

IN THE SUPREME COURT OF THE UNITED STATES

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No. 23A \_\_\_\_\_

MARTIN AKERMAN, PRO SE,  
APPLICANT

v.

GENERAL DANIEL HOKANSON,  
CHIEF OF THE NATIONAL GUARD BUREAU, ET AL

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MEMORANDUM AND APPENDICES IN SUPPORT OF  
URGENT APPLICATION TO RECALL AND STAY THE MANDATE OF THE UNITED  
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT PENDING THE  
FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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**VOLUME TWO: LEGAL COMPLEXITY AND FAIRNESS**

Volume Two (Appendices F-I) of the "Memorandum and Appendices in Support of Urgent Application to Recall and Stay the Mandate of the United States Court of Appeals for the Fourth Circuit" delves deeper into the legal complexities faced by Martin Akerman as a Pro Se litigant. This volume explores themes including Collateral Order appeals, EEOC Right-to-Sue notices, ongoing whistleblower claims, mixed claims under Title VII, and the intricate interplay of federal employment law within the context of national security roles. Akerman's journey unravels the challenges of preserving rights, seeking redress, and



navigating the intricate nuances of the legal system, all while addressing questions of judicial fairness and the rights of self-represented litigants.

> **Appendix F:** October 12, 2022 - Collateral Order Appeal

Filing: Filing of the Collateral Order appeal in the Fourth Circuit, citing spoliation, highlights the challenges Akerman faces in preserving his rights and seeking redress, particularly relevant to the questions regarding the rights of pro se litigants and the integrity of the legal process.

Appendix F encompasses documents related to Martin Akerman's Collateral Order appeal filings in the Fourth Circuit in 2022. These filings, particularly citing spoliation, emphasize the challenges Akerman faces in preserving his legal rights and seeking redress. They are crucial to understanding the broader context of judicial fairness and the treatment of Pro Se litigants within the legal system.

> **Appendix G:** June 21, 2022 - EEOC Right-to-Sue Notice: The

EEOC's notice allowing Akerman to file a lawsuit under the ADEA is significant in the context of employment discrimination and the interpretation of Title VII. This ties directly to questions about employment discrimination



law and the alignment of circuit decisions with EEOC positions.

Appendix G includes documents related to the Equal Employment Opportunity Commission's (EEOC) Right-to-Sue notice provided to Martin Akerman, allowing him to file a lawsuit under the Age Discrimination in Employment Act (ADEA), and associated legal proceedings. These documents are significant in exploring aspects of employment discrimination law, specifically in relation to Akerman's challenges and the alignment of circuit decisions with EEOC positions.

> **Appendix H:** June 10, 2022 - Additional MSPB Whistleblower Claims: The continued filing of whistleblower claims with the MSPB, covering the period post-March 11, 2022, is indicative of ongoing issues Akerman faces in the workplace. These claims relate to the broader questions of federal employment law, whistleblower protections, and the rights of tenured employees.

Appendix H includes documents relating to Martin Akerman's continued filing of whistleblower claims with the Merit Systems Protection Board (MSPB), covering the period post-March 11, 2022. These claims are indicative of ongoing workplace issues faced by Akerman and are central to



broader questions of federal employment law, whistleblower protections, and the rights of tenured employees.

> **Appendix I:** April 26, 2022 - MSPB Mixed Claims Filed: The mixed claims (Title VII) filed by Akerman related to his suspension, and their subsequent confirmation by the EEOC, are central to his case. Appendix I includes a detailed document related to Martin Akerman's mixed claims filed with the MSPB on April 26, 2022, and related proceedings with the EEOC. These documents highlight the intricate interplay of federal employment law, particularly regarding claims under Title VII, and the unique challenges faced in handling high-level national security positions.





> **Appendix F:** October 12, 2022 - Collateral Order Appeal

Filing: Filing of the Collateral Order appeal in the Fourth Circuit, citing spoliation, highlights the challenges Akerman faces in preserving his rights and seeking redress, particularly relevant to the questions regarding the rights of pro se litigants and the integrity of the legal process.

Appendix F encompasses documents related to Martin Akerman's Collateral Order appeal filings in the Fourth Circuit in 2022. These filings, particularly citing spoliation, emphasize the challenges Akerman faces in preserving his legal rights and seeking redress. They are crucial to understanding the broader context of judicial fairness and the treatment of Pro Se litigants within the legal system.

In this section, we delve into Appendices F1 to F5, a collection of documents that illuminate the legal journey of Martin Akerman as he initiates and navigates a Collateral Order appeal in the Fourth Circuit. These documents cover a range of critical procedural and legal issues, offering insights into Akerman's quest for justice and the challenges he faces as a Pro Se litigant within the legal system.



**Appendix F1:** October 12, 2022 - Appeal Transmittal for Collateral Order Appeal: Document F1, an appeal transmittal sheet filed on October 11, 2022, indicates the notice of appeal filed on October 7, 2022, in the EDVA case number 1:22-cv-696. This document marks the initiation of a Collateral Order appeal in the Fourth Circuit, focusing on critical procedural and legal issues, including spoliation.



**APPEAL TRANSMITTAL SHEET (non-death penalty)**

<b>Transmittal to 4CCA of notice of appeal filed:</b> <u>10/07/22</u>  <input checked="" type="checkbox"/> First NOA in Case <input type="checkbox"/> Subsequent NOA-same party <input type="checkbox"/> Subsequent NOA-new party <input type="checkbox"/> Subsequent NOA-cross appeal <input type="checkbox"/> Paper ROA <input type="checkbox"/> Paper Supp. Vols: _____ Other: _____	<b>District:</b> EDVA <b>Division:</b> Alexandria <b>Caption:</b> Akerman vs. Austin et al	<b>District Case No.:</b> 1:22-cv-696 <b>4CCA No(s). for any prior NOA:</b>  <b>4CCA Case Manager:</b>
<b>Exceptional Circumstances:</b> <input type="checkbox"/> Bail <input type="checkbox"/> Interlocutory <input type="checkbox"/> Recalcitrant Witness <input type="checkbox"/> Other _____		
<b>Confinement-Criminal Case:</b> <input type="checkbox"/> Death row-use DP Transmittal <input type="checkbox"/> Recalcitrant witness <input type="checkbox"/> In custody <input type="checkbox"/> On bond <input type="checkbox"/> On probation <b>Defendant Address-Criminal Case:</b>	<b>Fee Status:</b> <input type="checkbox"/> No fee required (USA appeal) <input type="checkbox"/> Appeal fees paid in full <input checked="" type="checkbox"/> Fee not paid <b>Criminal Cases:</b> <input type="checkbox"/> District court granted & did not revoke CJA status (continues on appeal) <input type="checkbox"/> District court granted CJA & later revoked status (must pay fee or apply to 4CCA) <input type="checkbox"/> District court never granted CJA status (must pay fee or apply to 4CCA) <b>Civil, Habeas &amp; 2255 Cases:</b> <input type="checkbox"/> Court granted & did not revoke IFP status (continues on appeal) <input type="checkbox"/> Court granted IFP & later revoked status (must pay fee or apply to 4CCA) <input checked="" type="checkbox"/> Court never granted IFP status (must pay fee or apply to 4CCA)	
<b>District Judge:</b>  Leonie M. Brinkema	<b>PLRA Cases:</b> <input type="checkbox"/> Proceeded PLRA in district court, no 3-strike determination (must apply to 4CCA) <input type="checkbox"/> Proceeded PLRA in district court, determined to be 3-striker (must apply to 4CCA)	
<b>Court Reporter (list all):</b>   <b>Coordinator: Judith Lanham</b>	<b>Sealed Status (check all that apply):</b> <input type="checkbox"/> Portions of record under seal <input type="checkbox"/> Entire record under seal <input type="checkbox"/> Party names under seal <input type="checkbox"/> Docket under seal	
<b>Record Status for Pro Se Appeals (check any applicable):</b> <input type="checkbox"/> Assembled electronic record transmitted <input type="checkbox"/> Additional sealed record emailed to 4cca-filing <input type="checkbox"/> Paper record or supplement shipped to 4CCA <input checked="" type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other:	<b>Record Status for Counseled Appeals (check any applicable):</b> <input type="checkbox"/> Assembled electronic record available if requested <input type="checkbox"/> Additional sealed record available if requested <input type="checkbox"/> Paper record or supplement available if requested <input type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other:	

Deputy Clerk: Niambi Neblett                      Phone: 703-299-2174                      Date: 10/11/22



**Appendix F2:** October 17, 2022 - Amended Appeal Transmittal Sheet: Document F2, filed on October 17, 2022, is an amended appeal transmittal sheet for Akerman's case in the Fourth Circuit. This document represents an update to the original notice of appeal, reflecting Akerman's ongoing efforts to advance his Collateral Order appeal.





**APPEAL TRANSMITTAL SHEET (non-death penalty)**

<b>Transmittal to 4CCA of notice of appeal filed: 10/14/20</b>  <input type="checkbox"/> First NOA in Case <input checked="" type="checkbox"/> Subsequent NOA-same party <input type="checkbox"/> Subsequent NOA-new party <input type="checkbox"/> Subsequent NOA-cross appeal <input type="checkbox"/> Paper ROA <input type="checkbox"/> Paper Supp. Vols: _____ Other: _____	<b>District:</b> EDVA <b>Division:</b> Alexandria <b>Caption:</b> Akerman v. Austin et al	<b>District Case No.:</b> 1:22-cv-696 <b>4CCA No(s). for any prior NOA:</b> 22-2066 <b>4CCA Case Manager:</b> Cathy Poulsen    Amended Appeal
<b>Exceptional Circumstances:</b> <input type="checkbox"/> Bail <input type="checkbox"/> Interlocutory <input type="checkbox"/> Recalcitrant Witness <input type="checkbox"/> Other _____		
<b>Confinement-Criminal Case:</b> <input type="checkbox"/> Death row-use DP Transmittal <input type="checkbox"/> Recalcitrant witness <input type="checkbox"/> In custody <input type="checkbox"/> On bond <input type="checkbox"/> On probation <b>Defendant Address-Criminal Case:</b> _____	<b>Fee Status:</b> <input type="checkbox"/> No fee required (USA appeal) <input checked="" type="checkbox"/> Appeal fees paid in full <input type="checkbox"/> Fee not paid * paid on 10/12/2022 <b>Criminal Cases:</b> <input type="checkbox"/> District court granted & did not revoke CJA status (continues on appeal) <input type="checkbox"/> District court granted CJA & later revoked status (must pay fee or apply to 4CCA) <input checked="" type="checkbox"/> District court never granted CJA status (must pay fee or apply to 4CCA) <b>Civil, Habeas &amp; 2255 Cases:</b> <input type="checkbox"/> Court granted & did not revoke IFP status (continues on appeal) <input type="checkbox"/> Court granted IFP & later revoked status (must pay fee or apply to 4CCA) <input type="checkbox"/> Court never granted IFP status (must pay fee or apply to 4CCA)	
<b>District Judge:</b> Leonie M. Brinkema	<b>PLRA Cases:</b> <input type="checkbox"/> Proceeded PLRA in district court, no 3-strike determination (must apply to 4CCA) <input type="checkbox"/> Proceeded PLRA in district court, determined to be 3-striker (must apply to 4CCA)	
<b>Court Reporter (list all):</b> _____ _____ _____	<b>Sealed Status (check all that apply):</b> <input type="checkbox"/> Portions of record under seal <input type="checkbox"/> Entire record under seal <input type="checkbox"/> Party names under seal <input type="checkbox"/> Docket under seal	
<b>Coordinator:</b> _____	<b>Record Status for Pro Se Appeals (check any applicable):</b> <input checked="" type="checkbox"/> Assembled electronic record available upon request <input type="checkbox"/> Additional sealed record available upon request <input type="checkbox"/> Paper record or supplement available upon request <input checked="" type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other: _____	<b>Record Status for Counseled Appeals (check any applicable):</b> <input type="checkbox"/> Assembled electronic record available upon request <input type="checkbox"/> Additional sealed record available upon request <input type="checkbox"/> Paper record or supplement available upon request <input type="checkbox"/> No in-court hearings held <input type="checkbox"/> In-court hearings held – all transcript on file <input type="checkbox"/> In-court hearings held – all transcript not on file <input type="checkbox"/> Other: _____

Deputy Clerk: Niambi Neblett    Phone: 703-299-2174    Date: 10/17/20



**Appendix F3:** October 12, 2022 - Fourth Circuit Appeal Opening:

Document F3, filed on October 12, 2022, officially opens Akerman's Collateral Order appeal case in the Fourth Circuit.

It signifies the commencement of appellate proceedings and underscores Akerman's pursuit of justice at a higher judicial level.



FILED: October 12, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-2066  
(1:22-cv-00696-LMB-WEF)

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MARTIN AKERMAN

Plaintiff - Appellant

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

Defendants - Appellees

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This case has been opened on appeal.

Originating Court	United States District Court for the Eastern District of Virginia at Alexandria
Originating Case Number	1:22-cv-00696-LMB-WEF
Date notice of appeal filed in originating court:	10/07/2022
Appellant(s)	Martin Akerman
Appellate Case Number	22-2066
Case Manager	Cathy Poulsen 804-916-2702



**Appendix F4:** Collateral Order Appeal Filing: Document F4 includes information about Akerman's address and the case number for the appeal. This document is part of the narrative of Akerman's Collateral Order appeal in the Fourth Circuit, adding to the overall context of his legal efforts.





Martin Akerman  
Pro Se  
2001 North Adams Street, 440  
Arlington, VA 22201

**USPS CERTIFIED MAIL**



**9214 8901 4298 0475 1795 09**

0007055956000010

Albert V. Bryan U.S. Courthouse  
Civil Clerk Office  
401 Courthouse Square  
Alexandria, VA 22314



01120000780468



**See Important Information Enclosed**

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria DIVISION

▶ SCANNED ◀  
NOV 01 2022

Martin Alkerman, Pro Se

Plaintiff(s)

CIVIL ACTION NO. 1:22 cv 696

v.

Defendant(s)

CRIMINAL NO. \_\_\_\_\_

AMENDED NOTICE OF APPEAL

Notice is hereby given that

Martin Alkerman, Pro Se

Amends Appeal

above named, hereby appeals to

the United States Court of Appeals for the Fourth Circuit from the Order entered in this action on  
the 14 day of October 2022 [Dkt. No. 40]



Attorney or Pro Se Appellant

MARTIN ALKERMAN

2001 NORTH ADAMS STREET #440  
Address ARLINGTON, VA 22201

Dated: 1 November 2022

Query Reports ▾ Utilities ▾ Help Log Out

**1:22-cv-00696-LMB-WEF** Akerman v. Austin et al

Leonie M. Brinkema, presiding

William E. Fitzpatrick, referral

Date filed: 06/21/2022

Date of last filing: 10/26/2022

▶ SCANNED ◀

NOV 01 2022

## History

Doc. No.	Dates	Description
<u>1</u>	Filed: 06/21/2022 Entered: 06/22/2022	Complaint
	<i>Docket Text:</i> COMPLAINT against Daniel R. Hokanson, Frank Kendall, Austin J. Lloyd, Christine E. Wormuth (Filing fee \$ 402.), filed by Martin Akerman. (Attachments: # (1) Attachments, # (2) Civil Cover Sheet)(nneb)	
<u>2</u>	Filed: 06/21/2022 Entered: 06/22/2022 Terminated: 06/23/2022	Motion for Leave to Proceed in forma pauperis
	<i>Docket Text:</i> MOTION for Leave to Proceed in forma pauperis by Martin Akerman. (nneb)	
<u>3</u>	Filed: 06/21/2022 Entered: 06/22/2022 Terminated: 06/23/2022	Motion for Electronic Device Application
	<i>Docket Text:</i> MOTION for Electronic Device Application by Martin Akerman. (nneb)	
<u>4</u>	Filed: 06/21/2022 Entered: 06/22/2022 Terminated: 06/23/2022	Motion for use of courtroom technology
	<i>Docket Text:</i> Motion for use of Courtroom Technology by Martin Akerman. (nneb)	
<u>5</u>	Filed & Entered: 06/23/2022	Order on Motion for Leave to Proceed in forma pauperis
	<i>Docket Text:</i> ORDERED that the Motion to Proceed in Forma Pauperis [Dkt. No. 2]; Motion for Electronic Device Application [Dkt. No. 3]; and Motion for Use of Courtroom Technology [Dkt. No. 4] are DENIED; and it is hereby ORDERED that the complaint be and is DISMISSED WITHOUT PREJUDICE to allow plaintiff to file an amended complaint alleging any claims that do not require administrative exhaustion (see Order for details). Signed by District Judge Leonie M. Brinkema on 6/23/2022. (nneb)(c/s pursuant to Order)	
<u>6</u>	Filed: 07/21/2022 Entered: 07/22/2022	Amended Complaint
	<i>Docket Text:</i> AMENDED COMPLAINT against Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Austin J. Lloyd, Christine E. Wormuth, filed by Martin Akerman.(nneb) (Additional attachment(s) added on 7/22/2022: # (1) Attachments) (nneb, ).	
<u>8</u>	Filed: 07/21/2022 Entered: 07/25/2022	Certificate of Service
	<i>Docket Text:</i> CERTIFICATES OF SERVICE by Martin Akerman re [6] Amended Complaint, (nneb)	
<u>7</u>	Filed & Entered: 07/22/2022	Filing Fee Received


	<i>Docket Text:</i> Filing fee re [6] Amended Complaint : \$ 402, receipt number 14683095991 (nneb)	
9	<i>Filed &amp; Entered:</i> 08/04/2022	Summons Issued as to USA <i>Docket Text:</i> Summons Issued as to Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth, U.S. Attorney and U.S. Attorney General (nneb)
10	<i>Filed:</i> 08/09/2022 <i>Entered:</i> 08/10/2022	Certificate of Service <i>Docket Text:</i> CERTIFICATE OF SERVICE by Martin Akerman Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth, U.S. Attorney General served on 8/4/2022; U.S. for the Eastern District of Virginia served on 8/4/2022, answer date 10/3/2022 (nneb)
11	<i>Filed:</i> 08/09/2022 <i>Entered:</i> 08/10/2022 <i>Terminated:</i> 08/10/2022	Motion for Pro Se E-Noticing <i>Docket Text:</i> MOTION for Pro Se E-Noticing by Martin Akerman. (nneb)
12	<i>Filed &amp; Entered:</i> 08/10/2022	Order on Motion for Pro Se E-Noticing <i>Docket Text:</i> ORDER granting [11] Motion for Pro Se E-Noticing. Signed by District Judge Leonie M. Brinkema on 8/10/2022. (kgall)
13	<i>Filed:</i> 08/18/2022 <i>Entered:</i> 08/31/2022	NOTICE <i>Docket Text:</i> NOTICE by Martin Akerman (nneb)
14	<i>Filed:</i> 08/18/2022 <i>Entered:</i> 08/31/2022	Affidavit of Service <i>Docket Text:</i> Additional Proof of Service served on U.S. Attorney General, U.S. Attorney filed by Martin Akerman. (nneb)
	<i>Filed &amp; Entered:</i> 08/31/2022	Notice of Correction <i>Docket Text:</i> Notice of Correction re [13] NOTICE. Informed filer that a motion needs to be filed for a Notice of Hearing (nneb)
15	<i>Filed &amp; Entered:</i> 09/01/2022 <i>Terminated:</i> 09/06/2022	Motion for Leave to File <i>Docket Text:</i> MOTION for Leave to File an Amended Complaint by Martin Akerman. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C)(nneb)
16	<i>Filed &amp; Entered:</i> 09/01/2022	Waiver of <i>Docket Text:</i> Waiver of Oral Argument re [15] MOTION for Leave to File an Amended Complaint by Martin Akerman (nneb)
17	<i>Filed &amp; Entered:</i> 09/06/2022	Order on Motion for Leave to File <i>Docket Text:</i> ORDERED that plaintiff's Motion for Leave to File an Amended Complaint [Dkt. No. 15] be and is DENIED WITHOUT PREJUDICE, to allow plaintiff to file a motion for leave to amend once he has received responses from the Department of Defense and Merit Systems Protection Board. Signed by District Judge Leonie M. Brinkema on 9/6/2022. (nneb)(c/s pursuant to Order)
18	<i>Filed:</i> 09/28/2022 <i>Entered:</i> 09/29/2022 <i>Terminated:</i> 10/07/2022	Motion to Appoint Counsel <i>Docket Text:</i> MOTION to Appoint Counsel by Martin Akerman. (Attachments: # (1) Attachments, # (2) Envelope)(nneb)
20	<i>Filed:</i> 09/28/2022	Motion for Leave to Proceed in forma pauperis

