

APPENDIX A

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

ORDER

After consideration of the parties' responses to this court's order directing them to show cause whether Martin

Akerman's petition for review should be dismissed for lack of jurisdiction, we dismiss.*

The court received Mr. Akerman's petition for review identifying two Merit Systems Protection Board docket numbers—DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1—and specifically requesting review of a "Third Order" entered May 22, 2023. ECF No. 1-2 at 1. Attached to that petition is a May 22, 2023, decision from the administrative judge in DC-0752-23-0457-I-1 entitled "Third Order," which denies Mr. Akerman's motion for "Certification of Interlocutory Appeal" to the Board.

The court directed the parties to show cause because while 28 U.S.C. § 1295(a)(9) provides the court with jurisdiction over "an appeal from a final order or final decision of the Merit Systems Protection Board," the administrative judge's denial of Mr. Akerman's third request for an interlocutory appeal to the Board does not "end[] the litigation on the merits and leave[] nothing for the [tribunal] to do but execute the judgment," *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). Thus, it is not a "final" order or decision that can be immediately appealed to this court. Mr. Akerman asserts that the order is nonetheless appealable under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), but *Cohen's* collateral order doctrine is for only a "small class of collateral rulings that," among other things, "resolve important questions separate from the merits," *Kaplan v. Conyers*, 733 F.3d 1148, 1154 (Fed. Cir. 2013) (cleaned up). Here, the interlocutory order is not such an order; rather,

* Mr. Akerman appears to seek reconsideration of the court's July 31, 2023, order denying his request to consolidate this case with Appeal No. 2023-2216 (concerning Board No. DC-3443-22-0639-I-1), but that request is denied as moot given this dismissal. Mr. Akerman's request to modify the caption is also denied.

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Mr. Akerman appears to simply want expedited review of the “underlying . . . issues,” ECF No. 20 at 2, which is insufficient.

Moreover, we note that in DC-0752-23-0457-I-1, the administrative judge has since issued an initial decision, but Mr. Akerman’s petition here does not challenge that initial decision, and, in any event, that decision remains non-final because Mr. Akerman filed a timely petition for review with the Board, such that our review of that decision is premature. *See* 5 C.F.R. § 1201.113(a); *Weed*, 571 F.3d at 1361–63. Lastly, we note that Mr. Akerman’s submissions here have not reasonably identified any decision, final or otherwise, in DC-0752-23-0457-S-1 for this court to review. We therefore dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) Each side shall bear its own costs.
- (3) All pending motions are denied.

FOR THE COURT

October 13, 2023

Date

/s/ Jarrett B. Perlow

Jarrett B. Perlow
Clerk of Court

APPENDIX B

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

MARTIN AKERMAN,
Appellant,

DOCKET NUMBER
DC-0752-23-0457-S-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: May 4, 2023

Martin Akerman, Arlington, Virginia, pro se.

Eugene R. Ingrao, Sr., Esquire, Arlington, Virginia, for the agency.

BEFORE
Joshua Henline
Administrative Judge

ORDER DISMISSING STAY REQUEST

On May 3, 2023, the appellant filed an appeal alleging his June 18, 2022 retirement was involuntary or that he was constructively discharged on the same date. *See* Initial Appeal File (IAF), Tab 1. In a pleading filed in the instant appeal on May 4, 2023, the appellant sought a stay of his constructive removal or involuntary retirement.¹ Stay Appeal File (SAF), Tab 1. For the following reasons, the appellant's stay request is DISMISSED.

¹ It was unclear if the appellant was seeking to stay his constructive discharge/involuntary retirement or to stay the case processing in the initial appeal. Nevertheless, as the appellant is *pro se*, this stay request was docketed.

