

AUG 07 2006

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

SYED J. QUADRI,
Appellant,

DOCKET NUMBER
CH-831E-06-0519-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: August 4, 2006

(CSA4256436)

Timothy M. Scheffler, Esquire, Madison, Wisconsin, for the appellant.

Charlretta T. McNeill, Washington, D.C., for the agency.

BEFORE

Stephen E. Manrose
Administrative Judge

INITIAL DECISION

INTRODUCTION

The appellant filed a timely appeal from an April 12, 2006 reconsideration decision issued by the Office of Personnel Management that denied his application for a disability retirement. I held a hearing on July 19, 2006.

The appeal falls within the Board's appellate jurisdiction. *See* 5 U.S.C.A. § 8347(d)(1) (West 1996). For the reasons stated below, the reconsideration decision is REVERSED.

ANALYSIS AND FINDINGS

The appellant has the burden of showing by preponderant evidence that he has been employed for a minimum of five years in a position under the Civil

Service Retirement System, that he is unable, because of disease or injury, to render useful and efficient service in his position, that the agency is unable to make reasonable accommodation for his medical condition, and that he is not qualified for reassignment to a vacant position at the same grade or level and in which he would be able to render useful and efficient service. 5 U.S.C.A. § 8337(a) (West 1996); 5 C.F.R. § 1201.56(a)(2) (2006); *O'Shea v. Office of Personnel Management*, 62 M.S.P.R. 352, 354 (1994). The appellant also must show his condition will in all probability last for at least one year from the date of the filing of his retirement application. 5 C.F.R. § 831.1203(a)(3) (2006); *Outlaw v. Office of Personnel Management*, 49 M.S.P.R. 189, 192 (1991). A physician's conclusion that an employee is disabled is persuasive only if the physician explains how the medical condition affects the employee's specific work requirements. *See Tanious v. Office of Personnel Management*, 34 M.S.P.R. 107, 111 (1987).

The appellant's application for disability retirement is based on his service with the Department of Commerce as a Commercial Specialist. The appellant was generally responsible for performing business counseling and outreach, trade event promotion, core program and administrative reporting, and market research analysis (Agency Response File: Tab IIB, pp. 137, 144). Although the appellant had a history of excellent performance (Tab IIB, pp. 16-241), his performance deteriorated and on September 12, 2004 he was placed on probation because he received two "needs improvement" ratings on his performance evaluation (p. 242). In his "statement of disability," the appellant stated he was in an accident on January 1, 2001 in which he suffered "multiple injuries." He stated he underwent "major orthopedic surgeries" for his right femur and that he received treatment for his right hand over a period of several months. In addition, he suffers from gastroenteritis and chronic prostatitis. He stated that the long walks from the parking lot to his office aggravate his leg injury and create pain which,

in turn, precipitates his reflux and prevents him from concentrating on his work (Tab IID, p. 1).

The appellant's supervisor, Douglas Wallace, Principal Commercial Officer, stated the appellant was "laboring" to adequately perform the duties of his job, notwithstanding his deteriorating medical conditions, and that he should be permitted to retire "based on medical grounds" (Tab IIB, p. 248). In a letter dated March 5, 2005, Mr. Wallace stated the appellant's physical disabilities prevented him from acceptably performing his business counseling duties and his maintenance of extensive business contacts through frequent face-to-face visits, emails, and phone calls (Tab IID, pp. 6, 7). He further stated the agency is unable to accommodate the appellant's conditions or reassign him to another job (Tab IID, pp. 17, 18).

In a February 28, 2005, letter, Dr. Syed Amjad Junedi, General Physician, reported the appellant suffers from pain in his right shoulder, based on a partial tear of his rotator cuff, and is unable to lift objects and open and close the door with his right hand. Dr. Junedi also reported the appellant has difficulty in walking any distance because of an intramedullary rod in his right femur (Tab IID, p. 8). On December 7, 2005 letter, Dr. Junedi wrote that because of the appellant's traffic accident on January 1, 2001, he suffered fractures of his right femur and right tibia. He has an intramedullary rod in his right femur which causes pain when he walks and also has a frozen right shoulder which prevents the free movement of his arm. He also has chronic gastritis reflux oesphoritis and fatty liver prostatitis, which also "bother" him. Dr. Junedi also stated that after a December 6, 2004 terrorist attack on the U.S. Consulate, the appellant became "mentally disturbed" and suffered from panic attacks, insomnia, and depression. Dr. Junedi opined the appellant is physically and mentally "not sound enough" to continue his job (Tab IIB, pp. 260, 261).

Dr. Junedi elaborated on the appellant's condition in a more recent letter, dated May 21, 2006 (Appellant's Exhibit B-1). He stated the appellant has

permanent restricted use of his right shoulder, arm, wrist, and leg. He cannot type at a normal speed, open and close heavy doors, lift or carry heavy books or documents, cross busy streets, walk or stand continuously for more than five or ten minutes, or walk up or down stairs at a normal pace. In addition, he has difficulty stepping over elevations or variations of more than five inches and the medications he takes for liver, prostate, and stomach conditions cause a lack of energy, dizziness, and weakness. He reiterated that the terrorist attack on the Jeddah Consulate in Saudi Arabia, in which some of the appellant's co-workers were shot to death, left the appellant "permanently mentally unable" with panic attacks and sleepless nights.