	Entered: 09/29/2022 Terminated: 10/07/2022	
	Docket Text: MOTION for Leave to Proceed in forma pauperis by Martin Akerman. (Attachments: # (1) Proposed Order)(nneb)	
21	Filed: 09/28/2022 Entered: 09/29/2022 Terminated: 10/07/2022	Motion for Miscellaneous Relief
	Docket Text: Request for Special Panel(plurality of chancellors) by Martin Akerman. (Attachments: # (1) Attachments)(nneb)	
22	Filed: 09/28/2022 Entered: 09/29/2022	Waiver of
	Docket Text: Waiver of Oral Arguments re [18] MOTION to Appoint Counsel, [20] MOTION for Leave to Proceed in forma pauperis, [19] MOTION for Extension of Time to File Initial Response by Martin Akerman (nneb)	
	Filed & Entered: 09/29/2022	Notice of Correction
	Docket Text: Notice of Correction re [18] MOTION to Appoint Counsel, [20] MOTION for Leave to Proceed in forma pauperis, [21] Request for Special Panel(plurality of chancellors). The filing user has been notified via USPS mail that for future filings documents must be filed separately for each motion relief and that the Waiver of Oral Arguments must be filed separately for each motion relief. (nneb)	
19	Filed & Entered: 09/29/2022 Terminated: 09/30/2022	Motion for Extension
	Docket Text: MOTION for Extension of Time to File Initial Response by Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth. (Attachments: # (1) Proposed Order)(Barghaan, Dennis)	
23	Filed & Entered: 09/30/2022 Terminated: 10/12/2022	Motion for Miscellaneous Relief
	Docket Text: MOTION to Deny, in Part, Defendant's Motion for an Enlargement re [19] MOTION for Extension of Time to File Initial Response by Martin Akerman. (Attachments: # (1) Attachments, # (2) Envelope)(nneb)	
24	Filed & Entered: 09/30/2022	Order on Motion for Extension of Time to File
	Docket Text: ORDER granting [19] MOTION for Extension of Time to File Initial Response; and it is further ORDERED that on or before October 17, 2022, defendants shall answer or otherwise respond to plaintiff's amended complaint. Signed by Magistrate Judge William E. Fitzpatrick on 9/30/2022. (nneb)	
25	Filed: 10/03/2022 Entered: 10/05/2022	Motion for Leave to File
	Docket Text: 1 October Motion for Leave to File Attached Amended Complaint by Martin Akerman. (Attachments: # (1) Proposed Amended Complaint, # (2) Attachment 2, # (3) Attachment 3, # (4) Envelope)(nneb)	
26	Filed: 10/04/2022 Entered: 10/05/2022	Motion for Leave to File
	Docket Text: 3 October Motion for Leave to File Attached Amended Complaint by Martin Akerman. (Attachments: # (1) Proposed Amended Complaint, # (2) Attachment 2, # (3) Attachment 3)(nneb)	
27	Filed: 10/04/2022 Entered: 10/05/2022	Motion for Leave to File
	Docket Text: Motion for Leave to Update Initial Cover Sheet, Update Case Name by Martin Akerman. (Attachments: # (1) Attachment 1, # (2) Attachment 2, # (3) Attachment 3)(nneb)	

<u>28</u>	<b>Filed &amp; Entered:</b> 10/07/2022	Order on Motion to Appoint Counsel
	<i>Docket Text:</i> ORDERED that the Motions [Dkt. Nos. 18, 20, 21] be and are DENIED (see Order for details). Signed by District Judge Leonie M. Brinkema on 10/7/2022. (nneb)(c/s pursuant to Order)	
<u>29</u>	<b>Filed:</b> 10/07/2022 <b>Entered:</b> 10/11/2022	Notice of Hearing on Motion
	<i>Docket Text:</i> NOTICE of Hearing on Motion [25] MOTION for Leave to File, [26] MOTION for Leave to File : Motion Hearing set for 10/14/2022 at 10:00 AM in Alexandria Courtroom 401 before Magistrate Judge William E. Fitzpatrick. (nneb)	
<u>30</u>	<b>Filed:</b> 10/07/2022 <b>Entered:</b> 10/11/2022	Notice of Appeal
	<i>Docket Text:</i> NOTICE OF APPEAL as to [24] Order on Motion for Extension of Time to File, Filing fee \$ 505 Not Paid. (Attachments: # (1) Attachments, # (2) Envelope)(nneb)	
<u>31</u>	<b>Filed &amp; Entered:</b> 10/11/2022	Transmission of Notice of Appeal to 4CCA
	<i>Docket Text:</i> Transmission of Notice of Appeal to US Court of Appeals re [30] Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (nneb)	
<u>32</u>	<b>Filed &amp; Entered:</b> 10/11/2022	Order
	<i>Docket Text:</i> ORDERED that the hearing set for October 14, 2022, be and is CANCELLED (see Order for details). Signed by District Judge Leonie M. Brinkema on 10/11/2022. (nneb)(c/s pursuant to Order)	
<u>36</u>	<b>Filed:</b> 10/11/2022 <b>Entered:</b> 10/12/2022	Motion for Leave to File
	<i>Docket Text:</i> 8 October Motion for Leave to File to File Amended Complaint by Martin Akerman. (Attachments: # (1) Propesd Amended Complaint, # (2) Attachment 2, # (3) Attachment 3, # (4) Envelope) (nneb)	
<u>37</u>	<b>Filed:</b> 10/11/2022 <b>Entered:</b> 10/12/2022 <b>Terminated:</b> 10/14/2022	Motion for Miscellaneous Relief
	<i>Docket Text:</i> MOTION for Certificate of Appealability by Martin Akerman. (Attachments: # (1) Envelope) (nneb)	
<u>38</u>	<b>Filed:</b> 10/11/2022 <b>Entered:</b> 10/12/2022 <b>Terminated:</b> 10/14/2022	Motion for Miscellaneous Relief
	<i>Docket Text:</i> MOTION for Fair Access to Court/Certificate of Appealability by Martin Akerman. (Attachments: # (1) Envelope)(nneb)	
	<b>Filed &amp; Entered:</b> 10/12/2022	Assembled INITIAL Electronic Record Transmitted to 4CCA
	<i>Docket Text:</i> Assembled INITIAL Electronic Record Transmitted to 4CCA re [30] Notice of Appeal (nneb)	
<u>33</u>	<b>Filed &amp; Entered:</b> 10/12/2022	USCA Case Number
	<i>Docket Text:</i> USCA Case Number 22-2066 4th Circuit, case manager Cathy Poulsen for [30] Notice of Appeal filed by Martin Akerman. (nneb)	
<u>34</u>	<b>Filed &amp; Entered:</b> 10/12/2022	Letter
	<i>Docket Text:</i> Letter to the Court from USCA, please transmit the record to this office. (nneb)	
<u>35</u>	<b>Filed &amp; Entered:</b> 10/12/2022	USCA Appeal Fees
	<i>Docket Text:</i> USCA Appeal Fees received \$ 505 receipt number 14683097069 re [30] Notice of Appeal filed by Martin Akerman (nneb)	
<u>39</u>	<b>Filed &amp; Entered:</b> 10/14/2022	Order on Motion for Miscellaneous Relief
	<i>Docket Text:</i> ORDERED that the Motion for Certificate of Appealability [Dkt. No. 37] be and is DENIED	

TIDSSRS 17

	(see Order for details). Signed by District Judge Leonie M. Brinkema on 10/14/2022. (nneb)	
40	<b>Filed &amp; Entered:</b> 10/14/2022	Order on Motion for Miscellaneous Relief
	<i>Docket Text:</i> ORDERED that the Motion for Fair Access to Court/Certificate of Appealability [Dkt. No. 38] be and is DENIED (see Order for details). Signed by District Judge Leonie M. Brinkema on 10/14/2022. (nneb)	
41	<b>Filed &amp; Entered:</b> 10/14/2022 <b>Terminated:</b> 10/14/2022	Motion for Miscellaneous Relief
	<i>Docket Text:</i> Second MOTION for Certificate of Appealability and Mandamus by Martin Akerman. (nneb)	
42	<b>Filed &amp; Entered:</b> 10/14/2022	Order on Motion for Miscellaneous Relief
	<i>Docket Text:</i> ORDER denying [41] Second Motion for Certificate of Appealability and Mandamus (see Order for further details). Signed by District Judge Leonie M. Brinkema on 10/14/2022. (swil)	
43	<b>Filed:</b> 10/14/2022 <b>Entered:</b> 10/17/2022	Notice of Appeal
	<i>Docket Text:</i> Amended NOTICE OF APPEAL as to [42] Order on Motion for Miscellaneous Relief, [39] Order on Motion for Miscellaneous Relief, [24] Order on Motion for Extension of Time to File, [40] Order on Motion for Miscellaneous Relief, [28] Order on Motion to Appoint Counsel, Order on Motion for Leave to Proceed in forma pauperis, Order on Motion for Miscellaneous Relief by Martin Akerman. (nneb) (Additional attachment(s) added on 10/17/2022: # (1) Envelope) (nneb, ). Modified on 10/17/2022 (nneb, ).	
44	<b>Filed &amp; Entered:</b> 10/17/2022	Transmission of Notice of Appeal to 4CCA
	<i>Docket Text:</i> Transmission of Notice of Appeal to US Court of Appeals re [43] Amended Notice of Appeal., (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (nneb)). (Main Document 44 replaced on 10/17/2022) (nneb, ). (Main Document 44 replaced on 10/17/2022) (nneb, ).	
45	<b>Filed &amp; Entered:</b> 10/17/2022	Amended Complaint
	<i>Docket Text:</i> 2022-10-14 AMENDED COMPLAINT against Department of Defense, Department of the Air Force, Department of the Army, filed by Martin Akerman.(nneb)	
46	<b>Filed &amp; Entered:</b> 10/17/2022	Motion to Dismiss/Lack of Jurisdiction
	<i>Docket Text:</i> MOTION to Dismiss for Lack of Jurisdiction , MOTION to Dismiss for Failure to State a Claim by Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth. (Barghaan, Dennis)	
47	<b>Filed &amp; Entered:</b> 10/17/2022	Memorandum in Support
	<i>Docket Text:</i> Memorandum in Support re [46] MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth. (Attachments: # (1) Exhibits A-F)(Barghaan, Dennis)	
48	<b>Filed &amp; Entered:</b> 10/17/2022	Waiver of
	<i>Docket Text:</i> Waiver of re [46] MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim ( <i>Waiver of Oral Argument</i> ) by Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth (Barghaan, Dennis)	
49	<b>Filed &amp; Entered:</b> 10/17/2022	Roseboro Notice
	<i>Docket Text:</i> Roseboro Notice as to Motion to Dismiss by Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth (Barghaan, Dennis)	
	<b>Filed &amp; Entered:</b> 10/18/2022	Assembled SUPPLEMENTAL Electronic Record Transmitted to 4CCA
	<i>Docket Text:</i> Assembled SUPPLEMENTAL Electronic Record Transmitted to 4CCA (nneb)	

<u>50</u>	<b>Filed &amp; Entered:</b> 10/18/2022	<b>Response</b>
	<i>Docket Text:</i> Pro Se Plaintiff's Roseboro Response to Defendant's Dispositive Motions filed by Martin Akerman. (Attachments: # (1) Attachments)(nneb)	
<u>51</u>	<b>Filed &amp; Entered:</b> 10/18/2022	<b>Notice of Hearing on Motion</b>
	<i>Docket Text:</i> NOTICE of Hearing [19] MOTION for Extension of Time to File Initial Response; [46] MOTION to Dismiss for Lack of Jurisdiction, MOTION to Dismiss for Failure to State a Claim (nneb)	
<u>52</u>	<b>Filed &amp; Entered:</b> 10/18/2022	<b>Notice of Hearing on Motion</b>
	<i>Docket Text:</i> NOTICE of Hearing [23] MOTION to Deny, in Part, Defendant's Motion for an Enlargement (nneb)	
<u>53</u>	<b>Filed &amp; Entered:</b> 10/18/2022	<b>Notice of Hearing on Motion</b>
	<i>Docket Text:</i> NOTICE of Hearing [45] Amended Complaint (nneb) 	
<u>54</u>	<b>Filed &amp; Entered:</b> 10/18/2022	<b>Letter</b>
	<i>Docket Text:</i> Letter to the court from USCA, please transmit the record to this office. (nneb)	
<u>55</u>	<b>Filed &amp; Entered:</b> 10/19/2022	<b>Motion to Quash</b>
	<i>Docket Text:</i> Pro Se Plaintiff's Roseboro Motion to Quash 3 Dispositive Motions by Martin Akerman. (nneb)	
<u>56</u>	<b>Filed &amp; Entered:</b> 10/19/2022	<b>NOTICE</b>
	<i>Docket Text:</i> Pro Se Plaintiff's Roseboro Notice to Defendants by Martin Akerman re [55] Pro Se Plaintiff's Roseboro Motion to Quash 3 Dispositive Motions (nneb)	
<u>57</u>	<b>Filed &amp; Entered:</b> 10/19/2022	<b>Memorandum in Opposition</b>
	<i>Docket Text:</i> Memorandum in Opposition re [25] MOTION for Leave to File, [26] MOTION for Leave to File, [36] MOTION for Leave to File filed by Lloyd J. Austin, III, Defense counterintelligence and Security Agency, Department of Defense, Department of the Air Force, Department of the Army, Daniel R. Hokanson, Frank Kendall, Christine E. Wormuth. (Attachments: # (1) Exhibit A)(Barghaan, Dennis)	
<u>58</u>	<b>Filed:</b> 10/19/2022 <b>Entered:</b> 10/20/2022	<b>NOTICE</b>
	<i>Docket Text:</i> Roseboro Brief 1 by Martin Akerman (nneb)	
<u>59</u>	<b>Filed:</b> 10/20/2022 <b>Entered:</b> 10/21/2022	<b>Response</b>
	<i>Docket Text:</i> Roseboro Responsive Material Accompanying Roseboro Amended Complaint and Roseboro Briefs 1-7 filed by Martin Akerman. (Attachments: # (1) Rosebro Amended Complaint Changes, # (2) Roseboro Brief 1-Supplement, # (3) Roseboro Brief 2, # (4) Roseboro Brief 3, # (5) Roseboro Brief 4, # (6) Roseboro Brief 5, # (7) Roseboro Brief 6, # (8) Roseboro Brief 7)(nneb)	
<u>61</u>	<b>Filed:</b> 10/20/2022 <b>Entered:</b> 10/21/2022	<b>NOTICE</b>
	<i>Docket Text:</i> Pro Se Plaintiff's Amended Roseboro Notice to Defendants by Martin Akerman (nneb)	
<u>60</u>	<b>Filed &amp; Entered:</b> 10/21/2022	<b>Sealed Attachment/Exhibit(s)</b>
	<i>Docket Text:</i> Sealed Attachment re [59] Roseboro Responsive Material Accompanying Roseboro Amended Complaint and Roseboro Briefs 1-7. (Attachments: # (1) Roseboro Brief 2, # (2) Roseboro Brief 3, # (3) Roseboro Brief 3)(nneb)	
<u>62</u>	<b>Filed:</b> 10/24/2022 <b>Entered:</b> 10/25/2022	<b>NOTICE</b>
	<i>Docket Text:</i> Pro Se Plaintiff's Amended Roseboro Notice to Defendants re Roseboro Briefs 1 through 22 and Roseboro Amended Complaint by Martin Akerman (Attachments: # (1) Envelope)(nneb)	
<u>63</u>	<b>Filed:</b> 10/24/2022	<b>Docket Annotation</b>



	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Roseboro Amended Complaint by Martin Akerman. (Attachments: # (1) Attachments)(nneb)		
64	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Roseboro Responsive Material Accompanying Roseboro Amended Complaint and Roseboro Briefs by Martin Akerman. (nneb)		
65	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court-Summary 1 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
66	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 2 of 50 by Martin Akerman. (nneb) (Additional attachment(s) added on 10/25/2022: # (1) Envelope) (nneb, ).		
67	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 9 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
68	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 10 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
69	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 23 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
70	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 24 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb) Modified on 10/25/2022 (nneb, ).		
71	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 31 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
72	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submissions to the Court- Summary 33 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
73	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Submission to the Court- Omnibus by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
74	<i>Filed:</i>	10/24/2022	Docket Annotation
	<i>Entered:</i>	10/25/2022	
	<i>Docket Text:</i> Supplement to Roseboro Brief 1 by Martin Akerman. (nneb)		
75	<i>Filed &amp; Entered:</i>	10/25/2022	Docket Annotation
	<i>Docket Text:</i> Roseboro Responsive Material Accompanying Roseboro Amended Complaint and Roseboro		

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<b>Briefs 23-27 by Martin Akerman. (Attachments: # (1) Brief 23, # (2) Brief 24, # (3) Brief 25, # (4) Brief 26, # (5) Envelope)(nneb)</b>		
<u>76</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Roseboro Amended Complaint by Martin Akerman. (nneb)		
<u>77</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Pro Se Plaintiff's Final Roseboro Notice to Defendants by Martin Akerman. (Attachments: # (1) Attachments)(nneb)		
<u>78</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Submissions to the Court-Summary 11 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
<u>79</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Submissions to the Court-Summary 13 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
<u>80</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Submissions to the Court-Summary 15 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
<u>81</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Submissions to the Court-Summary 16 of 50 by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
<u>82</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Submissions to the Court-Roseboro Brief 27A by Martin Akerman. (Attachments: # (1) Envelope)(nneb)		
<u>83</u>	Filed: 10/26/2022 Entered: 10/27/2022	Docket Annotation
Docket Text: Submissions to the Court-Roseboro Brief 27B by Martin Akerman. (nneb)		

PACER Service Center			
Transaction Receipt			
11/01/2022 09:45:56			
<b>PACER Login:</b>	makerman	<b>Client Code:</b>	
<b>Description:</b>	History/Documents	<b>Search Criteria:</b>	1:22-cv-00696-LMB-WEF
<b>Billable Pages:</b>	6	<b>Cost:</b>	0.60

▶ SCANNED ◀

NOV 01 2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing

(1) AMENDED NOTICE OF APPEAL [DKT No. 40], was mailed

this (2) 1<sup>st</sup> Day of (3) November 2022, to (4) ~~XXXXXX~~

Dennis Barghean ATTORNEY FOR DEF. at (5) 2100 JAMIESON AVENUE  
ALEXANDRIA, VA 22314

  
\_\_\_\_\_  
(Your Signature)Instructions

YOU must send a copy of every motion, pleading or document to the defendant(s) or counsel for defendant(s). If you do not send a copy to the defendant(s) or counsel for the defendant(s), the court will not be able to consider your document.

You must prepare and submit one certificate of service for EACH motion, pleading, or document you wish to have considered by the court.

