

No. 23A _____

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENTS

APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR D.C. CIRCUIT

MARTIN AKERMAN, PRO SE
2001 North Adams Street, Unit 440
Arlington, VA 22201
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RECEIVED

JUN -7 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION TO BE PRESENTED

- Does the Uniformed Services Employment and Reemployment Rights Act (USERRA) require the waiver of court fees for federal employees who engage in protected whistleblowing activities under USERRA's provisions, particularly when such activities form the basis of litigation against federal agencies?

PARTIES TO THE PROCEEDING

Applicant is Martin Akerman, the tenured Chief Data Officer of the National Guard Bureau of the United States of America, appearing pro se;

Respondents are U.S. Government agencies:

- Merit Systems Protection Board
- Office of Special Counsel
- Equal Employment Opportunity Commission
- Department of Defense Office of Inspector General
- Department of Labor

ORDERS ON APPEAL

Order Denying Fee Waiver (April 19, 2024): This order denied the applicant's motion to waive the appellate docketing and filing fees. The denial was based on the determination that the applicant's case did not arise under the Uniformed Services Employment and Reemployment Rights Act (USERRA) despite his assertions related to whistleblower protections, Attachment C.

Order Denying Reconsideration of Fee Waiver (May 13, 2024): Upon reconsideration, the court upheld its previous decision to deny the waiver of fees, affirming that the applicant had not demonstrated that the case involved issues under USERRA as claimed, Attachment B.

Order Denying Reconsideration En Banc (May 28, 2024): This order denied the applicant's motion for reconsideration en banc of the earlier orders and dismissed the motion to hold the appeal in abeyance as moot. The denial confirmed the appellate court's position that no substantial question of law or fact existed that warranted a full court review, Attachment A.

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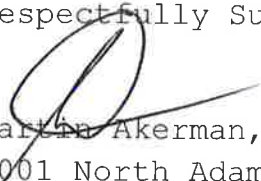
TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE
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Pursuant to Supreme Court Rule 13.5, I, Martin Akerman, appearing Pro Se, respectfully request a 30-day extension of time to file a petition for a writ of certiorari, seeking a new deadline of September 25, 2024. Without this extension, the petition would be due on August 26, 2024. This application is timely, being submitted more than ten days prior to the original due date, in accordance with S. Ct. R. 13.5.

Given the complex nature and significance of the legal issues involved in this case, including the rights of civilians in military judicial proceedings and the application of whistleblower protections, an extension of time is both reasonable and necessary. Harmonizing deadlines across multiple circuits, as requested by the applicant, will enable a more thorough and cohesive presentation before the Supreme Court. This extension not only aids the applicant in preparing a comprehensive petition but also supports the Court by providing a consolidated view of the case's progression through various jurisdictions.

Recognizing the applicant's pro se status, this extension aligns with principles of fairness and due process, facilitating a more informed and equitable decision by the Court. Therefore, it is respectfully requested that the Court grants the 30-day extension for filing the petition for a writ of certiorari, setting the new deadline to September 25, 2024, in the interest of justice.

Respectfully Submitted,



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ATTACHMENTS IN SUPPORT OF APPLICATION

Attachment A - Order Denying Reconsideration En Banc (May 28, 2024): This final order denied the applicant's motion for reconsideration en banc of earlier orders and dismissed the motion to hold the appeal in abeyance as moot.

Attachment B - Order Denying Reconsideration of Fee Waiver (May 13, 2024): Upon reconsideration, the appellate court upheld its previous decision to deny the waiver of fees.

Attachment C - Order Denying Fee Waiver (April 19, 2024): This initial order denied the applicant's motion to waive the appellate docketing and filing fees.

ATTACHMENT A - Order Denying Reconsideration En Banc (May 28, 2024): This final order denied the applicant's motion for reconsideration en banc of earlier orders and dismissed the motion to hold the appeal in abeyance as moot. The court's denial confirmed its position that no substantial question of law or fact existed that warranted a full court review, solidifying the appellate stance on the legal questions raised.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309**September Term, 2023****1:23-cv-02574-UNA****Filed On: May 28, 2024**

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins,
Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion for reconsideration en banc and to hold this appeal in abeyance, it is

ORDERED that the motion for reconsideration en banc be denied. The June 12, 2024 deadline for appellant to either pay the docketing and filing fee or file a motion in district court for leave to proceed on appeal in forma pauperis remains in effect. Failure to comply with this order may result in dismissal of the case for lack of prosecution. See D.C. Cir. Rule 38. It is

FURTHER ORDERED that the motion to hold this appeal in abeyance be dismissed as moot.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk

