

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

JAMES W. GLASPELL,
appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,
agency.

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OPINION AND ORDER

This case is before the Board upon a petition for review filed by appellant from the presiding official's initial decision dated February 24, 1983, sustaining a decision issued by the Office of Personnel Management (OPM) denying appellant's application for disability retirement based upon a determination that appellant's application was untimely filed. For the reasons set forth below, the Board hereby DENIES the petition for review for failure to meet the criteria for review set forth at 5 C.F.R. § 1201.115.

In his petition for review, appellant contends that good cause exists for waiver of the requirement that a claim for disability retirement must be filed within one year of an employee's separation from the Federal service. See 5 U.S.C. § 8337(b). Specifically, appellant contends that he was not properly separated from the U.S. Postal Service because, at the time of his separation, he was not informed that an application for disability retirement must be filed within one year and that failure to do so would result in loss of survivor annuity benefits. The evidence of record indicates that the agency did, however, inform appellant

of his right to file an application for disability retirement and in fact encouraged him to do so. Since there is no requirement upon an agency to inform an employee of the time limit within which he must file a voluntarily-initiated application for disability retirement, we do not find that the agency's failure to do so rendered the separation action invalid.

In addition, we find that the presiding official correctly found that he did not have discretion to waive the time limit for filing an application for disability retirement. See generally In re John Shinko, 1 MSPB 327 (1980). The appeal now before the Board is distinguishable from cases where it has been found appropriate to apply the doctrine of equitable estoppel against the government. In Hansen v. Harris, 619 F.2d 942 (2d Cir. 1980), the court set forth the circumstances under which the doctrine could be applied. The court limited application of the doctrine "to the situation where (1) a procedural not a substantive right is involved and (2) an internal procedural manual or guide or some other source of objective standards or conduct exists and supports an inference of misconduct by a government employee." Id. at 949. The agency did not provide the appellant with misinformation and in fact apprised him of his right to file an application for disability. We do not find that these circumstances warrant an inference of misconduct on the part of the agency. See generally Shelley v. Office of Personnel Management, 6 MSPB 228 (1981).

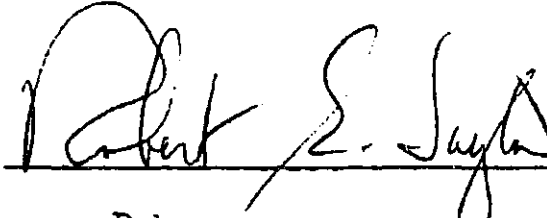
This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five (5) days from the date of this order. 5 C.F.R. § 1201.113(b).

The U.S. Court of Appeals for the Federal Circuit has held that the Board's final decision in an appeal from a denial of an employee-initiated application for disability retirement benefits is not subject to judicial review under 5 U.S.C. § 7703. Lindahl v. OPM, 718 F.2d 391 (Fed. Cir. 1983).

FOR THE BOARD:

April 20, 1984
(Date)

Washington, D.C.


Robert E. Taylor
Secretary