Complete each blank as directed:

(1) Describe the document you are submitting to the court and sending to the defendant(s). (Remember: you should attach a Certificate of Service to each motion, pleading, or document you wish to have considered by the court.)

(2) Day of the month that you give the document to officials for mailing to the defendant(s) or counsel for the defendant(s).

(3) Month and year.

(4) Name of person(s) to whom you are sending a copy of the document. If you send it directly to the defendant(s), list each defendant to whom you send a copy. If you send it to counsel for the defendant(s), list only the name(s) of counsel.

(5) Address(es) that copy is being mailed to.

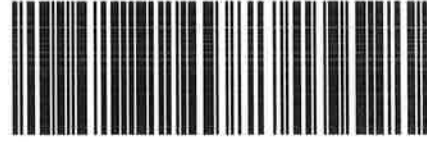
**NOTE: YOU MUST SIGN THIS FORM.** The court will not accept this form without an original signature.

7055906.1.12  
7055900.1.1c

**Martin Akerman**  
Pro Se  
2001 North Adams Street, 440  
Arlington, VA 22201

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**USPS CERTIFIED MAIL**



**9214 8901 4298 0475 1794 93**

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000705595000011



**Dennis Barghaan**  
Attorney for the Defendants  
2100 Jamieson Avenue  
Alexandria, VA 22314

01010000780462



**See Important Information Enclosed**

**Appendix F5:** October 14, 2022 - Order Denying Motion for Fair Access to Court: Document F5, dated October 14, 2022, includes an order from the EDVA denying Akerman's Motion for Fair Access to Court/Certificate of Appealability. The court found none of Akerman's multiple requests for relief to have merit, denying his requests for open and transparent proceedings, e-filing access, use of electronic devices in court, video conferencing, public audience, recording/transcription of hearings, legal representation, and waiver of court costs. This order reflects the judicial challenges Akerman faces as a Pro Se litigant, including the necessity to adhere to the same standards governing the practice of law as other parties.





[defendants) by proxy.” [Dkt. No. 38] at 3. The Court has already denied plaintiff’s Motion for Electronic Device Application, explaining that “limited electronic devices are permitted in the courthouse only for some evidentiary proceedings.” [Dkt. No. 5]. No evidentiary proceedings are scheduled in this civil action, and the Court does not grant blanket requests to bring electronic devices into the courthouse.<sup>1</sup> Therefore, this request is denied.

Plaintiff requests “video conferencing, public audience, and recording/transcription of all hearings.” [Dkt. No. 38] at 3. These requests as presented are denied. Whether oral argument is needed and, if so, how it will be conducted are resolved on a motion-by-motion basis, but unless proceedings are sealed, all hearings are open to the public. Moreover, a transcript is not made unless a party requests one and pays the appropriate fees to the court reporter. Therefore, these requests are denied.

Plaintiff “again requests legal representation[.]” [Dkt. No. 38] at 3. This is a duplicative request. On October 7, 2022, the Court denied plaintiff’s Motion for Representation by a Court-Appointed Lawyer, finding no good cause to appoint counsel. [Dkt. No. 28]. Akerman does not provide any justification for his renewed request, which is denied.

Plaintiff appears to repeat his request “to proceed without further payment of court costs under [T]itle VII (Dkt. No. 20).” [Dkt. No. 38] at 3. The Court denied this request in an Order issued on October 7, 2022. [Dkt. No. 28]. Moreover, the Court previously denied plaintiff’s application to proceed in forma pauperis, given the “more than sufficient funds in his checking account” [Dkt. No. 5]. Therefore, this request is denied.

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<sup>1</sup> Contrary to Akerman’s assertion, defense counsel and defendants are not authorized to access electronic devices in the courthouse, unless they receive approval from the Court in connection with a specific proceeding.



As for plaintiff's request for "clarification regarding the availability of a video conference for the [h]earing on 14 October 2022," [Dkt. No. 38] at 3, on October 11, 2022, the Court cancelled that hearing, because the hearing is premature as the Court has not yet heard from the government on plaintiff's pending motions for leave to amend. [Dkt. No. 32]. Therefore, this request is denied.

Finally, plaintiff "requests Certificate of Appealability for any request above that is denied." [Dkt. No. 38] at 3. A certificate of appealability is only available in habeas corpus proceedings. To the extent plaintiff is asking the Court to certify this Order for an interlocutory appeal, the Court finds no grounds for granting that request, which is denied.

Even though plaintiff is proceeding pro se, he is nonetheless required to follow the rules and standards governing the practice of law before this Court. Filing repetitive motions wastes judicial resources and will not be accepted by the Court. Should plaintiff continue to engage in the filing of unnecessary, frivolous, and duplicative motions, he may be subject to sanctions, including dismissal of his complaint.


For all these reasons, it is hereby

ORDERED that the Motion for Fair Access to Court / Certificate of Appealability [Dkt. No. 38] be and is DENIED.

The Clerk is directed to forward copies of this Order to Martin Akerman, pro se, and to counsel of record.

Entered this 14<sup>th</sup> day of October, 2022.

Alexandria, Virginia

  
\_\_\_\_\_  
/s/ Leonie M. Brinkema  
United States District Judge



> **Appendix G:** June 21, 2022 - EEOC Right-to-Sue Notice: The EEOC's notice allowing Akerman to file a lawsuit under the ADEA is significant in the context of employment discrimination and the interpretation of Title VII. This ties directly to questions about employment discrimination law and the alignment of circuit decisions with EEOC positions.

Appendix G includes documents related to the Equal Employment Opportunity Commission's (EEOC) Right-to-Sue notice provided to Martin Akerman, allowing him to file a lawsuit under the Age Discrimination in Employment Act (ADEA), and associated legal proceedings. These documents are significant in exploring aspects of employment discrimination law, specifically in relation to Akerman's challenges and the alignment of circuit decisions with EEOC positions.

In this section, we explore Appendices G1, G2, and G3, a collection of documents that provide a comprehensive view of Martin Akerman's experiences within the realm of employment discrimination, legal proceedings, and the challenges he encountered throughout his employment journey. These documents span from June 21, 2022, to July 25, 2023, and offer a detailed account of his pursuit of justice in the face of employment-related adversity.



**Appendix G1:** June 21, 2022 - EEOC Right-to-Sue Notice: Document G1, dated June 21, 2022, is the EEOC's Right-to-Sue notice to Akerman, enabling him to initiate legal action under the ADEA. This notice is a pivotal development in Akerman's legal efforts to address his claims of age discrimination in employment.





**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P. O. Box 77960**  
**Washington, D.C. 20013**

June 21, 2022

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

Re: June 7, 2022- Notice of Intent to Sue

Dear Martin Akerman:

The purpose of this letter is to acknowledge that the U.S. Equal Employment Opportunity Commission (EEOC) has received your documentation regarding a notice of intent to file a civil action against the Department of Defense pursuant to Section 15(d) of the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C Section 633a. For your reference, a copy of your documentation is attached hereto.

This is a form acknowledgment and does not address either the merits of the allegations forming the basis of the notice or the sufficiency of the notice. If you have not filed a formal administrative equal employment opportunity (EEO) complaint, you must provide a notice of intent to sue to the EEOC within one hundred and eighty days after the alleged unlawful practice occurred. Please be aware, however, that your notice must comply with EEOC Management Directive 110, Chapter 4, Section IV. B., which states that the notice of intent to sue should be dated and must contain the following information:

- (1) statement of intent to file a civil action under Section 15(d) of the ADEA;
- (2) name, address, and telephone number of the employee or applicant;
- (3) name, address, and telephone number of the complainant's designated representative, if any;
- (4) name and location of the federal agency or installation where the alleged discriminatory action occurred;
- (5) date on which the alleged discriminatory action occurred;
- (6) statement of the nature of the alleged discriminatory action(s); and
- (7) signature of the complainant or the complainant's representative.

Martin Akerman  
Page Two

If you have already filed a formal EEO administrative complaint based, at least in part on age, you must exhaust the administrative process before pursuing a civil action in a U. S. district court.

We are forwarding a copy of your notice, and by copy of this response we are providing notice to the Department of Defense of your intent. The Equal Employment Opportunity Commission Directive (EEO-MD-110), Chapter 4, Section IV, requires that within thirty days of receipt of this notice, the agency must review the allegation(s) of age discrimination and conduct an inquiry sufficient to determine whether there is evidence that unlawful age discrimination has occurred. The method of the inquiry is a matter for determination by the particular agency and may vary depending on the scope and complexity of the allegation(s).

In order to resolve age discrimination claims informally and preclude the necessity for litigation, the EEOC expects that the agency's inquiries under EEO-MD-110 will begin immediately and be completed promptly. Agency inquiries based on a notice of intent to sue should begin immediately and be completed promptly. Prompt inquiries are necessary so that a claimant's right to seek redress is not jeopardized by the expiration of a limitations period for filing a civil action. Agencies should implement case tracking systems to ensure the prompt processing of these matters.

The agency is encouraged to make good faith efforts to resolve the matter and must implement the appropriate make-whole relief under 29 C.F.R. Part 1614, Subpart E, where unlawful age discrimination is found. Please be aware that you may file a civil action under the ADEA at any time after thirty days from the date of filing a compliant notice of intent to sue with EEOC regardless of whether your agency has conducted any inquiry into your allegation.

If you have questions regarding the above information, please call the EEOC's Contact Center (Monday through Friday) at 1-800-669-4000 or contact the EEOC's Office of Federal Operations at [ofe.eeoc@eeoc.gov](mailto:ofe.eeoc@eeoc.gov).

Sincerely,



Lori Grant, Director  
Agency Oversight Division  
Office of Federal Operations  
Federal Sector Programs



Martin Akerman

Page Three

cc: Charmane Johnson  
Department of Defense  
Office of Diversity Management and Equal Opportunity  
4000 Defense Pentagon Rm 5D641  
Washington, DC 20301

Via email: [charmane.s.johnson.civ@mail.mil](mailto:charmane.s.johnson.civ@mail.mil)

Maritza Sayle-Walker  
Department of the Air Force  
A1Q  
1500 W. Perimeter Rd Suite 4500  
JB Andrews, Maryland 20762

Via email: [maritza.sayle\\_walker.12@us.af.mil](mailto:maritza.sayle_walker.12@us.af.mil)

Seema Salter  
Department of the Army  
US Army Equity and Inclusion Agency  
5825 21st Street Building 214  
Fort Belvoir, Virginia 22060

Via email: [seema.e.salter.civ@army.mil](mailto:seema.e.salter.civ@army.mil)

Paul Kurle  
National Guard Bureau  
NGB-DEI  
111 S. George Mason Drive  
Arlington, Virginia 22204

Via email: [paul.d.kurle.civ@army.mil](mailto:paul.d.kurle.civ@army.mil)

Carey Williams  
Defense Counterintelligence and Security Agency  
Diversity & Equal Opportunity  
27130 Telegraph Road  
Quantico, Virginia 22134

Via email: [carey.j.williams2.civ@mail.mil](mailto:carey.j.williams2.civ@mail.mil)

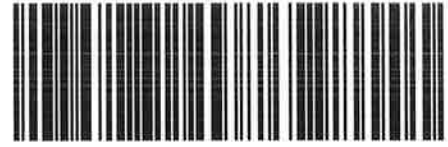
USCA4 Appeal: 22-2066 Doc: 55-4  
Return Mail Processing Center  
8551 East Anderson Dr #108  
Scottsdale, AZ 85255

Filed: 07/25/2023 Pg: 4 of 11

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**USPS CERTIFIED MAIL**



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Equal Employment Opportunity Commission  
Notice of Intent to Sue  
PO BOX 77960  
Washington, DC 20013



**See Important Information Enclosed**

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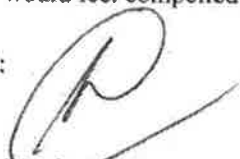
7 June 2022

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

### NOTICE OF INTENT TO SUE

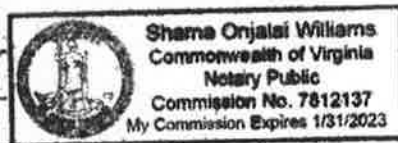
1. I intend to file a civil action under Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended. Ref. 29 CFR § 1614.201
2. Martin Akerman  
2001 North Adams Street, Unit 440  
Arlington, VA 22201  
202-656-5601
3. Pro Se
4. Department of Defense (including Department of the Air Force, Department of the Army, National Guard Bureau, and Office of the Under Secretary for Intelligence - DCSA) Pentagon, Washington, DC
5. 19 May 2022 - 2 June 2022
6. Statement of the nature of the alleged discriminatory action (Termination):
  - a. There exists in the Department of Defense a taint and bias against individuals who are 40 years of age or older that stems from the cultural adoption of DOPMA.
  - b. I was constructively discharged from my tenured Federal GS-15, Step 10 position.
  - c. The agency took impermissible discriminatory actions, violated my right to due process and lied about my ability to obtain and maintain a security clearance, resulting in working conditions that are so intolerable that any reasonable person would feel compelled to resign.

7. Signed:



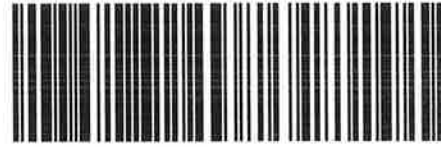
Martin Akerman

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged  
 before me this 7 day of June,  
2022 by  
Martin Akerman  
 (name of person seeking acknowledgement)  
Shara Williams  
 Notary Public  
 My Commission Expires: 07 31 2023



---

**USPS CERTIFIED MAIL**



**9214 8901 4298 0470 1538 18**

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0006394734000011

General Daniel R. Hokanson  
Chief, National Guard Bureau  
111 S. George Mason Drive  
Arlington, VA 22204-1373



**See Important Information Enclosed**

659124 1 2

6 June 2022

Martin Akerman  
2001 North Adams Street, Unit 440  
Arlington, VA 22201  
202-656-5601

General Daniel R. Hokanson  
Chief, National Guard Bureau  
111 S. George Mason Drive  
Arlington, VA 22204-1373

### Letter of Resignation

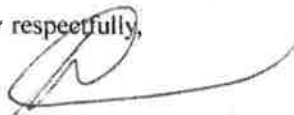
General Hokanson,

I hereby resign from my position as Chief Data Officer of the National Guard Bureau.<sup>123</sup>

The agency took impermissible discriminatory actions, violated my right to due process and lied about my ability to obtain and maintain a security clearance, placing me on Notice Leave (5 U.S. Code § 6329b) and in an indefinite unpaid suspension status, resulting in working conditions that are so intolerable that any reasonable person would feel compelled to resign.

I elect to incur a debt to FEHB only until the end of this current pay period, 18 June 2022.

Very respectfully,



Martin Akerman  
makerman.dod@gmail.com

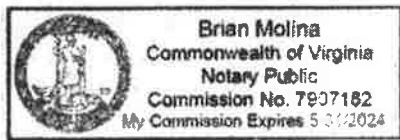
- CC: Dr. Clark Cully, Acting Chief Data Officer, Department of Defense
- Honorable Christine Wormuth, Secretary of the Army
- Honorable Frank Kendall, Secretary of the Air Force
- Maj. Gen. Janson Boyles, Mississippi, Chairman, NGAUS
- Governor Asa Hutchinson, Arkansas, Chairman, National Governors Association
- Senator Tim Kaine, State of Virginia

<sup>1</sup> 44 U.S. Code § 3520

<sup>2</sup> 10 U.S. Code § 10501 - The National Guard Bureau is a joint activity of the Department of Defense.

<sup>3</sup> The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged  
 before me this 5 day of June  
2022, by  
Martin Akerman  
 (name of person seeking acknowledgement)  
Brian Molina  
 Notary Public  
 My Commission Expires: 05/31/2024



Help With A Federal Agency | Feb 17 2022 02:26:37 | Akerman, Martin - Page 1 of 2



Privacy Act Release  
General Casework

Provisions of the Privacy Act of 1974 (Title 5, Section 552A of the United States Code) require congressional offices to obtain written permission from an individual before a federal agency can release any specific information to the Senator. Please complete the following Privacy Release Authorization and return it to our office as directed below. Family members, friends or other interested parties generally may not authorize the release of information on your behalf.

#### Constituent Information

---

**Name:** Mr. Martin Akerman      **Address:** 2001 North Adams Street 440 Arlington, VA 22201

**Preferred Name:**  
Martin

**Date of Birth:**  
[REDACTED]

**Email Address:** [REDACTED]      **Phone Number:** [REDACTED]      **Social Security Number:** [REDACTED]

#### Case Details

---

Do you currently have an open case for the matter described above with another U. S. Senator or Representative?  
No

**Federal Agency Involved:** US Department of Defense, Office of Special Counsel      **Account/Claim Number:** MA-21-1602

**Date of Birth:** [REDACTED]      **Your Place of Birth:** [REDACTED]

#### Tell us about your case

---

Briefly describe your situation.

My name is Martin Akerman and I am the Chief Data Officer of the National Guard. I was the Director of Data Strategy at the Department of the Air Force in my previous role. The job of a good CDO is to increase organizational transparency, improve efficiencies and position data for information superiority. This has huge National Security implications in the case of CDO's in the Department of Defense. I am a leading CDO in the Department of Defense, the only one directly representing the 54 States and Territories. The Department of Defense is currently utilizing Prohibited Personnel Practices to push me out. These include falsifying documentation and leveraging a seemingly untouchable Security Clearance process to disqualify me from my position. The OSC appears powerless against the Department of Defense and I am kindly requesting for you to help me get a status on my OSC case including 9 PPPs dating back to the Air Force and through the National Guard. I am also kindly asking you to help me navigate a solution with the Department of Defense through OSC. Our country cannot afford to take our brightest digital talent and destroy them professionally for doing their job exceptionally well. This incentive to maintain

*Help With A Federal Agency | Feb 17 2022 02:26:37 | Akerman, Martin - Page 2 of 2*

status quo and disincentive to innovate, if left unmitigated, will be the single reason we will not be able to outpace our adversaries and inevitably lose.

I hereby authorize the office of U.S. Senator Tim Kaine to intercede on my behalf, and review all relevant documentation that Senator Kaine or his staff deems necessary in connection with my request for assistance. I further understand that the Senator's office cannot request an application be granted, and expedite requests are reviewed on a case-by-case basis by the agency. The information I have provided is true and accurate to the best of my knowledge and belief. The assistance I have requested from Senator Kaine is in no way an attempt to violate any federal, state or local law.

Signature: \_\_\_\_\_



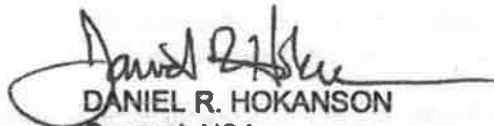
Date: FEB, 17, 2022

**Please return this form via mail, Email or fax to:**

Senator Tim Kaine  
ATTN: Constituent Services  
231 Russell Senate Office Building  
Washington, DC 20510  
fax: (202) 228-6363  
Email: [Kaine\\_Casework@kaine.senate.gov](mailto:Kaine_Casework@kaine.senate.gov)

**NATIONAL GUARD BUREAU**1636 DEFENSE PENTAGON  
WASHINGTON DC 20301-1636**DEC 20 2021****MEMORANDUM FOR ALL NATIONAL GUARD PERSONNEL****Subject: Appointment of a National Guard Bureau Chief Data Officer and Creating Competitive Advantage by positioning Data as a Strategic Asset****Reference: National Guard Strategic Data Management Framework, 08 June 2021**

1. In accordance with the reference, I hereby designate Mr. Martin Akerman as the National Guard Bureau (NGB) Chief Data Officer (CDO).
2. The NGB CDO will lead the utilization and governance of data across the National Guard.
3. The NGB CDO, in coordination with the Army National Guard and the Air National Guard, will lead the National Guard's Implementation Plan of the Department of Defense Data Strategy. See the attached "Supporting Department of Defense Data 'Decrees'" for more information.
4. The point of contact is Mr. Martin Akerman; NGB-J6; 703-607-7125.



