

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

VICTOR L. SPITHALER

v.

OFFICE OF PERSONNEL MANAGEMENT

} Docket No.

} SF831L09002-80-69

ORDER

This is a disability retirement case in which the statement of facts and the "Analysis and Findings" set forth in the initial decision dated February 15, 1980, consist in their entirety of the following:

Review has been made of all of the information of record, particularly appellant's most recent medical evaluation. Based upon that review, I find that appellant is totally disabled from performing the required duties of his position in a useful and efficient manner. Appellant's disability retirement is warranted; approval of his application is hereby directed.

An initial decision by a presiding official of the Board becomes in most cases the final decision of the Board, 5 C.F.R. § 1201.113. Consequently, such a decision is required to constitute an "adjudication," 5 U.S.C. § 1205(a)(1), which "must be articulated in a reasoned opinion providing an adequate basis for review by a Court of Appeals (or by the Court of Claims, 5 U.S.C. § 7703)." *Parker v. Defense Logistics Agency*, 1 MSPB 489, 497 (1980). This is essential to enable the parties and any reviewing court adequately to determine the factual basis for the Board's decision and to ascertain whether the Board considered all relevant factors or made any error of judgment.

To provide an adequate basis for such review the Board has required, in its regulations at 5 C.F.R. § 1201.111(b)(1), that each initial decision contain "Findings of fact and conclusions, as well as the reasons or bases therefor, upon all material issues of fact and law presented on the record." This means that an initial decision must identify all material issues of fact, summarize the evidence on each such issue sufficiently to disclose the evidentiary basis for the presiding official's findings of fact, set forth those findings clearly and explain how any issues of credibility were resolved and why, describe the application of burdens of proof, and address all material legal issues in a fashion that reveals the presiding official's conclusions of law, legal reasoning and the authorities on which that reasoning rests.

The initial decision in this case contains none of these essential ingredients. It provides no statement of facts at all. It leaves us totally in the dark even as to such preliminary matters as the nature of appellant's alleged disability, his position and its duties, and the nature of the disagreement between appellant and OPM. Congress has not authorized this Board, and the Board has not authorized its presiding officials, to rule by fiat. A decision articulating a reasoned adjudication is required; none has yet been issued in this case.

The initial decision dated February 15, 1980, is hereby RE-OPENED and VACATED, and this case is hereby REMANDED to the presiding official for preparation and issuance of an initial decision that conforms with the requirements of 5 C.F.R. § 1201.111(b)(1).

For the Board:

RONALD P. WERTHEIM.

March 20, 1980.

**UNITED STATES OF AMERICA
BEFORE THE MERIT SYSTEMS PROTECTION BOARD**

San Francisco Field Office

VICTOR L. SPITHALER

v.

OFFICE OF PERSONNEL MANAGEMENT

Decision No: SF831L09002

Date: February 15, 1980

INTRODUCTION

By letter dated November 7, 1979, Mr. Victor L. Spithaler appealed an October 11, 1979 reconsideration decision of the Office of Personnel Management, Compensation and Retirement Programs, Medical Division, Washington, D.C., which sustained a previous disapproval of appellant's application for disability retirement.

JURISDICTION

Since appellant's application for disability retirement was made after January 10, 1979, the application and its processing are covered by the Civil Service Reform Act of 1978 (Public Law 95-454).

Since appellant had completed at least five years of Federal Civilian Service he was covered by the retirement provisions of Chapter 23 of Title 5 of the United States Code (5 U.S.C. 8337).

An administrative action affecting the rights or interests of covered individuals may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board (5 U.S.C. 8347(d), 5 C.F.R. 1201.3(a)(6)). In addition, appeal rights have been granted to the Board by regulations of the Office of Personnel Management (5 C.F.R. 831.1205).

Appellant's timely appeal comes within the purview of 5 U.S.C. 8347(d) and 5 C.F.R. 1201.3(a)(6).

ANALYSIS AND FINDINGS

Review has been made of all of the information of record, particularly appellant's most recent medical evaluation. Based upon that review, I find that appellant is totally disabled from performing the required duties of his position in a useful and efficient manner. Appellant's disability retirement is warranted; approval of his application is hereby directed.

DECISION

The reconsideration decision is reversed.

This decision is an initial decision and will become a final decision of the Merit Systems Protection Board on March 18, 1980, unless a petition for review is filed with the Board within 35 calendar days of issuance of this decision.

Any party to this appeal, the Director of the Office of Personnel Management and the Special Counsel may file a petition for review of this initial decision with the Merit Systems Protection Board. The petition shall set forth objections to this decision, supported by references to applicable laws or regulations, and with specific reference to the record.

The petition for review must be filed with the Secretary to the Merit Systems Protection Board, 1717 H Street, N.W., Washington, D.C. 20419.

The Board may grant a petition for review when a party submits written argument and supporting documentation which tends to show that:

- (1) New and material evidence is available that despite due diligence was not available when the record was closed; or
- (2) The decision of the Presiding Official is based upon an erroneous interpretation of statute or regulation.

The Director of OPM may file a request for review only if he/she is of the opinion that the decision is erroneous and will have

substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office (5 U.S.C. 7701(e)(2)).

Under 5 U.S.C. 7703(b)(1), the appellant may petition the United States Court of Appeals for the appropriate circuit or the United States Court of Claims to review any final decision of the Board, provided the petition is filed no more than thirty (30) calendar days after receipt.

For the Board:

LONNY A. BARTHOLOMEW,
Presiding Official.