Moin Shah, M.D., reported on January 20, 2004, the appellant suffers from a burning sensation in his urethral passage and low back pain (Tab IID, p. 10). Dr. Ahmed Galal, Orthopedic Surgeon, stated the appellant was admitted to the emergency room with both a right and left fracture of the tibias as well as a compound fracture of his right forearm and fissure of the right shoulder scapula (p. 262). Medical notes reference the motor vehicle accident in Saudi Arabia in which the appellant was involved and which caused him to sustain multiple fractures, including a right femur fracture, a right radius/ulna fracture, and a left tibial plateau fracture (pp. 263, 264). In an April 26, 2001 statement, Amit Gupta, M.D., stated the appellant suffered a severe injury to his right wrist in the accident and that although the "shattered" radius healed "fairly decently," the ulna "is not doing well" and the distal radial joint "is disrupted" (p. 268).

The appellant testified his job required him to contact Saudi businessmen and provide them with supplies and services.¹ He stated he also attended shows and other special events to promote products of the United States of America. He stated he was required to visit with at least two and sometimes as many as ten

¹ The appellant no longer works in his position. He stated in his appeal that he was forced into an early retirement because of health problems.

clients a day. He stated that the consulate compound was over one mile from his office, that the consulate has five security doors weighing from five to seven hundred pounds, and that he was required to carry various items, including catalogs weighing five to twelve pounds, to the consulate. He testified that the January 1, 2001, accident killed his wife and left him with serious injuries, including broken legs and shoulder and hand injuries. He stated it is hard for him to lift heavy objects, to carry objects while walking, to sit down at shows or receptions, or to type or otherwise use a computer. In addition, he takes medications which adversely affect his ability to sleep. He also suffers from prostate and urinary problems as well as reflux. He stated it was necessary to often use the restroom which made it difficult to visit with clients. He stated his health got worse after he witnessed the terrorist attack. He stated that the agency finally asked him to resign his position based on his failure to meet his performance objectives.

The appellant's position required frequent public contact. His cumulative medical conditions often made these contacts difficult if not impossible. Even such a simple task as opening a heavy door was difficult to manage. During the course of the appellant's work, he was required to walk distances of greater than one mile, often carrying heavy catalogs or products. As described by Dr. Junedi, these tasks, as well as other mundane tasks such as typing, could not be easily, if at all, accomplished. The appellant's application for disability is supported not only by medical evidence but also by the appellant's supervisor, Mr. Wallace, who personally attested to the appellant's deteriorating job performance caused by his disabilities. The appellant is a credible applicant for benefits. He had a long and impressive record of government service prior to the tragic traffic accident in which his wife was killed and he was severely injured. I am persuaded that these injuries, as well as the associated mental problems caused by the accident and the terrorist attack on his place of employment, establish, by preponderant evidence, the appellant is unable to provide useful and efficient

service in his position. Because he has met all the other requirements necessary to qualify for a disability retirement, including showing he could not be accommodated or reassigned, I find he has proven his entitlement to a disability retirement.

DECISION

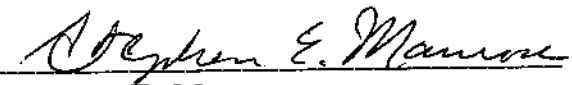
The agency's reconsideration decision is REVERSED.

ORDER

OPM is ORDERED to grant the appellant's application for disability retirement. This action must be accomplished no later than twenty days after the date this initial decision becomes final.

OPM is further ORDERED to inform the appellant in writing of all actions taken to comply with the Board's Order and the date on which it believes it has fully complied. If not notified, the appellant should ask OPM about its efforts to comply.

FOR THE BOARD:


Stephen E. Manrose
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **September 8, 2006**, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. You must establish the date on which you received it. The date on which the initial decision becomes final also controls when you can file a

petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.,
Washington, DC 20419

A petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition for review submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov>).

If you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 30 days after the date you actually receive the initial decision. If you claim that you received this decision more than 5 days after its issuance, you have the burden to prove to the Board the date of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (*see* 5 C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by electronic filing is the date of submission. The date of filing by personal delivery is the date on which

the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. See 5 C.F.R. § 1201.4(j).

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 60 calendar days after the date this initial decision becomes final.

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, <http://fedcir.gov/contents.html>. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

ATTORNEY FEES

If no petition for review is filed, you may ask for the payment of attorney fees (plus costs, expert witness fees, and litigation expenses, where applicable) by filing a motion with this office as soon as possible, but no later than 60 calendar days after the date this initial decision becomes final. Any such motion must be prepared in accordance with the provisions of 5 C.F.R. Part 1201, Subpart H, and applicable case law.

ENFORCEMENT

If, after the agency has informed you that it has fully complied with this decision, you believe that there has not been full compliance, you may ask the Board to enforce its decision by filing a petition for enforcement with this office, describing specifically the reasons why you believe there is noncompliance. Your petition must include the date and results of any communications regarding compliance, and a statement showing that a copy of the petition was either mailed or hand-delivered to the agency.

Any petition for enforcement must be filed no more than 30 days after the date of service of the agency's notice that it has complied with the decision. If you believe that your petition is filed late, you should include a statement and evidence showing good cause for the delay and a request for an extension of time for filing.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Mail

Syed J. Quadri
2120 Hassell Road
Apt. 101
Hoffman Estates, IL 60195

Appellant Representative

U.S. Mail

Timothy M. Scheffler, Esq.
Stix Law Offices
700 Rayovac Drive, Suite 117
Madison, WI 53711

Agency Representative

FEDEX

Charlretta T. McNeill
Office of Personnel Management
Retirement Services - Appeals, Room 4H19
1900 E Street, NW
Washington, DC 20415-3551

August 4, 2006

(Date)



Pamela Bland
Paralegal Specialist

Docket No. CH-831E-06-0519-I-1

Party: Appellant's Representative

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