**DANIEL R. HOKANSON**  
General, USA  
Chief, National Guard Bureau

**Attachment:****As stated**



## ATTACHMENT

## SUPPORTING DEPARTMENT OF DEFENSE DATA 'DECREES'

1. The Department of Defense (DoD) released a memorandum, on 05 May 2021, outlining the importance of data management in establishing information superiority and enabling better decision-making. The National Guard plays a key role in the globally integrated and partnered Joint Force, designed and able to out-think, out-maneuver, and out-fight any adversary under conditions of disruptive change.
2. National Guard Bureau is adopting the five DoD Data 'Decrees' as outlined in the DoD memorandum by:
  - a. Maximizing data sharing and rights for data use: all DoD data is an enterprise resource.
  - b. Publishing data assets in the DoD federated data catalog along with common interface specifications.
  - c. Using automated data interfaces that are externally accessible and machine-readable; ensure interfaces use industry-standard, non-proprietary, preferably open-source, technologies, protocols, and payloads.
  - d. Storing data in a manner that is platform and environment-agnostic, uncoupled from hardware or software dependencies.
  - e. Implementing best practices for secure authentication, access management, encryption, monitoring, and protection of data at rest, in transit, and in use.
3. The Joint Force will rapidly integrate, evaluate, and interpret data with artificial intelligence, machine language, and big data analytics. The National Guard Bureau Chief Data Officer will ensure the necessary data assets and expert resources are ready and empowered to help the National Guard achieve Joint All-Domain Operations, Senior Leader Decision Support and Executive Analytics while positioning our data to be visible, accessible, understandable, linked, trusted, interoperable, and secure (VAULTIS).
4. The National Guard will leverage better and faster human and machine-aided decision making to accelerate its response to changes in the operational environment (in collaboration with allies and partners), while adopting a rapid, iterative, and modular approach to capability development that will reduce costs, technology obsolescence, and acquisition risk.



**Appendix G2:** July 25, 2023 - Motion to Compel and Adverse Inference Instructions: Document G2, filed on July 25, 2023, includes Akerman's motion to compel the Merit Systems Protection Board (MSPB) to certify and transmit complete records for appellate review, and for adverse inference instructions due to potential spoliation of evidence. This motion highlights Akerman's continued endeavors to rectify procedural irregularities and safeguard his rights as a litigant.



July 25, 2023

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

No. 22-2066(L)(1:22-cv-00696-LMB-WEF), No.  
22-2147(1:22-cv-00696-LMB-WEF),  
No. 22-2154(1:22-cv-01258-LMB-WEF)

MARTIN AKERMAN, PRO SE Plaintiff - Appellant

v.

LLOYD J. AUSTIN, III, Secretary of Department of Defense; CHRISTINE E. WORMUTH, Secretary of the Army; FRANK KENDALL, Secretary of the Air Force; GENERAL DANIEL R. HOKANSON, Chief, National Guard Bureau; DEPARTMENT OF DEFENSE; DEPARTMENT OF THE ARMY; DEPARTMENT OF THE AIR FORCE; DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY; MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL Defendants - Appellees

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**MOTION TO COMPEL MERIT SYSTEMS PROTECTION BOARD TO  
CERTIFY RECORD FOR APPELLATE REVIEW AND FOR ADVERSE  
INFERENCE INSTRUCTIONS**

---

I, Martin Akerman, proceeding pro se, respectfully move this Court to (1) Compel the Merit Systems Protection Board (MSPB) to certify and transmit the complete records of my pending cases for appellate review in a manner consistent with practices of the Federal Circuit, and (2) Provide adverse inference instructions due to the potential spoliation of evidence.

### **Background**

I have filed appeals with this Court following the dismissals of my civil actions in the Eastern District of Virginia: Akerman v. Austin, No. 1:22-cv-696 (Lead Case), and Akerman v. Hokanson, No. 1:22-cv-1258. Both civil actions were dismissed with prejudice, and my Motions for Certification of Record were denied in each case. Copies of the court orders from these cases are attached hereto.

Furthermore, on May 1, 2023, I submitted a "PRO SE MOTION FOR PRESERVATION ORDER" (No. 22-2066(L)(1:22-cv-00696-LMB-WEF), No. 22-2147(1:22-cv-00696-LMB-WEF), No. 22-2154(1:22-cv-01258-LMB-WEF)) before this Honorable Court. This motion underscored the necessity of preserving pertinent evidence, given the potential risk of evidence manipulation and the consequential threat to a General Officer's career in Nevada.

The cases in question remain open and pending with the MSPB, including but not limited to Cases:

- DC-3443-22-0340-1-1
- DC-0752-22-0376-S-1
- DC-0752-22-0376-1-1
- DC-1221-22-0257-S-1
- DC-1221-22-0257-W-1
- DC-1221-22-0445-W-1
- DC-1221-22-0459-W-1

### **Argument**

Pursuant to Federal Rules of Appellate Procedure 10 and 11, I am entitled to a comprehensive and accurate record for review by this appellate court. Moreover, as evidenced by my prior motion for a preservation order, there is a looming concern regarding the possible destruction or falsification of relevant evidence.

This Court, when reviewing matters involving the MSPB, should ensure that records are provided consistently with the practices of the Federal Circuit. Such uniformity ensures fairness and a comprehensive review of cases, irrespective of the appellate circuit they fall under.

### **Concern of Potential Spoliation of Evidence**

In addition to the above arguments, I wish to express a serious concern regarding the potential spoliation of evidence by the MSPB. Spoliation refers to the intentional, negligent, or reckless destruction, alteration, or concealment of evidence that is relevant to legal proceedings.

Given my aforementioned concerns regarding potential spoliation of evidence by the MSPB, I also move this Court to provide adverse inference instructions to the jury, should this case proceed to trial.

Adverse inference instructions would acknowledge the potential harm caused by the loss or destruction of evidence. Specifically, I request that the Court instruct the jury that they may, or must, infer that the missing or destroyed evidence would have been unfavorable to the MSPB or the party responsible for its preservation.

### **Request for Relief**

I request this Court to:

1. Issue an order compelling the MSPB to certify and transmit the complete records of my pending cases for appellate review in a manner consistent with the practices of the Federal Circuit.
2. Instruct the jury, should this case proceed to trial, that they may or must infer that the missing or destroyed evidence would have been unfavorable to the MSPB, Defendants/Appellees, or the party responsible for its preservation.

### **Conclusion**

Ensuring a complete and comprehensive record is pivotal for a fair appellate review. I respectfully ask this Court to grant this Motion to Compel the MSPB to provide the complete record in accordance with the established practices of the Federal Circuit and to provide adverse inference instructions due to potential spoliation.

### **Certificate of Ethical AI Use**

I, Martin Akerman, hereby certify that I have made use of ethical Artificial Intelligence (AI) technology to aid in drafting this motion and navigating this complex legal matter, especially given my limitations stemming from Post Traumatic Stress Disorder (PTSD). The use of this technology is in good faith and for the purpose of ensuring comprehensive representation of my interests.



**Certificate of Service**

I hereby certify that on July 25, 2023, I electronically filed the foregoing with the Clerk of the Court using the appellate CM/ECF system, and that copies were served to all parties or their counsel of record via electronic means.

**Affirmation**

Pursuant to Federal Rule of Appellate Procedure 27, I, Martin Akerman, the undersigned, hereby affirm that the facts and grounds presented in the accompanying motion are true and accurate to the best of my knowledge, belief, and understanding.

Respectfully Submitted:



Martin Akerman, Pro Se

2001 North Adams Street Unit 440

Arlington, VA 22201

**Attachments:**

1. Order from Akerman v. Austin, No. 1:22-cv-696
2. Order from Akerman v. Hokanson, No. 1:22-cv-1258
3. Certificate Received from EEOC



**Appendix G3: Legal Proceedings and Employment Challenges:**

Document G3 details various legal and employment-related challenges faced by Akerman. It includes information about Akerman's employment history, security clearance issues, and his interactions with various defense agencies. Notably, it documents instances where Akerman alleges that sensitive medical information was leaked, his security clearance was questioned, and he faced discriminatory actions and procedural violations. These challenges culminated in Akerman's resignation from his position due to what he describes as intolerable working conditions and violations of his rights.





## Attachment 1

On 13 June 2022, the Dir Emp Service, Wash DC 20310, unnecessarily and willfully leaked private, inaccurate, and sensitive medical information about the Plaintiff to the Virginia Employment Commission (Attachment 1)

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 102  
 102

Reply to ES-931 Request for Wage and Separation



Section I - Identification

SSN: [REDACTED]-2902 Name: AKERMAN, MARTIN  
 Positio IT SPECIALIST (POLICY AND PLANNING/DATA Date of ES 06-05-2022

0931

Corrections to Section I Data:

Section II - Federal Agency

Verification of Federal Service: Y If No,

Duty State: VA

Employment Type EMP ON I WOP/FURL/SUSP  
 IN NON PAY STAT FOR  
 31/MORF CONS DAYS  
 Duty Hours Work Week 0  
 Duty Hours Workday 0  
 Hourly Rate 70.32  
 SF-8 Furnished Yes

Base Period Wages

QTR	YR	Ending	Gross Wages	Hours	Weeks
2	2022	6/30/2022	\$20,275.20		
1	2022	3/31/2022	\$40,404.00		
4	2021	12/31/2021	\$46,284.00		
3	2021	9/30/2021	\$26,448.00		
2	2021	6/30/2021	\$50,822.36		
1	2021	3/31/2021	\$41,914.92		
Base and Total			\$226,148.48		

	Estimated Amt:	Paid Amnt.	Hours Paid.	Date Paid	Period From	Period To
Terminal Annual Leave Payment	0	0	0			
Severance Payment	0	0	0			
Incentive Payment:	0	0	0			

Date of Separation: Last Day of Active pay 04-23-2022

Reason for Separation: CLAIMANT IS CURRENTLY SERVING ON AN INDEFINITE SUSPENSION FOR FAIL URF TO ATTAIN AND/OR MAINTAIN A CONDITION OF EMPLOYMENT - SECURITY CLEARANCE RELATED.

Certification: I certify that I have examined this report and this report constitutes the findings of this agency under Federal Law (5 U.S.C. 8506(a)) and, to the best of my knowledge, it is a correct and

TAKI JOSEPHINE.K.1021832207 Digitally signed by TAKI JOSEPHINE.K.1021832207  
 Date: 2022.06.13.07:33:24 -06'00'

Signature of Official: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Agency 422-Army HC-DEST 422-0100

Name of Parent Federal AR

Servicing Civilian Personnel Office to which all UCFE inquires for this individual should be addressed.

Agency Name Dir Per Emp Service, Wash DC 20310 We intend to challenge this claim Y

City, State, Zip Ft. Riley, KS, 66442

UCPA Name Maria King  
 Commercial 1-866-792-7620  
 Fax /85-240-3643



DEPARTMENT OF DEFENSE  
CONSOLIDATED ADJUDICATIONS FACILITY  
BUILDING 600 10TH STREET  
FORT GEORGE G. MEADE, MD 20755-5615



August 12, 2021

MEMORANDUM FOR MR. MARTIN AKERMAN, [REDACTED] -2902

THROUGH: USAF - A1  
(ATTN: SECURITY MANAGEMENT OFFICE)

SUBJECT: Intent to Revoke Eligibility for Access to Classified Information and Assignment to Duties that have been Designated National Security Sensitive, and Deny Eligibility for Access to Sensitive Compartmented Information (SCI)

- References:
- (a) DoDM 5200.02, Procedures for the DoD Personnel Security Program (PSP), April 3, 2017
  - (b) Security Executive Agent Directive 4, National Security Adjudicative Guidelines, December 10, 2016 (Effective June 8, 2017)
  - (c) ICD 704, Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information, and Other Controlled Access Program Information, October 1, 2008
  - (d) ICPG 704.3, Denial or Revocation of Access to Sensitive Compartmented Information, Other Controlled Access Program Information, and Appeals Processes, October 2, 2008

1. Per the above references, a preliminary decision has been made by the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) to revoke your eligibility for access to classified information and assignment to duties that have been designated national security sensitive, and deny your eligibility for access to Sensitive Compartmented Information (SCI).

2. A decision on eligibility for access to classified information, assignment to duties that have been designated national security sensitive, and SCI access is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Pursuant to reference (a), eligibility shall be granted only where facts and circumstances indicate eligibility for access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security. Information concerning your personal history has led to the security concern(s) listed in Attachment 1, *Statement of Reasons (SOR)*, which prevent the DoD CAF from making the affirmative decision that your eligibility is clearly consistent with the interests of national security. If this preliminary decision becomes final, you will not be eligible for access to classified information, assignment to duties that have been designated national security sensitive, and SCI access as defined by the above-cited references.

3. If you currently have access to classified information, this access may be suspended by your organization's Security Management Office.

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4. You must complete Attachment 2, *Statement of Reasons Receipt and Statement of Intent*, and forward it to the DoD CAF, via your organization's Security Management Office (SMO) or SCI SMO within ten (10) calendar days of receipt of this memorandum. Contact your SMO or SCI SMO for help in preparing and forwarding this form. If the completed Attachment 2 is not received at the DoD CAF, it will be presumed that you do not intend to submit a reply.

5. You may request the records upon which the DoD CAF relied on to make the preliminary decision. Attachment 3 is provided to assist you in requesting your records. Use the Defense Counterintelligence and Security Agency (DCSA) investigation request if your SOR is based upon a DCSA Investigation (formally known as the Office of Personnel Management (OPM) investigation). Use the appropriate records request form(s) provided herein, if your SOR is based upon records other than, or in addition to, the DCSA investigation. Failure to request the record(s) in a timely manner, failure to provide an accurate mailing address, and/or failure to accept receipt of the record(s) upon delivery, will not serve as justification for an extension of time to respond to the SOR.

6. You may challenge this preliminary decision by responding, in writing, with any information or explanation that you think should be considered in reaching a final decision. Attachment 4, *Instructions for Responding to a Statement of Reasons*, provides instructions to assist you if you choose to submit a response. Attachment 5, *National Security Adjudicative Guidelines*, provides information on the guidelines and Attachment 6, *Applicable National Security Adjudicative Guidelines*, provides the specific national security adjudicative guideline(s) from reference (b) used in this preliminary decision.

7. You may choose to obtain legal counsel, or other assistance, in preparing your response to this preliminary decision. You may obtain civilian counsel, at your own expense, or, if you are eligible, from the staff of the Judge Advocate General. If you desire assistance from legal counsel, you should make those arrangements immediately.

8. If you choose the option to respond, your written response must be submitted through your SMO or SCI SMO within sixty (60) calendar days from the date you acknowledge receipt of this memorandum. Your SMO or SCI SMO will then forward it to the DoD CAF. To request an extension, you must provide a written request, with justification, to your SMO or SCI SMO prior to the current deadline. Your SMO or SCI SMO will then submit your request to the DoD CAF for review/approval. Any request for extension of time to respond may be granted only by the DoD CAF.





817066 20220608094321

**STATEMENT OF REASONS (SOR) FOR MR. MARTIN AKERMAN, [REDACTED]-2902**

The information listed below was derived from the documents listed at the end of this attachment (Attachment 1, Statement of Reasons). Each item of disqualifying information falls under one or more of the security guidelines listed below.

**GUIDELINE I: Psychological Conditions**

Available information shows issues of Psychological Conditions on your part.

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. No negative inference may be raised solely on the basis of seeking mental health counseling.

Per the Adjudicative Guidelines, conditions that could raise a security concern and may be disqualifying include:

On a Questionnaire for National Security Positions, Standard form 86 (SF-86), signed by you on November 8, 2019, under Section 21 - Psychological and Emotional Health, you answered "Yes", indicating that you had been hospitalized for a mental health condition. You also listed that the dates of treatment were in about February 2012.

During your interview with a Defense Counterintelligence and Security Agency (DCSA) Investigator on January 24, 2020, you confirmed your involuntary hospitalization for an emotional/mental health condition at the Psychiatric Institute of Washington, D.C. for stress induced anxiety in which you were hospitalized for 72 hours. You also confirmed that you were seen by a therapist and psychiatrist as an outpatient after you were released. You explained you were seen by a counselor in 2012, and from about 2013 to about 2018 you were seen by a psychologist.

Because the investigation did not include a recent opinion by a duly qualified mental health professional acceptable to the U.S. Government, a Request for Medical Evaluation was sent to you on June 2, 2020 to obtain a professional medical opinion regarding whether a condition exists that could affect your judgment and/or reliability. When there was no response an Extension Granted Due to Health Protection Condition memorandum was sent to you on October 21, 2020. To date there has still been no response.

As such, the DoD CAF must make a determination based on the available information.

Individuals will be granted only when facts and circumstances indicate that eligibility is clearly consistent with the national security interests of the United States, and any doubt will be resolved in favor of national security. Without any current information on your condition, doubt remains as to your stability. Your previous incident indicates that you may have a condition that could affect your ability to properly safeguard classified or sensitive information. Therefore, your psychological condition remains a security issue. (Guideline I, Attachment 6)

## Attachment 2

On 17 August 2021, the Office of Special Counsel witnessed the Air Force and DCSA conspire to revoke my security clearance. The Office of Special Counsel intervened.

I was allowed to keep my Secret clearance while obtaining my TS clearance (Attachment 2).



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON DC, 20330

17 August 2021

MEMORANDUM FOR: Martin Akerman

FROM: Director/Chief Data Office SAF/CO

SUBJECT: Notification to Individual of Classified Information Access Determination

1. You are hereby notified that an incident report must be reported to DoD CAF IAW DoDM5200.02 AFMAN16-1405, *Air Force Personnel Security Program*. This action is being taken because of your actions/alleged actions, conduct and/or behavior involving (be as specific as protection of sources allows and national security permits.) I have determined your current access to classified information.

May continue until further notice.

May NOT continue until further notice.

2. When all final actions in this case are complete, I will evaluate the incident(s) and make a security recommendation. The DoD CAF will make the final security determination concerning your security clearance eligibility.

3. Our POC:

Ms. Dana Caesar/ SAF/AA Security Manager  
TSgt Luis H. Santa/ SAF/CO Security Manager

VIDRINE EILEEN M. Digitally signed by  
ARGARET 1010451  
830  
Date: 2021.08.17 12:31:38 -0400

EILEEN M. VIDRINE, SES, DAF  
Chief Data Officer

cc:  
Servicing IP Activity

FOR OFFICIAL USE ONLY. This document contains information that is protected under the Privacy Act of 1974 (see AFI 33-332) and protected from disclosure under the Freedom of Information Action Act, 5 USC 552. Do not release this information without consent of the originators office.

1st Ind. Martin Akerman

TO: Eileen M. Vidrine

Receipt acknowledged 17 August 2021.

I (do/do not) intend to submit a written reply within 72 hours.

MARTIN AKERMAN, GS-15, DAF  
Director of Strategy

### Attachment 3

On 20 December 2021, the Plaintiff was formally appointed as the Chief Data Officer of the National Guard Bureau.

On 2 February 2022, an Air Force civilian in the National Guard Bureau conspired with the Army and DCSA to suspend Plaintiff's access to classified information, in an effort to affect Plaintiff's suitability for employment.

On 14 February 2022, the Army and National Guard Bureau falsely claimed to have suspended Plaintiff's access to classified information and immediately placed the Plaintiff involuntarily out of the office for 69 days.

On 11 April 2022, after misrepresenting facts required by the Office of Personnel Management, an Air Force General Officer in the National Guard Bureau sustained the decision to suspend the Plaintiff indefinitely without pay, starting on 24 April 2022.