ANALYSIS AND FINDINGS

In his initial appeal, the appellant stated in the narrative portion of his appeal form that “The Agency refuses to respond to OPM and has lied to OPM LMER and DOL-OWCP as it relates to my constructive dismissal.” IAF, Tab 1. He also alleged he was “constructively forced into retirement;” “has been under false arrest and false imprisonment since 14 February 2022;” “the [a]gency refuses to respond to OPM since November 2022;” “the [a]gency initially blamed an officer of the Nevada Air National Guard, [but] now appears to be blaming the Army National Guard;” “he is disabled and on Medicaid without income;” and he requested an “urgent intervention by way of the Office of Workmans Compensation Programs.” *Id.* at 4.

On the May 4, 2023, the appellant filed his stay request wherein he averred, in part, that he requested a stay to “ensure that all pertinent issues are examined thoroughly and that the administrative process is properly conducted while also acknowledging the significance of the right to counsel in a criminal matter and the importance of administrative decisions.” SAF, Tab 1 at 4.

Under 5 U.S.C. § 1221(c), an appellant may request a stay of the personnel action that he alleges is based on whistleblowing. Such a stay request may be filed at any time after the appellant becomes eligible to file an appeal with the Board under 5 C.F.R. § 1209.5, but no later than the time limit set for the close of discovery in the appeal. 5 C.F.R. § 1209.8(a). The request may be filed prior to, simultaneous with, or after the filing of an appeal. *Id.* The appellant’s stay request was filed after he filed his initial appeal. SAF, Tab 1.

The appellant has not alleged in his initial appeal or in his stay request that his constructive discharge or involuntary retirement was based on whistleblowing. Accordingly, he is not eligible to file a stay request. *See* 5 U.S.C. § 1221(c). Even if he were eligible to file such a request, the Board’s regulations require that such a request be accompanied by certain information. 5 C.F.R. § 1209.9. In his stay request, the appellant referenced that she would

like to provide evidence of her whistleblowing and protected activity but the regulations are clear that the stay request must include, *inter alia*, the following:

- (4) A chronology of facts, including a description of the appellant's disclosure and the action that the agency has taken or intends to take;
- (6) Evidence and/or argument showing that:
 - (ii) The action complained of was based on whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and
 - (iii) There is a substantial likelihood that the appellant will prevail on the merits of the appeal;
- (7) Evidence and/or argument addressing how long the stay should remain in effect; and

Id. The appellant failed to provide this information with his stay request.

It is incumbent on the appellant to provide the information required by the regulations so that the Board can determine whether there is a substantial likelihood that he will prevail on the merits of his appeal. As the appellant failed to provide the required information with his stay request, the stay request must be dismissed.^{2 3}

² Because the appellant's alleged constructive removal was effective on June 18, 2022, *see* IAF, Tab 1 at 3, a request for stay of his constructive removal may be moot. *See Horner v. Merit Systems Protection Board*, 815 F.2d. 668, 670-71 (Fed. Cir. 1987). An issue must be "live" at the time the case is decided, not merely when the appeal is filed. *See Occhipinti v. Department of Justice*, 61 M.S.P.R. 504 (1994). The question of mootness must also be a consideration in determining whether a stay request should be granted. A stay does not reverse, annul, undo, or suspend what has already been done. *See* BLACK'S LAW DICTIONARY 1413 (6th Ed. 1990).

³ The appellant is free, however, to refile the stay request in compliance with the Board's regulations. If so, the agency has five business days after the service of the stay request to file a response. 5 C.F.R. § 1209.9(c).

The parties are advised that this decision only involves the appellant's stay request and not his constructive removal/involuntary retirement. A party seeking review of this order must move for certification of an interlocutory appeal under 5 C.F.R. §§ 1201.91-.93.

