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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NIKIFOROS P. KALFOUNTZOS,</p> <p>Petitioner,</p> <p>v.</p> <p>THE UNITED STATES OF AMERICA RAILROAD RETIREMENT BOARD,</p> <p>Respondent.</p>

No. 09-72253

R.R.B. No. A-XXX-XX-XXXX

MEMORANDUM*

On Petition for Review of a Decision of the
United States Railroad Retirement Board

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Nikiforos P. Kalfountzos petitions pro se for review of the Railroad Retirement Board’s (“Board”) decision affirming the hearing officer’s denial of his application for a disability annuity under the Railroad Retirement Act. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

jurisdiction under 45 U.S.C. § 231g, which incorporates 45 U.S.C. § 355(f). We deny the petition for review.

We uphold the Board’s decision because it “‘is supported by substantial evidence, is not arbitrary and has a reasonable basis in the law.’” *Calderon v. U.S. R.R. Ret. Bd.*, 780 F.2d 812, 813 (9th Cir. 1986) (citation omitted); *see also* 45 U.S.C. § 231(a)(1) (defining “employer”); *id.* § 231(f)(1) (defining “years of service”); *id.* § 231a (setting forth required years of service for annuity eligibility).

Kalfountzos’s remaining contentions, including his equal protection challenge, are unpersuasive. *See U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 174-179 (1981) (rejecting plaintiffs’ equal protection challenge to Railroad Retirement Act under the rational basis test).

We do not consider contentions that Kalfountzos did not raise before the Board. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004) (“‘[I]f a petitioner wishes to preserve an issue for appeal, he must first raise it in the proper administrative forum.’” (citation omitted)).

PETITION FOR REVIEW DENIED.