ATTACHMENT B - Order Denying Reconsideration of Fee Waiver (May 13, 2024): Upon reconsideration, the appellate court upheld its previous decision to deny the waiver of fees. This order affirmed that the applicant had not demonstrated involvement of issues under the Uniformed Services Employment and Reemployment Rights Act (USERRA) as claimed, echoing the court's stance on the lack of statutory grounds for fee waiver under USERRA.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309**September Term, 2023****1:23-cv-02574-UNA****Filed On: May 13, 2024**

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

BEFORE: Rao, Walker, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion for reconsideration of the court's April 19, 2024 order denying appellant's motion to waive fees, it is

ORDERED that the motion for reconsideration be denied. Appellant has not shown that this case arises under the Uniformed Services Employment and Reemployment Rights Act, regardless of whether he intended to invoke the prohibitions set forth under 38 U.S.C. § 4311(a) or those set forth under § 4311(b). It is

FURTHER ORDERED that, within 30 days of the date of this order, appellant either pay the \$605 appellate docketing and filing fee to the Clerk of the District Court or file a motion in district court for leave to proceed on appeal in forma pauperis. Failure to comply with this order may result in dismissal of the case for lack of prosecution. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Selena R. Gancasz
Deputy Clerk

ATTACHMENT C - Order Denying Fee Waiver (April 19, 2024):

This initial order denied the applicant's motion to waive the appellate docketing and filing fees. The court based its denial on the determination that the applicant's case did not arise under USERRA, despite assertions related to whistleblower protections, setting the stage for subsequent appeals and the need for further judicial review.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309**September Term, 2023****1:23-cv-02574-UNA****Filed On:** April 19, 2024

Martin Akerman,

Appellant

v.

Merit Systems Protection Board, et al.,

Appellees

BEFORE: Rao, Walker, and Garcia, Circuit Judges

ORDER

Upon consideration of the response to the court's February 6, 2024 order, which includes a motion to waive fees, the motion to appoint counsel, the motion to suspend briefing schedule and hold case in abeyance, and the motion to clarify and for a status conference, it is

ORDERED that the motion to waive fees be denied. Appellant has not shown that this case arises under the Uniformed Services Employment and Reemployment Rights Act, which prohibits employment discrimination on the basis of membership in the uniformed services. See 38 U.S.C. § 4311(a). Additionally, appellant's assertion that he was allowed to proceed without paying a filing fee in other cases does not excuse him from the requirement to either pay the fee or file a motion to proceed in forma pauperis with a completed affidavit in this case. See D.C. Cir. Rule 45(e)(1) (providing that fees are charged for "[d]ocketing a case or docketing any other proceeding"); see also 28 U.S.C. § 1915(a)(1) (requiring submission of an affidavit in order to proceed in forma pauperis). It is

FURTHER ORDERED that, within 30 days of the date of this order, appellant either pay the \$605 appellate docketing and filing fees to the Clerk of the District Court, see Fed. R. App. P. 3(e); 28 U.S.C. § 1917, or file a motion in district court for leave to proceed on appeal in forma pauperis, see Fed. R. App. P. 24(a). See Enclosure. In the event the district court denies leave to proceed on appeal in forma pauperis, appellant may renew that request in this court. See Fed. R. App. P. 24(a)(5). It is

FURTHER ORDERED that the motion to suspend briefing schedule and hold case in abeyance be dismissed as moot. Appellant's opening brief and appendix are

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5309**September Term, 2023**

now due within 30 days of the date of this order. Neither this court's rules nor the Federal Rules of Appellate Procedure provide for "preliminary briefs" subject to supplementation. It is

FURTHER ORDERED that consideration of the motion to appoint counsel be deferred pending further order of the court. This court's usual practice is to defer consideration of a motion for appointment of counsel pending initial consideration of the merits of the appeal, and appellant provides no reason to depart from that practice in this case. It is

FURTHER ORDERED that the motion to clarify and for a status conference be denied. The current procedural posture of this case is that, as ordered above, a new deadline has been established for appellant's opening brief and appendix, and the appeal will not otherwise proceed until appellant either pays the filing fee or files a motion to proceed in forma pauperis. Additionally, the mandamus petition that appellant filed in Akerman v. Doiron, No. 23-5230, was denied; the petition has not been and will not be "transfer[red]" to this appeal.

Failure by appellant to comply with this order may result in dismissal of the appeal for lack of prosecution. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk

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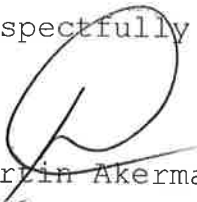
MERIT SYSTEMS PROTECTION BOARD, ET AL,
RESPONDENTS

PROOF OF SERVICE

It is hereby certified that on June 4, 2024 three copies of the APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI were delivered to the Supreme Court of the United States by hand. Additionally, copies were served on June 5, 2024, by priority mail, to Respondent:

- Solicitor General of the United States,
950 PENNSYLVANIA AVE NW RM 5616
WASHINGTON, DC 20530-0009

Respectfully Submitted,



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