On 6 June 2022, the Plaintiff resigned as Chief Data Officer of the National Guard Bureau.  
(Attachment 3)

Return Mail Processing Center  
8551 East Anderson Dr #108  
Scottsdale, AZ 85255

USPS CERTIFIED MAIL



9214 8901 4298 0470 1538 18

General Daniel R. Hokanson  
Chief, National Guard Bureau  
111 S. George Mason Drive  
Arlington, VA 22204-1373



**See Important Information Enclosed**

6 June 2022

Martin Akerman  
2001 North Adams Street, Unit 440  
Arlington, VA 22201  
202-656-5601

General Daniel R. Hokanson  
Chief, National Guard Bureau  
111 S. George Mason Drive  
Arlington, VA 22204-1373

### Letter of Resignation

General Hokanson,

I hereby resign from my position as Chief Data Officer of the National Guard Bureau.<sup>(2)</sup>

The agency took impermissible discriminatory actions, violated my right to due process and lied about my ability to obtain and maintain a security clearance, placing me on Notice Leave (5 U.S. Code § 6329b) and in an indefinite unpaid suspension status, resulting in working conditions that are so intolerable that any reasonable person would feel compelled to resign.

I elect to incur a debt to FEHB only until the end of this current pay period, 18 June 2022.

Very respectfully,



Martin Akerman  
makerman.dod@gmail.com

CC: Dr. Clark Cully, Acting Chief Data Officer, Department of Defense  
Honorable Christine Wormuth, Secretary of the Army  
Honorable Frank Kendall, Secretary of the Air Force  
Maj. Gen. Janson Boyles, Mississippi, Chairman, NGAUS  
Governor Asa Hutchinson, Arkansas, Chairman, National Governors Association  
Senator Tim Kaine, State of Virginia

<sup>1</sup> 44 U.S. Code § 3520  
<sup>2</sup> 10 U.S. Code § 10501 - The National Guard Bureau is a joint activity of the Department of Defense.  
<sup>3</sup> The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

County/City of Arlington  
Commonwealth State of Virginia  
The foregoing instrument was acknowledged  
before me this 5 day of June,  
2022, by  
Martin Akerman  
(name of person seeking acknowledgment)  
Brian Molina  
Notary Public  
My Commission Expires 05/31/2024





Help With A Federal Agency | Feb 17 2022 02:26:37 | Akerman, Martin - Page 1 of 2



Privacy Act Release  
General Casework

Provisions of the Privacy Act of 1974 (Title 5, Section 552A of the United States Code) require congressional offices to obtain written permission from an individual before a federal agency can release any specific information to the Senator. Please complete the following Privacy Release Authorization and return it to our office as directed below. Family members, friends or other interested parties generally may not authorize the release of information on your behalf.

**Constituent Information**

**Name:** Mr. Martin Akerman **Address:** 2001 North Adams Street 440 Arlington, VA 22201

**Preferred Name:** Martin

**Date of Birth:** [REDACTED]

**Email Address:** [REDACTED] **Phone Number:** [REDACTED] **Social Security Number:** [REDACTED]

**Case Details**

**Do you currently have an open case for the matter described above with another U. S. Senator or Representative?**  
No

**Federal Agency Involved:** US Department of Defense, Office of Special Counsel **Account/Claim Number:** WA-21-1682

**Date of Birth:** [REDACTED] **Your Place of Birth:** [REDACTED]

**Tell us about your case**

Briefly describe your situation.  
My name is Martin Akerman and I am the Chief Data Officer of the National Guard. I was the Director of Data Strategy at the Department of the Air Force in my previous role. The job of a good CDO is to increase organizational transparency, improve efficiencies and position data for information superiority. This has huge National Security implications in the case of CDO's in the Department of Defense. I am a leading CDO in the Department of Defense, the only one directly representing the 54 States and Territories. The Department of Defense is currently utilizing Prohibited Personnel Practices to push me out. These include falsifying documentation and leveraging a seemingly untouchable Security Clearance process to disqualify me from my position. The OSC appears powerless against the Department of Defense and I am kindly requesting for you to help me get a status on my OSC case including 9 PPPs dating back to the Air Force and through the National Guard. I am also kindly asking you to help me navigate a solution with the Department of Defense through OSC. Our country cannot afford to take our brightest digital talent and destroy them professionally for doing their job exceptionally well. This incentive to maintain

*Help With A Federal Agency | Feb 17 2022 02:26:37 | Akerman, Martin - Page 2 of 2*

status quo and disincentive to innovate, if left unmitigated, will be the single reason we will not be able to outpace our adversaries and inevitably lose.

I hereby authorize the office of U.S. Senator Tim Kaine to intercede on my behalf, and review all relevant documentation that Senator Kaine or his staff deems necessary in connection with my request for assistance. I further understand that the Senator's office cannot request an application be granted, and expedite requests are reviewed on a case-by-case basis by the agency. The information I have provided is true and accurate to the best of my knowledge and belief. The assistance I have requested from Senator Kaine is in no way an attempt to violate any federal, state or local law.

Signature: \_\_\_\_\_



Date: FEB, 17, 2022

Please return this form via mail, Email or fax to:

Senator Tim Kaine  
ATTN: Constituent Services  
231 Russell Senate Office Building  
Washington, DC 20510  
fax: (202) 228-6363  
Email: [Kaine\\_Casework@kaine.senate.gov](mailto:Kaine_Casework@kaine.senate.gov)



**NATIONAL GUARD BUREAU**  
1036 DEFENSE PENTAGON  
WASHINGTON DC 20301-1036

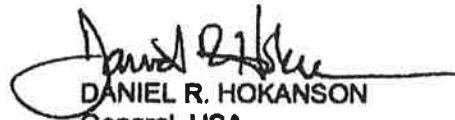
**DEC 20 2021**

**MEMORANDUM FOR ALL NATIONAL GUARD PERSONNEL**

**Subject: Appointment of a National Guard Bureau Chief Data Officer and Creating Competitive Advantage by positioning Data as a Strategic Asset**

**Reference: National Guard Strategic Data Management Framework, 08 June 2021**

1. In accordance with the reference, I hereby designate Mr. Martin Akerman as the National Guard Bureau (NGB) Chief Data Officer (CDO).
2. The NGB CDO will lead the utilization and governance of data across the National Guard.
3. The NGB CDO, in coordination with the Army National Guard and the Air National Guard, will lead the National Guard's Implementation Plan of the Department of Defense Data Strategy. See the attached "Supporting Department of Defense Data 'Decrees'" for more information.
4. The point of contact is Mr. Martin Akerman; NGB-J6; 703-607-7125.

  
**DANIEL R. HOKANSON**  
General, USA  
Chief, National Guard Bureau

**Attachment:**  
**As stated**

ATTACHMENT

SUPPORTING DEPARTMENT OF DEFENSE DATA 'DECREES'

1. The Department of Defense (DoD) released a memorandum, on 05 May 2021, outlining the importance of data management in establishing information superiority and enabling better decision-making. The National Guard plays a key role in the globally integrated and partnered Joint Force, designed and able to out-think, out-maneuver, and out-fight any adversary under conditions of disruptive change.
2. National Guard Bureau is adopting the five DoD Data 'Decrees' as outlined in the DoD memorandum by:
  - a. Maximizing data sharing and rights for data use: all DoD data is an enterprise resource.
  - b. Publishing data assets in the DoD federated data catalog along with common interface specifications.
  - c. Using automated data interfaces that are externally accessible and machine-readable; ensure interfaces use industry-standard, non-proprietary, preferably open-source, technologies, protocols, and payloads.
  - d. Storing data in a manner that is platform and environment-agnostic, uncoupled from hardware or software dependencies.
  - e. Implementing best practices for secure authentication, access management, encryption, monitoring, and protection of data at rest, in transit, and in use.
3. The Joint Force will rapidly integrate, evaluate, and interpret data with artificial intelligence, machine language, and big data analytics. The National Guard Bureau Chief Data Officer will ensure the necessary data assets and expert resources are ready and empowered to help the National Guard achieve Joint All-Domain Operations, Senior Leader Decision Support and Executive Analytics while positioning our data to be visible, accessible, understandable, linked, trusted, interoperable, and secure (VAULTIS).
4. The National Guard will leverage better and faster human and machine-aided decision making to accelerate its response to changes in the operational environment (in collaboration with allies and partners), while adopting a rapid, iterative, and modular approach to capability development that will reduce costs, technology obsolescence, and acquisition risk.

## Attachment 4

On 28 June 2021, I agreed to Alternative Dispute Resolution through the Office of Special Counsel.

On 29 July 2021, I was selected to be the first Chief Data Officer of the National Guard, a job requiring the ability to obtain a TS clearance.

On 4 August 2021, I received a Tentative Offer for employment from the Office of the Chief of the National Guard Bureau and on 9 August IIR confirmed my Clearance.

On 11 August 2021, I informed the Office of Special Counsel that I accepted the tentative offer for employment with the National Guard Bureau and requested closure of ADR.

On 17 August 2021, the Office of Special Counsel witnessed the Air Force and DCSA conspire to revoke my security clearance. The Office of Special Counsel intervened.

I was allowed to keep my Secret clearance while obtaining my TS clearance

The Air Force agreed to "request payments for SLR be restarted back to the day they were dropped. Additionally, request retroactive payments to the date agreement was signed and approved, 10 December 2019" (Attachment 4)

Standard Form 52

Rev. 7/91

U.S. Office of Personnel Management

**REQUEST FOR PERSONNEL ACTION**

**PART A - Requesting Office (Also complete Part B, Items 1, 7-22, 32, 33, 36, and 39.)**

1. Actions Requested  
Student Loan Repayment

2. Request Number  
21AUGP9LSNYDER050108

3. For Additional Information Call (Name and Telephone Number)  
Jennifer M. Snyder 703-614-2757

4. Proposed Effective Date  
04-25-2021

5. Action Requested By (Name, Title, Signature, and Request Date)  
Jennifer M. Snyder  
HUMAN RESOURCES SPECIALIST 08-11-2021

6. Action Authorized By (Name, Title, Signature, and Concurrence Date)  
Jennifer M. Snyder  
HUMAN RESOURCES SPECIALIST 08-11-2021

**PART B - For Preparation of SF 50 (Use only codes in FPM Supplement 292-1. Show all dates in month-day-year order.)**

1. Name (Last, First, Middle)  
AKERMAN, MARTIN NMN

2. Social Security Number 081-66-2902  
3. Date of Birth 04-08-1979

4. Effective Date

**FIRST ACTION**

**SECOND ACTION**

5-A. Code R17  
5-B. Nature of Action Student Loan Repayment

6-A. Code  
6-B. Nature of Action

5-C. Code  
5-D. Legal Authority

6-C. Code  
6-D. Legal Authority

5-E. Code  
5-F. Legal Authority

6-E. Code  
6-F. Legal Authority

7. FROM: Position Title and Number  
SUPV IT SPECIALIST (DATAMGT)  
9S784 - 2326236

15. TO: Position Title and Number  
SUPV IT SPECIALIST (DATAMGT)  
9S784 - 2326236

8. Pay Plan	9. Occ. Code	10. Grade/Level	11. Step/Rate	12. Total Salary	13. Pay Basis
GS	2210	15	10	\$172,500.00	PA
12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay		
\$143,598.00	\$28,902.00	\$172,500.00	\$0		

16. Pay Plan	17. Occ. Code	18. Grade/Level	19. Step/Rate	20. Total Salary/Award	21. Pay Basis
				\$172,500.00	
20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay		

14. Name and Location of Position's Organization  
AFFELM DATA SVC CTR HS  
AHQ COMMAND: 13  
STRATEGY OSC: COS  
PENTAGON ADM VA 20330  
AUTH PAS: HH13FWFW

22. Name and Location of Position's Organization  
AFELM DATA SVC CTR HS  
AHQ COMMAND: 13  
STRATEGY OSC: COS  
PENTAGON ADM VA 20330  
AUTH PAS: HH13FWFW

**EMPLOYEE DATA**

23. Veterans Preference  
1 - None 3 - 10-Point/Disability 5 - 10-Point/Other  
2 - 5-Point 4 - 10-Point/Compassable 6 - 10-Point/Compassable/30%

24. Tenure  
0 - None 1 - Conditional  
1 - Permanent 3 - Indefinite

25. Agency Use  
26. Veterans Preference for RIF  
YES X NO

27. FEGLI  
D0 Basic + Option A

28. Annuitant Indicator  
9 Not Applicable

29. Pay Rate Determinant  
0

30. Retirement Plan K FERS and FICA  
31. Service Comp. Date (Leave) 11-19-2016

32. Work Schedule  
F Full-Time

33. Part-Time Hours Per Biweekly Pay Period

**POSITION DATA**

34. Position Occupied  
1 - Competitive Service 3 - SES (General)  
2 - Excepted Service 4 - RES Career Reserved

35. FLSA Category  
E - Exempt  
N - Nonexempt

36. Appropriation Code  
604000 33200A |

37. Bargaining Unit Status  
8888

38. Duty Station Code  
510100013  
39. Duty Station (City - County - State or Overseas Location)  
ARLINGTON / ARLINGTON / VIRGINIA

40. Agency Data 41 42 43 44

45. Education Level 17  
46. Year Degree Attained 2010  
47. Academic Discipline 521299  
48. Functional Class 00  
49. Citizenship 1 1-USA 8-Other X  
50. Veterans Status  
51. Supervisory Status 2

**PART C - Reviews and Approvals (Not to be used by requesting office.)**

1. Office/Function	Initials/Signature	Date	Office/Function	Initials/Signature	Date
A. AARC	Snyder, Jennifer M	08-11-2021	D.		
B.			E.		
C.			F.		

2. Approval: I certify that the information entered on this form is accurate and that the proposed action is in compliance with statutory and regulatory requirements. Signature Approval Date

**PART D - Remarks by Requesting Office**

(Note to Supervisors: Do you know of additional or conflicting reasons for the employee's resignation/retirement?

YES | NO

Request payments for SLR be restarted back to the date they were dropped. Additionally, Request retroactive payments to the date the service agreement was signed and approved: 10 DEC 2019. Member was authorized total repayment of \$40,000 for 3 years of service which expires 10 DEC 2022. SLR and prior SF-50 are attached.

POC for this action is Jennifer Snyder, jennifer.snyder.10@us.af.mil.

**PART E - Employee Resignation/Retirement**

**Privacy Act Statement**

You are requested to furnish a specific reason for your resignation or retirement and a forwarding address. Your reason may be considered in any future decision regarding your re-employment in the Federal service and may also be used to determine your eligibility for unemployment compensation benefits. Your forwarding address will be used primarily to mail you copies of any documents you should have or any pay or compensation to which you are entitled.

regulations with regard to employment of individuals in the Federal service and their records, while section 8506 requires agencies to furnish the specific reason for termination of Federal service to the Secretary of Labor or a State agency in connection with administration of unemployment compensation programs.

The furnishing of this information is voluntary; however, failure to provide it may result in your not receiving: (1) your copies of those documents you should have; (2) pay or other compensation due you; and (3) any unemployment compensation benefits

This information is requested under authority of sections 301, 3301, and 8506 of title

1. Reasons for Resignation/Retirement (NOTE: Your reasons are used in determining possible unemployment benefits. Please be specific and avoid generalizations.

2. Effective Date      3. Your Signature      4. Date Signed      5. Forwarding Address (Number, Street, City, State, Zip Code)

**PART F - Remarks for SF 50**





> **Appendix H:** June 10, 2022 - Additional MSPB Whistleblower Claims: The continued filing of whistleblower claims with the MSPB, covering the period post-March 11, 2022, is indicative of ongoing issues Akerman faces in the workplace. These claims relate to the broader questions of federal employment law, whistleblower protections, and the rights of tenured employees.

Appendix H includes documents relating to Martin Akerman's continued filing of whistleblower claims with the Merit Systems Protection Board (MSPB), covering the period post-March 11, 2022. These claims are indicative of ongoing workplace issues faced by Akerman and are central to broader questions of federal employment law, whistleblower protections, and the rights of tenured employees.

In this section, we delve into Appendices H1, H2, and H3, a collection of documents that provide insight into Martin Akerman's experiences in navigating workplace challenges and his pursuit of legal remedies within the framework of federal employment and whistleblower laws. These documents, spanning from June 10, 2022, to June 14, 2022, shed light on the issues he has faced, including alleged retaliation and improper conduct, and the procedural complexities that accompany whistleblower claims.



**Appendix H1:** June 10, 2022 - MSPB Whistleblower Claims Filing:

Document H1, filed on June 10, 2022, includes Akerman's whistleblower claims submitted to the MSPB. These claims reflect Akerman's allegations of retaliation and improper conduct in his workplace, underscoring the ongoing challenges he faces in seeking redress and protection under federal employment and whistleblower laws.



# Exhibit C

Request for MSPB to enter Initial Decision on the written record, titled  
"Motion for Initial Decision on the Written Record"

- Dated and served 17 August 2022
- No response received to date
- 8 October marks day 120
- Attaching only page 3 of 22 for brevity

RECEIVED

2022 AUG 32 A 8:41

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-1221-22-0459-W-1

Motion for Initial Decision on the Written Record

Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

Enter Online

---

2. Please enter text of your pleading.

I am hereby requesting this case return the Department of Defense as Respondent and that it be decided on the written record. The agency continues to provide contradictory documents. I have not been provided the records afforded to me by statute and by constitutional due process: Due process while on investigative or notice leave requires that an action be proposed within a particular period of time and all delays be explained and recorded. Unexplained delays while on investigative or notice leave constitute a departure from the law and an error that presumptively harms the employee, particularly since the employee is deemed to pose a threat and is placed involuntarily out of the office while on investigative or notice leave. See the Administrative Leave Act of 2016 and the amendments made by that Act; 5 U.S. Code Â§ 6329b. The agency must provide a notice of proposed action and a reasonable opportunity to reply 30 days before any action can be taken. The 30-day-minimum notice must come after a reasonable opportunity to reply. The 30 day notice must be provided 30 days before any action can be taken. -- See the Administrative Leave Act of 2016 and the amendments made by that Act; 5 U.S. Code Â§ 6329b; An agency may place an employee in leave under paragraph only if the agency has made a determination with respect to the employee that the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, as applicable, may pose a threat to the employee or others; result in the destruction of evidence relevant to an investigation; result in loss of or damage to Government property; or otherwise jeopardize legitimate Government interests; considered assigning the employee to duties in which the employee no longer poses a threat; allowing the employee to TAKE LEAVE FOR WHICH THE EMPLOYEE IS ELIGIBLE; if the employee is absent from duty without approved leave, carrying the employee in absence without leave status; and for an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed; and determined that none of the available options are appropriate.

---

3. Does your pleading assert facts that you know from your personal knowledge?

Yes

**Appendix H2:** June 14, 2022 - MSPB Order on Jurisdiction and Proof Requirements: Document H2, dated June 14, 2022, details the MSPB's order regarding the jurisdiction and proof requirements for Akerman's whistleblower claims. This order highlights the procedural aspects of whistleblower appeals, including the requirements Akerman must meet to establish MSPB jurisdiction over his claims. The document emphasizes the MSPB's process for determining jurisdiction, including the necessity for Akerman to demonstrate nonfrivolous allegations related to whistleblowing or other protected activities and their contribution to the alleged retaliatory personnel actions.