APPENDIX C



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk of the Board

1615 M Street, N.W.
Washington, D.C. 20419-0002

Phone: 202-653-7200; Fax: 202-653-7130; E-Mail: mspb@mspb.gov

June 21, 2023

Notice to:

Martin Akerman
2001 North Adams Street
Unit 440
Arlington, VA 22201

Re: Martin Akerman v. Department of the Army
MSPB Docket Number: DC-0752-23-0457-S-1

On June 20, 2023, you electronically filed a pleading with this office in the above-referenced docket number using the option for "Request for Extension of Time to File PFR" in e-Appeal Online. An administrative judge issued an Order Dismissing Stay Request in this matter on May 4, 2023, and this docket number is therefore closed. Please be advised that the Board's regulations do not provide for the filing of a petition for review when an administrative judge denies a request for a stay under 5 C.F.R. § 1209. Therefore, the Board will take no further action concerning your June 20, 2023 submission titled "Request for Extension of Time to File PFR" relating to MSPB Docket No. DC-0752-23-0457-S-1. However, this in no way impacts your ability to continue to pursue the claims currently pending before the administrative judge in MSPB Docket No. DC-0752-23-0457-I-1 or your ability to file a petition for review in that matter after the administrative judge issues an initial decision.

Jennifer Everling
Acting Clerk of the Board

/s/

Dinh Chung
Case Management Specialist

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 Martin Akerman
2001 North Adams Street
Unit 440
Arlington, VA 22201

Agency Representative

Electronic Mail Eugene R. Ingrao, Sr.
Department of the Army
Attorney- Advisor
Office of the Chief Counsel, NGB
111 S. George Mason Drive
AHS-2/Room 3TI-308
Arlington, VA 22204

June 21, 2023

(Date)

/s/

Dinh Chung
Case Management Specialist



Martin Akerman <makerman.dod@gmail.com>

Rejecting Pleading - Martin Akerman v. Department of the Army DC-0752-23-0457-S-1


1 message

Rejected Submissions <Rejected.Submissions@mspb.gov>
To: "makerman.dod@gmail.com" <makerman.dod@gmail.com>

Wed, Jun 21, 2023 at 11:56 AM

You are receiving this email from the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, in accordance with our notice rejecting your additional submission. As a courtesy to you, a copy of your rejected additional submission is attached to this email.

Please do not respond to this email. This is not a monitored email account and the Clerk's office will not respond to any inquiries sent to this email address. If you have questions about the Board's procedures, please call the Clerk's office at (202) 653-7200 or send an email to mspb@mspb.gov.

 **DOCSPROD-#2042189-v1-Akerman__Martin__-DC230457S1_-Request_for_Extension_of_Time_**
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APPENDIX D

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1, DC-0752-23-0457-S-1.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

PER CURIAM.¹

ORDER

On October 13, 2023, Martin Akerman filed a combined petition for panel rehearing and rehearing en banc [ECF No. 34]. The petition was referred to the panel that heard

¹ Circuit Judge Newman did not participate.

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the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 20, 2023

Date

APPENDIX E

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1 and DC-0752-23-0457-S-1.

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2216

Petition for review of the Merit Systems Protection Board in No. DC-3443-22-0639-I-1.

ON MOTION

PER CURIAM.

ORDER

Martin Akerman filed multiple motions to enjoin the Merit Systems Protection Board from transitioning to an e-Appeal Online system on October 2, 2023, because “[t]he MSPB’s transition poses a substantial risk to the integrity of records,” Appeal No. 2023-2046, ECF No. 26 at 2. Given the limited time to consider the motion, a one-judge decision was issued, which denied the motions. Mr. Akerman now moves for reconsideration of that decision.

Upon consideration thereof,

IT IS ORDERED THAT:

The motions are denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

October 13, 2023
Date

APPENDIX F

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2023-2046

Petition for review of the Merit Systems Protection Board in Nos. DC-0752-23-0457-I-1, DC-0752-23-0457-S-1.

ON MOTION

PER CURIAM.

ORDER

On November 3, 2023, Martin Akerman moved the court for adverse inference [ECF No. 35].

Upon consideration thereof,

IT IS ORDERED THAT:

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The motion is denied.

FOR THE COURT



November 13, 2023
Date

Jarrett B. Perlow
Clerk of Court