSTS

No costs.