**Attachment 3. Final Communications from MSPB in case DC-1221-22-0459-W-1**

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE**

MARTIN AKERMAN,  
Appellant,

DOCKET NUMBER  
DC-1221-22-0459-W-1

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: June 14, 2022

**THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT  
THIS APPEAL AND ITS PROCESSING. PLEASE READ THE ENTIRE  
DOCUMENT CAREFULLY.**

**ORDER ON JURISDICTION AND PROOF REQUIREMENTS**

**There is a question whether this appeal is within the Board's jurisdiction. As a result, the Board might dismiss the appeal for lack of jurisdiction without addressing the merits of the case. This Order provides necessary information concerning the jurisdictional issue and the burdens of proof the appellant must meet to show that the Board should not dismiss this appeal for lack of jurisdiction, as well as how to prove the claim on the merits.**

The appeal claims the agency took retaliatory action because of the appellant's whistleblowing or other protected activity. I **ORDER** the parties to follow the procedures set out below. If either party has a question about any of the case processing instructions in this Order, you may call this office at the telephone number listed under my signature at the end of the Order for assistance.

### NOTICE TO THE APPELLANT

Your claim that the agency retaliated against you because of your whistleblowing or other protected activity appears to be an individual right of action (IRA) appeal. *See* 5 U.S.C. § 1221. To establish Board jurisdiction over an IRA appeal, you must show that you exhausted your administrative remedies before the Office of Special Counsel (OSC) and make nonfrivolous allegations that: (1) you engaged in whistleblowing activity by making a protected disclosure, or engaged in other protected activity as specified below; and (2) the disclosure or activity was a contributing factor in the agency's decision to take or fail to take one of the personnel actions listed at 5 U.S.C. § 2302(a).

Specifically, you must first prove by a preponderance of the evidence that you brought your whistleblower or other complaint to the attention of OSC, sought corrective action for it, and exhausted OSC's procedures. Preponderance of the evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, would need to find that a contested fact is more likely true than untrue. 5 C.F.R. § 1201.4(q). You have "exhausted" OSC's procedures once OSC has notified you that it is terminating its investigation into your complaint. You may also show you exhausted OSC's procedures if 120 days have passed since you filed your claim with OSC and you have not received a termination notice. To satisfy this requirement, you must have informed OSC of the precise ground of your claim and given it a sufficient basis to pursue an investigation which might lead to corrective action. The test of the sufficiency of your claim to OSC is the statement you made in the complaint requesting corrective action or in other submissions to OSC, not any later characterization of those statements. It is not necessary, though, that you have correctly labeled the category of wrongdoing when you raised it to OSC. In this appeal, I will review only those alleged disclosures and personnel actions that were specifically raised to and exhausted at OSC.

A whistleblowing "disclosure" is defined at 5 U.S.C. § 2302(a)(2)(D) as "a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure

evidences-(i) any violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” See 5 U.S.C. § 2302(b)(8).

In addition, 5 U.S.C. § 2302(b)(9) protects certain activity that may form the basis for an IRA appeal. Specifically, that section makes it unlawful to take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of (A) the exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation with regard to remedying a violation of section 2302(b)(8), discussed immediately above; (B) testifying for or otherwise lawfully assisting any individual in the exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation; (C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or (D) refusing to obey an order that would require an individual to violate a law, rule, or regulation.

A nonfrivolous allegation is a claim under oath or penalty of perjury or supported by evidence relevant to the matter at issue that, if proven, could establish the matters it asserts. 5 C.F.R. § 1201.4(s). Because you must make nonfrivolous allegations as to each of the jurisdictional requirements set out in this Order (except exhaustion at OSC, as stated above), your claim and evidence must pertain to the proof required to support each element of those jurisdictional requirements. Conclusory, vague, or unsupported allegations are not enough to meet this standard. As an administrative agency, the Board has wide latitude in the kinds of evidence that it can accept, and affidavits are just one example of the kind of evidence that may be used to support an allegation. The way in which an allegation may be supported will often depend on the particular facts of the case.

The Board has held that a “gross waste of funds” is more than a debatable expenditure, and is one that is significantly out of proportion to the benefit reasonably expected to accrue to the government; that “gross mismanagement” means a management

action or inaction which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission; and that an "abuse of authority" occurs when a Federal official or employee arbitrarily or capriciously exercises power and adversely affects anyone's rights or causes personal gain or advantage to himself or to someone he prefers.

If your claim is made under section 2302(b)(8), you need not prove that the matter you disclosed actually established any of the conditions described above, such as gross mismanagement. You must, however, make a nonfrivolous allegation that the matter you disclosed was one that a reasonable person in your position would believe was evidence of any of these situations. The test for determining whether your belief was reasonable is whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by you, the employee or applicant, could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger. 5 U.S.C. § 2302(b).

A nonfrivolous allegation that a protected disclosure or activity was a contributing factor in the decision to take or fail to take a personnel action against you is a detailed, factual allegation that you disclosed one of the above matters or engaged in one of the protected activities, and that agency officials responsible for the personnel action were aware of your disclosure or activity and acted within such time that a reasonable person could find that the disclosure or activity contributed to the action. A disclosure shall not be excluded from 5 U.S.C. § 2302(b)(8), however, because of the amount of time which has passed since the occurrence of the events described in the disclosure. 5 U.S.C. § 2302(f)(1)(G). Meeting the knowledge and timing test satisfies your burden, but there are also other ways for you to satisfy it. If you do not introduce allegations and evidence to meet that test, the Board will then consider any relevant evidence on the contributing factor question, including the strength or weakness of the agency's reasons for taking the personnel action, whether the whistleblowing or activity was personally directed at the proposing or deciding official, and whether those individuals had a desire or motive to retaliate against you. You may also show that the official accused of taking retaliatory

action had imputed knowledge of your protected disclosure or activity by showing that individuals with actual knowledge of it influenced the official's action.

There is also another way to gain whistleblower status, which is by making a nonfrivolous allegation that the agency perceived you as a whistleblower. For example, you may gain this status if you make a nonfrivolous allegation that: The agency believed you to be the person who made anonymous complaints concerning violations of law, even though you were not, *see Special Counsel v. Department of the Navy*, 46 M.S.P.R. 274 (1990); the agency knew of your intention to blow the whistle, although you had not done so, *see Mausser v. Department of the Army*, 63 M.S.P.R. 41 (1994); or you disagreed with a public position of the agency but expressed that only within the agency and did not intend for your expression of disagreement to constitute a whistleblowing disclosure but the acting official saw your view as dangerous, *see Thompson v. Farm Credit Administration*, 51 M.S.P.R. 569 (1991); *see also Holloway v. Department of the Interior*, 82 M.S.P.R. 435, ¶ 15 (1999) (a newspaper reported, with no discussion of the particulars, that the appellant had disclosed “fraud, waste and abuse,” and the appellant showed that the agency acted because of the report).

In cases of perceived whistleblowing, the analysis focuses on the agency's perceptions, i.e., whether the agency officials involved in the personnel actions at issue believed that you made or intended to make disclosures that evidenced the type of wrongdoing listed under 5 U.S.C. § 2302(b)(8). In those cases, whether you actually made protected disclosures is immaterial to both the jurisdictional and merits issues of the appeal. However, you must still establish that you exhausted your remedies with OSC on the issue of whether the agency perceived you as a whistleblower and make nonfrivolous allegations that the agency's perception was a contributing factor in its decision to take or not take the personnel action at issue. *King v. Department of the Army*, 116 M.S.P.R. 689, ¶¶ 8, 9 (2011).

The Board has also decided that an individual alleging a violation of 5 U.S.C. § 2302(b)(9)(C) may gain protected status by claiming to have been perceived as having engaged in protected activity. *Corthell v. Department of Homeland Security*, 123 M.S.P.R. 417 (2016). That provision makes it a prohibited personnel practice to take or fail to take, or threaten to take or fail to take, any personnel action because of “cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency or the Special Counsel, in accordance with applicable provisions of law.” To establish jurisdiction, the appellant must prove that he exhausted his remedy with OSC and make nonfrivolous allegations that the agency perceived him to have engaged in the protected activity and that this perception was a contributing factor to the personnel actions at issue. The Board has not yet addressed whether a claim that an agency perceived an appellant to have engaged in any of the other activities listed in § 2302(b)(9) is protected. However, if you believe that retaliation occurred because of such a perception, you must make nonfrivolous allegations concerning the specific facts on which your claim is based.

#### **PROOF OF CLAIM**

If you show that the Board has jurisdiction over your appeal, you are entitled to a hearing on the merits of the appeal, at which you must prove each of those same matters by preponderant evidence, as defined above, i.e., that you engaged in whistleblowing or other protected activity, or were perceived to have done so, that contributed to the personnel action(s). In other words, you must show that it is more likely than not that you engaged in whistleblowing or other protected activity, or were perceived to have done so, and that this contributed to the personnel action.

If you meet this burden, then for the agency to prevail it must show by clear and convincing evidence that it would have taken the same personnel action even if you had not made a disclosure or engaged in other protected activity. In order to determine whether the agency met its clear and convincing evidence burden, the Board looks at the strength of the evidence the agency used in support of the personnel action, the existence

and strength of any motive to retaliate on the part of the agency officials who were involved in the decision(s), and any evidence that the agency takes similar actions against employees who are not whistleblowers or have not engaged in other protected activity, but who are in other ways similar to you with respect to your Federal employment.

If you claim that you were perceived as a whistleblower or to have engaged in an activity under section 2302(b)(9), as noted above, whether you actually were a whistleblower or engaged in such activity is not material; however, you must establish by preponderant evidence the same matters that established jurisdiction. If you meet your burdens on the merits of the appeal, the agency may still prevail if it can show by clear and convincing evidence that it would have taken the personnel action even if it had not perceived you to be as a whistleblower or to have engaged in such activity.

#### **REQUIRED SUBMISSIONS**

For purposes of deciding whether the Board has jurisdiction over your appeal (that is, whether you proved you exhausted your remedy at OSC and made nonfrivolous allegations as to each of the other jurisdictional elements discussed earlier), I **ORDER** the appellant to file a statement, accompanied by evidence, listing the following: (1) your protected disclosure(s) or activity(ies); (2) the date(s) you made the disclosure(s) or engaged in the activity(ies); (3) the individual(s) to whom you made any disclosure(s); (4) why your belief in the truth of any disclosure(s) was reasonable; (5) the action(s) the agency took or failed to take, or threatened to take or fail to take, against you because of your disclosure(s) or activity(ies); (6) why you believe a disclosure or activity, or a perception of such a disclosure or activity, was a contributing factor to the action(s); and (7) the date of your complaint to OSC, the matters you raised in it and any amendments, and the date that OSC notified you it was terminating its investigation of your complaint, or if you have not received such notice, evidence that 120 days have passed since you filed your complaint with OSC. Unless you submit a copy of the complaint you submitted to OSC, along with any amendments you filed there, and a copy of the OSC letter notifying you of your right to appeal to the Board, your response must be in the



form of an affidavit, sworn statement, or declaration under penalty of perjury, 28 U.S.C. § 1746, a form for which is found in the Board's regulations at 5 C.F.R. Part 1201, Appendix IV. The law does not require that you submit a copy of OSC's letter, but it does provide that you bear the burden of establishing the required elements of an IRA appeal.

I note you have already provided a copy of your OSC complaint and right to sue letter. You need not resubmit these documents. Instead you may cite to them as appropriate in responding to this order.

You must file this statement within 10 calendar days of the date of this Order, and must serve a copy on the agency at the same time. The agency may file a response on the jurisdictional issue within 20 calendar days of the date of this Order. Unless I tell the parties otherwise, the record on the issue of jurisdiction will close on the date the agency's response is due. No evidence and/or argument on jurisdiction filed after that date will be accepted unless the party submitting it shows that it was not readily available before the record closed. Notwithstanding the close of the record, however, pursuant to 5 C.F.R. § 1201.59(c), a party must be allowed to respond to new evidence or argument submitted by the other party just before the close of the record. If there is no jurisdiction, I will dismiss your appeal. If the Board has jurisdiction, I will adjudicate your appeal and will schedule a hearing if you requested one.

FOR THE BOARD:

/S/

---

Melissa Mehring  
Administrative Judge  
Phone: (703) 756-6250  
Fax: (703) 756-7112

**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  
440  
Arlington, VA 22201

Agency Representative

Electronic Mail      Kevin Greenfield  
Department of Defense  
Office of the General Counsel  
Washington Headquarters Service &  
Pentagon Force Protection Agency  
WHS/OGC 1155 Defense Pentagon, Rm. 2E1035  
Washington, DC 20301-1155

June 14, 2022

(Date)

/S/

Melissa Mehring  
Administrative Judge

### **The Actions the Agency Took (Jurisdiction Requirement 5)**

7. **CLAIM 1:** From 14 February 2022 to 23 April 2022 (69 days), I was subjected to an involuntary period out of work that the National Guard Bureau incorrectly reported to the Department of Defense as Notice Leave, and the Department of Defense incorrectly charged to the taxpayer and reported to OPM and to Congress as Administrative Leave.
  - a. Time recorded for 14 February 2022 is 8 hours of Notice Leave. I worked 4 hours prior to being told to leave my equipment and to go home. (Exhibit 7a)
  - b. On 10 March 2022, I was informed that I was in an investigative leave status by the deciding official, pending the agency review of the job post, my application to the job, tentative offer letter, official offer letter and the requirement for the job communicated in the Douglas Factors from the proposing official. (Exhibit 7b)
  - c. On 11 March 2022, I was told that I would be placed on Administrative Leave, without need to specify which kind. (Exhibit 7c)
  - d. On 23 March 2022, I remained on Notice Leave well past the Notice Period. (Exhibit 7d)
8. **CLAIM 2:** The National Guard Bureau denied me my earned sick leave during a documented 2-week bout with COVID.
  - a. Between 25 April and 6 May 2022, I requested sick leave after testing positive with COVID and was denied. (Exhibit 8a)
9. **CLAIM 3:** The National Guard Bureau caused the Department of Defense to incur a debt to me for a period in which I was the subject of an official investigation and was not paid.
  - a. Between 24 and 28 April 2022, I prepared information for the OIG for an official investigation and held the recorded conference and was not paid. I was on unpaid suspension despite being sick with COVID. (Exhibit 9a)
10. **CLAIM 4:** The National Guard Bureau caused the Department of Defense to incur a debt to me for a day in which I was asked to return all equipment and identifications (unclassified and classified) and was not paid.

- a. I am entitled to proper documentation and pay related to the time it took for me to return telework equipment, CAC, SIPR token, and parking sticker on 11 May 2022, as instructed. (Exhibit 10a)

11. CLAIM 5: Before and after my 2-week bout with COVID, the agency leveraged pay statuses to manipulate my ability to respond to personnel actions.

- a. The days I was afforded to prepare my response to the deciding official related to the proposed suspension from 14 February 2022 should be coded as Official Time. (Exhibit 11a)
- b. On 8 April 2022, I was granted time to prepare my EEO narrative during the initial stages of EEO counseling. That time was recorded as Notice Leave and not Official Time. (Exhibit 11b)
- c. On 12 May 2022, after the agency did not respond to the EEO counselor within the time allowed by law, the EEO counselor contacted me to extend the time, prepare for and conduct another interview without offering Official Time during the unpaid suspension. (Exhibit 11c)

### **Protected Disclosures or Activities (Jurisdiction Requirements 1-3)**

12. On 2 July 2021, I completed an interview for OSC disclosure (DI-21-0627) and prohibited personnel practice complaint (MA-21-1602) (Exhibit 12)

- a. COP/COS (Erycka Reid and Russ Jimeno) misalignment
  - i. 19 May 2021, Colonel McDaniel agreed to review PDs and the organizational structure with me at a meeting to be scheduled for 24 May 2021. Colonel McDaniel scheduled a "Feedback Meeting" for 24 May 2021 and I requested for us to include and discuss my concerns with the help of the Dispute Resolution service of Air Force District of Washington, in an effort to mitigate what I rightfully started to perceive to be an adverse action.
  - ii. 20 May 2021, I was told that SF50s would be corrected after the merger with SAF/CN is completed.

> **Appendix I:** April 26, 2022 - MSPB Mixed Claims Filed: The mixed claims (Title VII) filed by Akerman related to his suspension, and their subsequent confirmation by the EEOC, are central to his case. Appendix I includes a detailed document related to Martin Akerman's mixed claims filed with the MSPB on April 26, 2022, and related proceedings with the EEOC. These documents highlight the intricate interplay of federal employment law, particularly regarding claims under Title VII, and the unique challenges faced in handling high-level national security positions.

MSPB Mixed Claims Filing on April 26, 2022: On April 26, 2022, Akerman filed mixed claims with the MSPB, which were central to his case. These claims, related to his suspension, bring into focus the complexities of applying federal employment law to sensitive national security roles. Akerman's situation underscores the need for clear and fair treatment within the federal employment framework, especially for positions that involve high-level security clearances and sensitive information.

EEOC Appeal and Adjudication Process: The EEOC appeal document, numbered 2022005058, outlines the procedural aspects of Akerman's appeal following the MSPB filings. This includes guidelines for submitting documents and statements,



emphasizing the critical timeframes and procedural requirements set by the EEOC. The appeal process, as detailed in the document, involves considerations of various types of claims, including those related to discrimination and grievances.

Key Aspects of the Petition for Review: Akerman's Petition for Review filed with the EEOC delves into detailed arguments and legal references, challenging agency decisions and procedures. The petition addresses discrimination claims, referencing laws like the ADEA and ADA. It also highlights the CSRA's provisions, illustrating how these laws intersect with anti-discrimination statutes and affect federal employees facing adverse actions.

Personal Employment Challenges and Material Facts: The document further provides a comprehensive account of Akerman's employment situation, detailing his claims of perceived mental impairment, discrimination, and issues surrounding his security clearance. Akerman's request for a thorough review of material facts not previously considered in decisions reflects his pursuit of justice and due process, challenging the lack of consideration of significant evidence in his case.







Welcome, Martin Log Out

OCT 19

View My Information

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OCT 18 2022

## My Case

### EEOC Number 2022005058

Your appeal of 2022005058 has been received by the U.S. Equal Employment Opportunity Commission's (EEOC) Office of Federal Operations (OFO). You may view the Preliminary Acknowledgement Notice (which has also been emailed to the Email Address in your Public Portal account)

When communicating with the EEOC about this appeal, please reference EEOC Number 2022005058

**Status: The case is now closed, please review the Closure Document for any additional avenues for what steps you may take next**

## My Representatives

## My Documents

### [Initial Appeals from an Agency's Decision on an EEO Complaint, and Appeals from a Decision on a Grievance Containing Claims of Discrimination](#)

You may submit documents related to your appeal to the EEOC using this Portal. However, please be aware that EEOC's regulations at 29 C.F.R. § 1614.403(d) state that any statement or brief in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Accordingly, if you elect to file any statements or briefs after the 30-day time period, it will be at the discretion of the attorney reviewing the matter whether or not to read or consider them during the adjudication of your appeal.

### [Petitions for Review of a Decision by the Merit Systems Protection Board \(MSPB\) on an MSPB Appeal Containing Claims of Discrimination](#)

The Commission's regulations at 29 C.F.R. § 1614.304(b)(3) require that any statement or brief in support of a petition be filed at the same time as the Petition for Review is filed. Accordingly, if you elect to file any statements or briefs after you filed the Petition, it will be at the discretion of the attorney reviewing the matter whether or not to read or consider them during the adjudication of your Petition for Review.

### [Requests for Reconsideration of an EEOC Decision on an Appeal](#)

EEOC management Directive 110, which provides federal agencies and complainants with Commission policies, procedures, and guidance relating to the processing of employment discrimination complaints governed by the Commission's regulations in 29 C.F.R. Part 1614 require that any statement or brief in support of a Request for Reconsideration be filed at the same time as the Request is filed. Accordingly, if you elect to file any statements or briefs after you filed the Request, it will be at the discretion of the attorney reviewing the matter whether or not to read or consider them during the adjudication of your Request for Reconsideration.

You can open a document to review it or download and save it. Please submit only documents of the available Document Types. Documents that you send to or receive from the EEOC are listed below.

