



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for March 30, 2018

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COURT DECISION

PRECEDENTIAL:

Petitioner: Tito C. Lledo

Respondent: Office of Personnel Management

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2017-1717](#)

MSPB Docket No. SF-0831-16-0799-I-1

Issuance Date: March 28, 2018

From 1968 to 1991, the appellant held a number of not-to-exceed (NTE) and indefinite appointments in the excepted service at the U.S. Navy Public Works Center in Subic Bay, Philippines. On March 31, 2014, he filed an application for deferred retirement benefits under the Civil Service Retirement System (CSRS) and requested to make a post-employment deposit into the Civil Service Retirement and Disability Fund. In a reconsideration decision, the Office of Personnel Management (OPM) denied his application and deposit request. The appellant filed a Board appeal challenging OPM's reconsideration decision, which the administrative judge affirmed.

Holding: The Court affirmed the Board's decision affirming OPM's reconsideration decision.

- (1) The Court agreed with the administrative judge's findings that the appellant failed to show that he completed at least 1 year, out of the last 2 years preceding his separation, in a covered position—i.e., a position subject to the Civil Service Retirement Act—and that, therefore, he was not entitled to a CSRS annuity benefit. In so finding, the Court observed that temporary, intermittent, term, and excepted indefinite appointments are not covered positions.
- (2) The Court rejected the appellant's argument that, pursuant to 5 C.F.R. § 831.303(a), he should be permitted to make a deposit to convert his creditable service prior to October 1, 1982, into covered service. The Court explained that section 831.303(a) allows an employee who qualifies for an annuity to include certain periods of creditable service in the calculation of covered service but does not alter the definition of covered service or convert creditable service into covered service.
- (3) The Court further noted that the relevant time period for the calculation of covered service is the last 2 years of the appellant's employment, not the appellant's creditable service between 1968 and September 30, 1982. The Court found that section 831.303(a) does not change the relevant time period during which the appellant needed to have served in a covered position or the fact that he never served in a covered position during the critical time period.