

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40087

(Summary Calendar)

CHARLES P. SCHOEN,

Petitioner,

versus

RAILROAD RETIREMENT BOARD,

Respondent.

Petition for Review of an Order
of the Railroad Retirement Board
(A-449-46-3374)

(June 27, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Petitioner Charles P. Schoen, *pro se*, appeals from two decisions of the Railroad Retirement Board ("the Board"). Finding no error, we affirm.

I

Since August 1991, Schoen, a military veteran and former railroad company employee, has been receiving disability annuity

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

payments pursuant to the Railroad Retirement Act, 45 U.S.C. § 231 et seq. (1988). In September 1991, Schoen petitioned the Board to modify the onset date of his disability, the amount of his annuity, and the beginning date of his annuity. The Board, via two written decisions, determined that the disability onset date, the annuity beginning date, and the amount of the annuity payments were correct. Schoen now appeals both decisions.

II

On review of the Board's decision, we must affirm the Board's decision if its findings of fact are supported by substantial evidence and its decision is not based upon an error of law. *Harris v. Railroad Retirement Bd.*, 3 F.3d 131, 132 (5th Cir. 1993); *Kurka v. United States R.R. Retirement Bd.*, 615 F.2d 246, 249-50 (5th Cir. 1980). Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a decision. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971).

Schoen initially contends that the Board erroneously determined the onset date of his disability. Schoen's annuity had been awarded on the basis of his combined mental and physical impairments. The only medical evidence submitted to the Board documents a mental impairment as of November 7, 1988. The Board determined Schoen's disability onset date to be May 1, 1988, six months prior to the date of the earliest medical evidence documenting a mental impairment. Consequently, substantial evidence supports the Board's determination.

Schoen nonetheless contends that he was disabled, apparently due to a physical impairment, as of April 1969. Schoen, however, previously filed applications for disability annuity benefits based on that impairment. The Board denied those applications in 1972 and 1975. Although he was informed of his rights to appeal those decisions, Schoen failed to do so. Thus, those decisions are final and not reviewable.¹ *Califano v. Sanders*, 430 U.S. 99, 107-08, 97 S. Ct. 980, 985-86, 51 L. Ed. 2d 192 (1977); *Brandyburg v. Sullivan*, 959 F.2d 555, 558 (5th Cir. 1992).

Schoen next challenges the Board's determination that the annuity beginning date was correct as calculated. Under the Railroad Retirement Act, a disability annuity may begin the first day of the sixth month after the onset of the disability or the first day of the twelfth month prior to the date the application for benefits was filed, whichever is later. 45 U.S.C. § 231d(a)(ii). Here, the evidence demonstrates a disability onset date of May 1, 1988. Schoen filed his application for benefits on

¹ Schoen argues that the Board erred in denying his request to reopen the 1972 and 1975 decisions. However, we lack jurisdiction to review the Board's decision not to reopen a case. See *Gutierrez v. Railroad Retirement Bd.*, 918 F.2d 567, 569 (6th Cir. 1990); *Steebe v. United States R.R. Retirement Bd.*, 708 F.2d 250, 252 (7th Cir.), cert. denied, 464 U.S. 997, 104 S. Ct. 496, 78 L. Ed. 2d 689 (1983). Moreover, even if we had jurisdiction, Schoen has not demonstrated that good cause exists to reopen the earlier cases. See 20 C.F.R. § 260.3(d) (noting that the Board will reopen a case only upon a showing of good cause to do so); see also *Clifford v. United States R.R. Retirement Bd.*, 3 F.3d 536, 538 (1st Cir. 1993) ("[A]ssuming that we have jurisdiction over the Board's refusal to reopen the case, . . . we can find no abuse of discretion in the Board's action . . . [because] appellant has made no [showing of good cause.>").

March 13, 1990. Therefore, the Board correctly determined that Schoen's disability onset date was March 1, 1989.

Schoen also challenges the Board's determination of the amount of the disability annuity he receives. The amount of the annuity is based upon the claimant's length of service and earnings. See 45 U.S.C. § 231b. Under certain circumstances, military service may be included in computing the claimant's years of service. 45 U.S.C. § 231b(i)(2). Schoen argues that he should be credited with twenty-six months of military service, twenty-four months between 1956 and 1958 and two months in 1961. The record, however, does not substantiate Schoen's claim that he spent two months in the military in 1961.² Moreover, the record indicates that the Board credited Schoen with twelve months of railroad service for 1961. Consequently, the Board's determination again is supported by substantial evidence.

III

For the foregoing reasons, we AFFIRM the orders of the Railroad Retirement Board.

² Attached to his brief, Schoen submitted a copy of his discharge order substantiating his claim that he should be credited with an additional two months of military service. This evidence, however, was not submitted to the Board and is not part of the administrative record. Consequently, we may not consider it. *Louisiana ex rel. Guste v. Verity*, 853 F.2d 322, 327 n.8 (5th Cir. 1988) ("Nor are the courts permitted to consider evidence outside the administrative record.").