Name	Type	Added On
<u><a href="#">Email from complainant.10.14.22</a></u>	Statements/Briefs Complainant	10/18/2022
<u><a href="#">2022-10-14 Amended Complaint</a></u>	Statements/Briefs Complainant	10/18/2022
<u><a href="#">DC220459W1-Tab 11- DocNum1063412</a></u>	Statements/Briefs Complainant	10/18/2022

<u>2022005058_DEC</u>	<b>Appellate Decision</b>	<b>10/17/2022</b>
<u>2022005058_COS</u>	<b>Certificate of Service</b>	<b>10/17/2022</b>
<u>2022005058_received via email</u>	<b>Statements/Briefs Complainant</b>	<b>10/13/2022</b>
<u>DC22037611-PER-11- DocNum1960650.pdf</u>	<b>Compliance - OFO Information Request</b>	<b>10/04/2022</b>
<u>2022-10-04.pdf</u>	<b>Compliance - OFO Information Request</b>	<b>10/04/2022</b>
<u>2022005058_03_A3- AG_092622_084911_A.pdf</u>	<b>Acknowledgement Letter Agency</b>	<b>09/26/2022</b>
<u>2022005058_03_AT- CO_092622_084911_C.pdf</u>	<b>Complainant Acknowledgement Letter</b>	<b>09/26/2022</b>
<u>2022005058_03_A3- MS_092622_084911_M.pdf</u>	<b>MSPB Acknowledgment Letter</b>	<b>09/26/2022</b>
<u>Martin Akerman-Copy</u>	<b>Appeal</b>	<b>09/26/2022</b>
<u>Martin Akerman_03</u>	<b>Appeal</b>	<b>09/26/2022</b>

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**Office of Federal Operations**  
**P. O. Box 77960**  
**Washington, D.C. 20013**

**OFO Document Routing Slip**

<b>Complainant Name</b>	<i>Martin Akerman</i>	
<b>Docket Number</b>		
<b>Date Received</b>	<i>9/8/22</i>	
<b>Date Scanned</b>	SEP 08 2022	
<b>Document Type</b>	<input checked="" type="checkbox"/> APPEAL	BRIEF
	COMPLIANCE	
<b>Method of Delivery</b>	<input checked="" type="checkbox"/> Mailed	Faxed
	Hand Delivered	Emailed

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OCT 18 2022

RECEIVED  
SEP 08 2022  
EEOC/OFO

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY  
Docket # DC-0752-22-0376-I-1  
Petition for Review  
Summary Page

**Case Title :** MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

**Docket Number :** DC-0752-22-0376-I-1

**Pleading Title :** Petition for Review

**Filer's Name :** Martin Akerman

**Filer's Pleading Role :** Appellant

**Details about the supporting documentation**

#	Title/Description	Mode of Delivery
1	Petition For Review	Uploaded
2	Opening	Uploaded
3	Closing and Signature	Uploaded
4	First Page of Privacy Violation	Uploaded
5	DCSA - DOD CAF - FOIA	Uploaded

Please kindly see page 30

It is unclear to me if the rules  
~~allow me to continue going straight~~  
~~to District court or if EEOC~~  
~~will review.~~

Thank you,  
Martin Akerman  
202-656-5601

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MARTIN AKERMAN v. DEPARTMENT OF THE ARMY  
Docket # DC-0752-22-0376-I-1  
Petition for Review  
Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

Enter Online

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2. Do you want to enter the text in a free form manner or through a guided interview?

Free Form

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3. Please enter the text of your pleading

The Attached are the timely Petition For Review, Opening (with supporting information), Closing (with Declaration), and 2 New Attachments.

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4. Does your pleading assert facts that you know from your personal knowledge?

Yes

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5. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

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### **L ADHERENCE TO MSPB PROCEDURES.<sup>62</sup>**

**A. All evidence from the agency should be considered as hear-say and omitted unless they are official authoritative records or signed under oath by credible witnesses.**

**B. Review of AJ decision to not joinder appropriate parties:**

- a. **TAB 40 at 4: My mixed appeal was filed versus the Department of Defense as respondent. The *ORDER AND SUMMARY OF STATUS CONFERENCE* (the ORDER) continues to incorrectly show this appeal to be against the Department of the Army on the grounds that it is my employing agency. From 12 September until 6 June 2022, I worked for the National Guard Bureau. On 16 June 2022 (The date of the ORDER) I was unemployed. The Removal action is not before this court.<sup>63</sup> I am seeking redress in this mixed appeal from the Department of Defense which oversees the National Guard Bureau, the Department of the Army and the Department of the Air Force on the Suspension action.**
- b. **As mentioned in Section 3 above, the Board may also need to joinder State National Guard Components.**
- c. **Not properly joindering does not allow the right parties to respond or be held liable for remedies. This is also against Rule 19.**

**C. REVIEW DENIAL OF MIXED APPEAL:**

- a. **Tab 40 at 5: On 17 June 2022, I filed a motion for clarification on the ORDER to establish if and why the AJ dismissed my mixed appeal. When the MSPB dismisses an appeal based on jurisdictional grounds, the MSPB is determining that the employee was affected by an agency action that the employee may not appeal to the MSPB. When the MSPB dismisses a case based on procedural grounds, the MSPB is determining that the employee was affected by an agency action that the employee may appeal to the MSPB. (Tab 39)**
- b. **In the Order, on page 6, the AJ writes Analyzing an appellant's discrimination and reprisal claims in such cases would require the Board to focus on the validity of**

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<sup>62</sup> 5 CFR § 1201.115(c): The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

<sup>63</sup> 29 CFR 1614.201 - Age Discrimination in Employment Act (29:621-634); 5 USC 7121(g)

the agency's legitimate, nondiscriminatory reason for taking the challenged action (i.e., the validity of the suspension of eligibility to occupy a national security sensitive position determination). *Id.* at 323. Thus, the Board is not permitted to adjudicate whether an agency's adverse action, which is premised on the suspension or revocation of eligibility to occupy a sensitive position and/or access classified information, constitutes impermissible discrimination or reprisal. See, e.g., *Hesse v. Department of State*, 82 M.S.P.R. 489, ¶ 9 (1999), *aff'd*, 217 F.3d 1372 (Fed. Cir. 2000). The appellant disagreed with this conclusion. In support of his argument that the Board should consider his discrimination claim he cited *Southerland v. Department of Defense*, 117 M.S.P.R. 56 (2011), *aff'd as modified* at 119 M.S.P.R. 566 (2013). I find this case inapplicable to the case at bar as it did not involve the adjudication of an adverse action premised on a security determination.

c. I disagree and requested the AJ to (1) have the decision to dismiss the mixed appeal that is implied in this ORDER explained; and (2) have the decision reviewed/certified by the Board prior to the scheduled Hearing

i. As stated in my initial mixed appeal, *In Southerland v. Department of Defense, 2011 MSPB 92 (October 5, 2011)*, it interpreted the Americans With Disabilities Act Amendments Act (ADAAA) and held that if an employee is not challenging the agency's failure to make reasonable accommodation and does not require a reasonable accommodation, the analysis should proceed under the "regarded as" prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. It also held that a "but for" test applies under the ADAAA, i.e., that the employee must show that but for the disability, the agency would not have taken the appealed action, and the burden of persuasion does not shift to the agency to show that it would have taken the action regardless of disability, even if the appellant produces some evidence that disability was one motivating factor in the adverse employment action. I am a qualified individual, making an affirmative claim that a perceived disability covered under the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) was impermissibly considered by the Agency, and having a right to prove that the agency would not have taken the same action in the absence of impermissible discriminatory motives.<sup>64</sup>

<sup>64</sup> At the time of the Board's decision in *Southerland*, neither MSPB reviewing court, nor the EEOC, had addressed the applicability of a mixed-motive analysis to a disability discrimination claim under the ADAAA.



- ii. The United States Supreme Court's recent ruling in *Babb v. Wilkie* changed the law for discrimination claims filed by federal employees. 140 S.Ct. 1168. The U.S. Supreme Court held, in the context of a federal employee's discrimination claim under the Age Discrimination in Employment Act ("ADEA"), that "age need not be a but-for cause of an employment decision" for a plaintiff to prove discrimination. *Id.* at 1172. Instead, age must be "the but-for cause of differential treatment," not the but-for cause of an ultimate employment decision. *Id.* at 1174 (emphasis in original). As a result, at least with respect to liability, a federal employee alleging discrimination under the ADEA need only show that age discrimination played "any part" in the way that the federal employer made a personnel decision. *Id.*
  - iii. Until DOPMA/ROPMA include provisions against age discrimination, or until civilians in the Department of Defense are not held to the promotion and retention bias of Military Officers, civilians will be subjected to an environment of differential treatment.
  - iv. A personnel decision is tainted by discrimination if a protected characteristic plays "any part" in the way that the federal employer made that decision. *Id.* at 1204 (quoting *Babb*, 140 S.Ct. at 1174). Thus, a federal employer is liable for discrimination if a protected characteristic was "the but-for cause of differential treatment," regardless whether the protected characteristic was the but-for cause of the ultimate employment decision. *Id.* (quoting *Babb*, 140 S.Ct. at 1174). "[E]ven when there are non-pretextual reasons for an adverse employment decision," the "presence of those reasons doesn't cancel out the presence, and the taint, of discriminatory considerations." *Id.* at 1204.<sup>65</sup>
- d. Because I was a tenured civilian in the Department of Defense and therefore was a government employee, the terms of my employment and eligibility for promotion, retention, and suspension are governed by the CSRA. This statute was enacted to provide "an integrated scheme of administrative and judicial review" of "employment decisions involving government employees." *Mann v. Haigh*, 120 F.3d 34, 37 (4th Cir. 1997) (quoting *United States v. Fausto*, 484 U.S. 439, 445, 108 S.Ct. 668, 98 L.Ed.2d 830 (1988)). The CSRA was thereby meant to replace the previous "haphazard arrangements for administrative and judicial

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<sup>65</sup> *Ford v. DeJoy*, 4:20-cv-00778-NAD (N.D. Ala. Dec. 27, 2021)

review . that was the civil service system.” Fausto, 484 U.S. at 444, 108 S.Ct. 668.

- e. Chapter 75, Subchapter II of the CSRA provides certain procedural protections for federal employees subjected to certain serious adverse employment actions taken to promote the efficiency of the service. 5 U.S.C. §§ 7511–15. Covered adverse employment actions include suspensions for more than fourteen days. Id. § 7512. Individuals subject to such adverse employment actions may challenge the action before the MSPB, and they may seek review of the MSPB’s decision in the Federal Circuit. Id. §§ 7703(b)(1)(a), 7513(d).
- f. However, the CSRA also anticipates that employees may challenge such actions under federal antidiscrimination statutes over which the Federal Circuit lacks jurisdiction. Thus, Section 205 of the CSRA provides that the MSPB may hear claims of discrimination under Title VII, the ADEA, or the Fair Labor Standards Act, where the alleged discrimination is tied to claims arising from an adverse employment action over which the board otherwise has jurisdiction. Id. § 7502. These cases are defined by regulations as “mixed cases”—cases in which an employee “has been affected by an action which the employee or applicant may appeal to the [MSPB]” and alleges that the basis for the action was prohibited discrimination. Id. § 7702(a)(1); 5 C.F.R. § 1614.302.
- g. Under controlling precedent, we now identify a mixed case by looking to a petitioner’s allegations, not the basis for the MSPB’s jurisdiction or disposition. Where a petitioner alleges that they suffered an adverse employment action subject to MSPB review, and that the adverse employment action involved discrimination under an antidiscrimination statute enumerated in 5 U.S.C. § 7702(a)(1)(B), they have raised a mixed case.
- h. This error deprives the appellant of a right to remedy and a burden shifting framework unique to his case.

**D. REVIEW AS NOT APPLYING BUT-FOR BURDEN SHIFTING FRAMEWORK.<sup>66</sup>**

- a. As mentioned in my initial mixed appeal, a “but for” test applies under the ADEA, ADA and ADAAA, i.e., that I, the employee, must show that but for the presence, and the taint, of discriminatory considerations, the agency would not have taken the appealed action, and the burden of persuasion does not shift to the

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<sup>66</sup> Tab 40 at 7-10

agency to show that it would have taken the action regardless of presence, and the taint, of discriminatory considerations.

- b. Accordingly, the points called "Facts not in Dispute" must be considered only after I am given a chance to state my "but for" case, and only in the context of establishing opposing issues of fact when compared to the agency's own contradictory evidence, the evidence the agency continues to refuse to provide me, and the evidence still due to me under timely FOIA requests.
- c. Despite rejecting the mixed appeal and its available remedies, the Board should still retain the burden shifting framework afforded under the facts of this case:

- i. My initial mixed appeal on 26 April 2022 makes the following assertion:

1. *On 25 March 2022, I received evidence that the agency took impermissible discriminatory actions "but for" perceived mental impairment : "FEB 2, 2022: Mr. McNeill and senior leaders made preliminary decision to suspend subject's clearance based on information contained in the SOR regarding subject's mental health issues and concern for National Security."*<sup>67, 68, 69</sup> (Tab 27 at 8)

- ii. My status before the Impermissible Discriminatory Actions (as at 2 February 2022):

1. Favorable Evaluation in September of 2021, Communicated to NGB Security Manager on 26 January 2022. (Exhibit A) No law prevents MSPB from reviewing this evidence.
    2. Able to obtain and maintain, and in the process of obtaining a TS Clearance. Security clearance status verified before final offer with NGB, Confirmed by NGB on several occasions as highlighted in

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<sup>67</sup> In *Southerland v. Department of Defense*, 2011 MSPB 92 (October 5, 2011), it interpreted the Americans With Disabilities Act Amendments Act (ADAAA) and held that if an employee is not challenging the agency's failure to make reasonable accommodation and does not require a reasonable accommodation, the analysis should proceed under the "regarded as" prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.

<sup>68</sup> *Babb v. Wilkie*, Secretary of Veteran Affairs, No. 18-882 (Apr. 6, 2020)

<sup>69</sup> *Ford v. DeJoy*, 4:20-cv-00778-NAD (N.D. Ala. Dec. 27, 2021)

the omnibus document from docket DC-1221-22-0257-W-1. This is the condition of employment cited in the adverse personnel action. (Tab 27 at 5)(Exhibit B) No law prevents MSPB from reviewing this evidence.<sup>70</sup>

- a. *AUG 11, 2021: NGB Security (OIS-A) completed CPAC new hire request. Subject required a Top Secret clearance for position per CPAC documents. DISS indicated that subject had a Tier 5 investigation that completed APR 4, 2020 and adjudication for Top Secret was in progress. This indicated no additional action was required from Security and no delinquencies noted at the time of completion. Subject's SOR was dated AUG 12, 2021.*
  - b. *AUG 26, 2021 - Official Offer: This position requires the following Conditions of Employment. If you are unable to obtain/maintain these requirements, you may be separated from the position and Federal employment. By accepting this job offer, you are acknowledging and agreeing to these Conditions of Employment. 1) Incumbent must be able to obtain and maintain a TOP SECRET/SCI security clearance.*
3. Good documented Performance of duties as highlighted in my appointment letter and performance plan. No law prevents MSPB from reviewing this evidence. (Exhibit C)
  4. Response due 24 March 2022 as communicated to me on 26 January 2022. (Tab 9 at 91)(Exhibit A) No law prevents MSPB from reviewing this evidence.
    - a. Extension granted until 13 May 2022 on 8 February 2022. No law prevents MSPB from reviewing this evidence. (Tab 27 at 10)(Tab 9 at 91)

**iii. "But for" test: WITHOUT THE DISCRIMINATORY CONSIDERATIONS**

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<sup>70</sup> See *Buelna*, 121 M.S.P.R. 262

1. I would have continued to work on important CDO matters with a SECRET clearance and ability to obtain a TS clearance. No law prevents MSPB from reviewing this evidence. This is the single condition of employment cited in the adverse personnel action.<sup>71</sup> (Exhibit B)
2. I would have responded to the SOR by the allowed 13 May 2022 due date. No law prevents MSPB from reviewing this evidence. (Exhibit A)

iv. **"But for" test: ADDITIONAL SUBSUMED DISCRIMINATORY ACTIONS<sup>72</sup>**

1. 8 February 2022 - Same person that took the impermissible discriminatory action conspired with Security office to suspend my access after an extension was granted by the DOD CAF. (Tab 27 at 9)
  - a. Access suspension is falsified - I verified that I still have an active SECRET clearance on 31 May 2022.<sup>73</sup> (Exhibit D)
2. 14 February 2022 - Same person that took the impermissible discriminatory action on 8 February 2022 was the recommending official for the Indefinite Suspension. (Tab 27 at 9)
3. 14 February 2022 - Same person that took the impermissible discriminatory action placed me on Notice Leave and out of the office involuntarily. (Tab 27 at 9)

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<sup>71</sup> See Buelna, 121 M.S.P.R. 262. The Board explained that the only information material to an agency's charge involving the suspension or revocation of a clearance is whether the employee's position required a security clearance and whether the clearance was suspended or revoked; the Board concluded that any additional information a deciding official may consider in connection with such a charge cannot be new and material information under Ward/Stone.

<sup>72</sup> Each (12(D)(a)-12(D)(e)): Ward v. U.S. Postal Service, 634 F.3d 127, 1279-80 (Fed. Cir. 2011) and Stone v. Federal Deposit Insurance Corporation, 179 F.3d 1368 (Fed. Cir. 1999): ex parte communications that introduce new and material information to the deciding official may violate the due process guarantee of notice.

<sup>73</sup> See Buelna, 121 M.S.P.R. 262

4. 18 Feb - 14 March 2022 - Same person that took the impermissible discriminatory action held ex parte communications with the deciding official. (Tab 27 at 9)
5. 14 March 2022 - Someone that held ex parte communications with both the person that took the impermissible discriminatory action and the deciding official misinformed OPM LMER when they requested my files. (TAB 22.at 85)

*a. Subject: Akerman, Martin - Request for information: Hello Karen, LMER is requesting the complete hiring packet on Martin Akerman, EOD 12 Sep 2021 (RPA: 108062). Please include the following:*

- i. Vacancy Announcement*
- ii. Certificate*
- iii. Any and all information provided by Mr. Akerman including any selections notes that were uploaded into USA Staffing*
- iv. Security and suitability verification - if you do not have this information please provide a POC for suitability*
- v. Tentative offer including any corrections or changes to the offers*
- vi. Final offer that set his EOD*
- vii. Any/all additional email traffic between you and Mr. Akerman related to the pre-employment requirements or any other information you feel is important.*

*b. Subject: RE: Akerman, Martin - Request for information: Hi Karen, We are actually in the decision phase of an adverse action with this employee - the deciding official is a GO... Can you give me what you have available and then we can play cleanup when Ms. Deppe returns?*

**E. APPELLANT IS CHALLENGING DECISION TO NOT APPOINT LEGAL COUNSEL DESPITE MIXED CLAIM (INCLUDING PERCEIVED MENTAL IMPAIRMENT) AND APPELLANT REQUEST FOR HELP. (TAB 31) APPELLANT IS ALSO CHALLENGING DENIED DISCOVERY. (TAB 28)**

**II. PENDING AND NEW EVIDENCE AND LEGAL ARGUMENTS:<sup>74</sup>**

- A. The appellant is still waiting for the following items as given to OPM LMER on 15 March.<sup>75</sup>
- a. *Vacancy Announcement*
  - b. *Certificate*
  - c. *Any and all information provided by Mr. Akerman including any selections notes that were uploaded into USA Staffing*
  - d. *Security and suitability verification - if you do not have this information please provide a POC for suitability*
  - e. *Tentative offer including any corrections or changes to the offers*
  - f. *Final offer that set his EOD*
  - g. *Any/all additional email traffic between you and Mr. Akerman related to the pre-employment requirements or any other information you feel is important.*
  - h. This information is important to deconflict issues of material fact. They are also important for due process as the deciding official received them and the appellant has not yet gotten them. Appellant found out about the ex parte communications and the records on 17 May 2022 (Tab 17 at 85)
- B. The appellant is still waiting for signature on the document provided by the agency on 25 March 2022 with the final opportunity to reply by 30 March 2022 (only 5 days).
- a. The document contains important evidence IN SUPPORT OF CLAIM OF DUE PROCESS AND DISCRIMINATION.
  - b. The document was not considered as it did not have a signature. The agency refused to have it signed.
- C. The appellant is still waiting for FOIA request of the security clearance history, requested within the period of response to the SOR issued on 26 January 2022, while appellant was in the process of obtaining the TS clearance.
- a. The evidence is owed to the appellant and no decision can be rendered without this authoritative record of the history of the clearance.

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<sup>74</sup> 5 CFR § 1201.115(d): New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. The information contained in the documents was unavailable despite due diligence when the record closed.

<sup>75</sup> See above email between HR and deciding official "then we can play cleanup"

- b. Please see Motion to Compel Discovery (Tab 33) "I made explicit requests on 26 January 2022 (attached) together with Tab 23 at 52 (I certify that I have no additional documents on file for Mr. Akerman. Any other security documents that may be in Mr. Akerman's official security file will be provided to him via the FOIA request he submitted."
- D. The appellant continues to request all documents afforded by regulation. The agency owes the appellant an accurate Position Description, as provided to OPM for the job posting. The agency owes a single file with all documents required by either 5 U.S. Code § 7513 or 5 U.S. Code § 7532, as applicable. The agency owes the appellant a series of records as afforded by 5 U.S. Code § 6329b. The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge. This constitutes an issue of material fact as the agency must prove that any adverse action will promote the efficiency of the service.
- a. The agency did not provide documents required by due process.
- E. The appellant Received New Evidence Showing New Legal Argument: On 13 June 2022, the agency unnecessarily and willfully leaked private information about the Plaintiff to the Virginia Employment Commission (Attachment 1). These civilian personnel records are covered under Section 522a of Title 5, United States Code (commonly known as "the Privacy Act of 1974") and DoD Directive 5400.111. This case is before the District Court. The document misinforms the Virginia Employment Commission by stating the official charge on record: "failure to attain and/or maintain".
- a. The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge.<sup>76</sup>
- b. The agency must prove that the adverse action will promote the efficiency of the service.<sup>77</sup>
- c. Labels must be proven.<sup>78</sup> The agency must prove "failure".

<sup>76</sup> *Nazelrod v. Justice*, 54 MSPR 461, 463-68 (1992)

<sup>77</sup> 5 U.S.C. § 7513(a). The action must be taken "only for such cause as will promote the efficiency of the service."

<sup>78</sup> *King v. Nazelrod*, 43 F.3d 663, 666-67 (Fed. Cir. 1994) - The U.S. Court of Appeals for the Federal Circuit has held that an agency must prove every element of a charge, including intent if that is an element. For example, if an agency uses the label of "theft" as its charge, then the



### **III. ERRONEOUS FINDINGS OF MATERIAL FACT:<sup>72</sup>**

- A. The appellant includes the points covered in the BACKGROUND sections above as they describe issues of material fact that are significant enough to warrant review.
- B. The appellant calls on the Board to grant the appellant the records outlined in section II above, by way of direct request or Order to Compel the agency to produce the files. In the interest of timeliness and to reduce administrative burden on all parties, the appellant requests the Board request the files, share the files with all parties, and render a Final Decision after all files and Legal Review from EEOC are received.<sup>80</sup>
- C. The AJ failed to take appellant's evidence into consideration during the Status Conference. TAB 40:<sup>81</sup>

a. The timeline in the Summary of Status Conference is biased. This is a mixed appeal. I object generally on the basis that under procedures afforded to me, as a Federal employee in the Department of Defense, over 40 years old, and regarded as having a disability, the burden of persuasion does not shift to the agency to show that it would have taken the action regardless of presence, and the taint, of discriminatory considerations. I object to the alleged facts as presented in this ORDER because this matter is before the court in Individual Right of Action appeal DC-1221-22-0257-W-1 filed on 28 February 2022, as one of the 69 claims raised. I only appeal for the exercise of Board authority to require the agency to prove anything insofar as it relates to the minimum analysis required under the mixed appeal. I reserve the right to provide additional objections at a later time.

i. I point to Tab 27 for an additional Agency timeline provided on 25 May 2022.

ii. Point 1: Objection - As a matter of fact, the date and response due date as they relate to this action are 26 January 2022 and 24 March 2022, respectively. The SOR was re-issued to me on 26 January 2022 and I was given a due date of 24 March 2022 to respond. The dates present a

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agency must prove that the employee "intended to permanently deprive the owner of possession" of the item in question.

<sup>72</sup> 5 CFR § 1201.115(a): The initial decision contains erroneous findings of material fact.

<sup>80</sup> 5 U.S. Code § 7701(c)(2)

<sup>81</sup> Tab 40 - the AJ admits to not considering these facts and the decision to decide without the ability to decide on the record as a whole is detrimental to the appellant and the merit system.

divergence of fact that only a hearing can decide. It will be decided as part of Individual Right of Action appeal DC-1221-22-0257-W-1.

- iii. **Point 3: Correction** - My position requires me to "obtain and maintain" said clearance.
- iv. **Point 4: Objection** - I do not work for the Army National Guard. Mark Berglund did not have the authority to suspend my clearance and my clearance is still intact. I went to the Pentagon and visited classified offices without an escort for an investigative meeting with General Garduno (the deciding official) on 10 March 2022. I have an active SECRET clearance verified on 31 May 2022. Furthermore, I was granted an extension to my response to the SOR on 8 February 2022, from 24 March 2022 to 13 May 2022. (Exhibit A)(Exhibit D)
- v. **Point 5: Clarification** - I received Merged Notices including a notice of proposed indefinite suspension without the ability to respond.
- vi. **Point 6: Objection** - The agency did not afford me time to respond to the proposed suspension of access.
- vii. **8 February 2022** - Same person that took the impermissible discriminatory action conspired with Security office to suspend my access after an extension was granted by the DOD CAF.
- viii. **14 February 2022** - Same person that took the impermissible discriminatory action on 8 February 2022 was the recommending official for the Indefinite Suspension.
- ix. **14 February 2022** - Same person that took the impermissible discriminatory action placed me on Notice Leave and out of the office involuntarily.
- x. **18 Feb - 14 March 2022** - Same person that took the impermissible discriminatory action held ex parte communications with the deciding official.
- xi. **14 March 2022** - Someone that held ex parte communications with both the person that took the impermissible discriminatory action and the

deciding official misinformed OPM LMER when they requested my files.  
(TAB 22 at 85)

1. a. Subject: Akerman, Martin - Request for information: Hello Karen, LMER is requesting the complete hiring packet on Martin Akerman, EOD 12 Sep 2021 (RPA: 108062). Please include the following:
  - a. Vacancy Announcement
  - b. Certificate
  - c. Any and all information provided by Mr. Akerman including any selections notes that were uploaded into USA Staffing
  - d. Security and suitability verification - if you do not have this information please provide a POC for suitability
  - e. Tentative offer including any corrections or changes to the offers
  - f. Final offer that set his EOD
  - g. Any/all additional email traffic between you and Mr. Akerman related to the pre-employment requirements or any other information you feel is important.
2. Subject: RE: Akerman, Martin - Request for information: Hi Karen, We are actually in the decision phase of an adverse action with this employee - the deciding official is a GO... Can you give me what you have available and then we can play cleanup when Ms. Deppe returns?
  - b. **SIDECAR:** Discrimination in this case is further supported by the urgency, lack of candor, and violations of due process demonstrated by the agency on the decision to (1) place me immediately on Notice Leave and (2) falsification of Douglas Factors. Congress was clear about the use of Notice Leave. The agency's misrepresentation of facts to the OPM LMER and MSPB breaches the trust and

confidence implied in our employment relationship. This breach is the real threat to the agency and to National Security.

**D. The AJ failed to take additional facts into account (also from the Status Conference):**

- a. Favorable Evaluation in September of 2021, Communicated to NGB Security Manager on 26 January 2022. (Exhibit A) No law prevents MSPB from reviewing this evidence.
- b. Able to obtain and maintain, and in the process of obtaining a TS Clearance. Security clearance status verified before final offer with NGB, Confirmed by NGB on several occasions as highlighted in the omnibus document from docket DC-1221-22-0257-W-1. This is the condition of employment cited in the adverse personnel action. (Tab 27 at 5)(Exhibit B) No law prevents MSPB from reviewing this evidence.<sup>82</sup>
  - i. *AUG 11, 2021: NGB Security (OIS-A) completed CPAC new hire request. Subject required a Top Secret clearance for position per CPAC documents. DISS indicated that subject had a Tier 5 investigation that completed APR 4, 2020 and adjudication for Top Secret was in progress. This indicated no additional action was required from Security and no delinquencies noted at the time of completion. Subject's SOR was dated AUG 12, 2021.*
  - ii. *AUG 26, 2021 - Official Offer: This position requires the following Conditions of Employment. If you are unable to obtain/maintain these requirements, you may be separated from the position and Federal employment. By accepting this job offer, you are acknowledging and agreeing to these Conditions of Employment. 1) Incumbent must be able to obtain and maintain a TOP SECRET/SCI security clearance.*
- c. Good documented Performance of duties as highlighted in my appointment letter and performance plan. No law prevents MSPB from reviewing this evidence. (Exhibit C)
- d. Response due 24 March 2022 as communicated to me on 26 January 2022. (Tab 9 at 91)(Exhibit A) No law prevents MSPB from reviewing this evidence.
- e. Extension granted until 13 May 2022 on 8 February 2022. No law prevents MSPB from reviewing this evidence. (Tab 27 at 10)(Tab 9 at 91)

<sup>82</sup> See Buelna, 121 M.S.P.R. 262

- f. I would have continued to work on important CDO matters with a SECRET clearance and ability to obtain a TS clearance. No law prevents MSPB from reviewing this evidence. This is the single condition of employment cited in the adverse personnel action.<sup>83</sup> (Exhibit B)
- g. I would have responded to the SOR by the allowed 13 May 2022 due date. No law prevents MSPB from reviewing this evidence. (Exhibit A)
- h. My access was not suspended or revoked, as I still possess a SECRET clearance as of 31 May 2022, I responded to the SOR in a timely manner on 10 May 2022, and I am in the process of obtaining the TS clearance as of 9 June 2022.
- i. I requested to be reinstated from suspension on several occasions – even as part of EEO counseling that terminated without agency response on 12 May 2022.
- j. The position I held required that “Incumbent must be able to obtain and maintain a TOP SECRET/SCI security clearance”. The Board must consider and review this fact.
- k. In Putnam, the agency actually suspended the appellant’s security clearance on January 26, 2011, *id.* at 66-67, and it thereafter proposed the appellant’s indefinite suspension on February 1, 2011. My case is different as it does not involve a criminal allegation and in my case, the agency:
  - i. misrepresented the requirement of the position that I accepted to the OPM LMER and to the deciding official.
  - ii. falsely claimed to have suspended my clearance on 8 February 2022,
  - iii. and communicated the alleged proposal and decision on the access suspension to me on the same day, 14 February 2022, together with the proposed indefinite suspension (Merged Notices).

<sup>83</sup> See Buelna, 121 M.S.P.R. 262, The Board explained that the only information material to an agency’s charge involving the suspension or revocation of a clearance is whether the employee’s position required a security clearance and whether the clearance was suspended or revoked; the Board concluded that any additional information a deciding official may consider in connection with such a charge cannot be new and material information under Ward/Stone.

- I. Putnam also decided that in the event that an appellant cannot establish a Ward/Stone violation concerning the deciding official's penalty determination, as in all other instances involving alleged due process violations, the Board will then conduct a harmful error analysis to determine if the agency erred in the application of its procedures, and, if so, whether such an error caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. Id., see Bennett v. Department of Justice, 119 M.S.P.R. 685, (2013) (under Ward/Stone, if no due process violation is found, then a harmful error analysis must be conducted).
- E. The AJ describes the initial appeal as an "appeal". The appeal was a "mixed appeal". A mixed appeal offers the appellant certain rights and procedures in MSPB and/or EEOC that do not appear to be afforded to the appellant in the case at bar. Only after the appellant's claims of discrimination were rejected did the appellant request for a decision on the written record. (TAB 44)
- F. The AJ describes that the appellant asserted claims of discrimination and retaliation. The AJ is the presiding official over the whistleblower IRA claims not before the board in this case. Including those claims would result in a claim for double remedy. The petition at bar is one over facts, legal application, due process and procedures related to a rejected mixed appeal where MSPB has original jurisdiction. Any additional claims identified are being remedied in other forums as provided in the initial pages of this petition.
  - a. On 20 May 2022, I cleared up confusion. (Tab 27)
  - b. This was cleared up again in the status conference and in response thereafter. This is explained in Tab 40 on page 16.
- G. The AJ describes the appellant's employer as the Army National Guard Bureau. Background Section 2.4 clears this confusion. The AJ was misinformed by the Army. I have raised this matter on several occasions. This issue appears to be the sole reason the correct parties are not joindered in this case and in a manner that will prevent MSPB from providing remedy.
- H. The AJ correctly describes the letter from the DODCAF as a notice of intent to revoke. There is no question that the appellant was in the process of obtaining the required clearance and responding to the notice of intent to revoke, even after transferring to the National Guard Bureau. However, The issue of material fact here is regarding dates. The notice was provided to the appellant by the National Guard Bureau on 1 October 2021

and re-issued on 26 January 2022 with an response due date of 24 March 2022 which was later extended to 13 May 2022 on 8 February 2022. The appellant was never delinquent in his response, he was in the process of obtaining the clearance, and not not guilty of failing to obtain a clearance, the condition of employment.

- I. Until the FOIA request is returned from DODCAF (See II.C above), we can only rely on this email: On Thu, Sep 23, 2021 at 3:50 PM Morris, Sematar A CIV NG NGB ARNG (USA) <sematar.a.morris.civ@mail.mil> wrote: "Don't see anything in DISS with his clearance. It says, Adjudication for Top Secret in progress with DoD CAE." (Enclosure 19 from the agency). The notice must state the specific instances of poor performance that are the basis for the action.<sup>84</sup>
- J. Appellant was in the process of obtaining the clearance. The "and/or" was not a condition of employment. Maintaining would require first obtaining. ("and")
- K. There is an issue of material fact surrounding the security requirement of the position. The final email offer setting the EOD and the condition of employment says "Top Secret" - the Position Description printed on 2 February 2022, THE SAME DAY AS THE ALLEGED DISCRIMINATORY ACTION, (agency Tab 7 at 8) conflicts with other facts:
  - a. See point C.j. above: The position I held required that "Incumbent must be able to obtain and maintain a TOP SECRET/SCI security clearance". The Board must consider and review this fact.
  - b. Agency Tab 7 at 17 says "Top Secret/Special Sensitive" and at 40 says "Top Secret" with a link:
  - c. See point I.D.c.i.1. above: *On 25 March 2022, I received evidence that the agency took impermissible discriminatory actions "but for" perceived mental impairment : "FEB 2, 2022: Mr. McNeill and senior leaders made preliminary decision to suspend subject's clearance based on information contained in the SOR*

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<sup>84</sup>. *Greene v. Department of Health and Human Services*, 48 M.S.P.R. 161, 166 (1991); see also *Cleveland Board of Education v. Loudernill*, 470 U.S. 532 (1985); *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672, 680-81 (1991).

*regarding subject's mental health issues and concern for National Security."*<sup>85</sup>  
<sup>86</sup> <sup>87</sup> (Tab 27 at 8)

- d. The new evidence and legal argument provided in section II.E. above appears to show a reference to the charge outlined in the notice of proposed indefinite suspension, "Failure to attain and/or maintain a condition of employment" ...  
" - TOP SECRET/Special Sensitive Clearance and access to classified information and systems."
- e. Official documents are needed to clear up the requirement. The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge.<sup>88</sup> Please see C.a.xi.1.b. above showing pending documents requested by appellant.
- f. See II.A.h.: This information is important to deconflict issues of material fact. They are also important for due process as the deciding official received them and the appellant has not yet gotten them. Appellant found out about additional ex parte communications and the records on 17 May 2022 (agency Tab 17 at 85)

L. Specification 1 in agency tab 7 at 5 says "DODCAF invoked a preliminary decision", tab 7 at 20 says "If you choose the option not to respond or if you chose to respond but your response is not received by your SMO or SCI SMO within the specified time, this preliminary decision will become a final security determination on the merits of the information available. Please direct questions regarding this memorandum to your SMO or SCI SMO." The evidence provided is conflicting. The notice must state the specific instances of poor performance that are the basis for the action.<sup>89</sup>

M. Agency tab 7 at 39 does not match enclosure 6 provided with notice (Tab 1 at 45)

<sup>85</sup> In *Southerland v. Department of Defense*, 2011 MSPB 92 (October 5, 2011), it interpreted the Americans With Disabilities Act Amendments Act (ADAAA) and held that if an employee is not challenging the agency's failure to make reasonable accommodation and does not require a reasonable accommodation, the analysis should proceed under the "regarded as" prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.

<sup>86</sup> *Babb v. Wilkie, Secretary of Veteran Affairs*, No. 18-882 (Apr. 6, 2020)

<sup>87</sup> *Ford v. DeJoy*, 4:20-cv-00778-NAD (N.D. Ala. Dec. 27, 2021)

<sup>88</sup> *Nazelrod v. Justice*, 54 MSPR 461, 463-68 (1992)

<sup>89</sup> *Greene v. Department of Health and Human Services*, 48 M.S.P.R. 161, 166 (1991); see also *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985); *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672, 680-81 (1991).



**IV. THE APPLICATION OF THE LAW TO THE FACTS:<sup>90</sup>**  
**IV.1. THE DECISION TO SUSTAIN THE CHARGES OF THE ALLEGED**  
**SECURITY CLEARANCE SUSPENSION:**

A. OPM regulations set the minimum standard for a reply period at not less than 24 hours for the alleged security clearance suspension.<sup>91</sup>

a. The document (Enclosure 6) given to the appellant (without commander) offered no reply period. (Tab 1 at 45)

i. Enclosure 6 was handed in the same meeting with Proposed Indefinite Suspension on 14 February 2022. The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge.<sup>92</sup> OPM regulations set the entitlement of the employee to minimally be informed of their right to review the material which is relied on to support the reasons for the action given in the notice. OPM regulations set the entitlement of the employee to receive in writing the reason(s) for the decision before the effective date of the action. The agency must advise the employee of any grievance rights available in the notice of decision before the effective date of the action. The agency must maintain copies of a minimal set of records and shall furnish them upon request.

ii. THE OFFENSE LISTED IS A CONFIRMED HOSPITALIZATION FOR A MENTAL HEALTH CONDITION IN 2012.

b. Enclosure 6 was likely not provided to OPM LMER (see Tab 7 at 39). See II.A. The appellant is still waiting for the items as given to OPM LMER on 15 March.<sup>93</sup>

B. The agency did not provide clear reasons as demonstrated by multiple inconsistent recitations in the proof provided.

C. The Official that allegedly suspended security clearance does not have the authority.<sup>94</sup>

<sup>90</sup> 5 CFR § 1201.115(b): The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case.

<sup>91</sup> 5 C.F.R. §§ 752.203(b), 752.404(b).

<sup>92</sup> *Nazelrod v. Justice*, 54 MSPR 461, 463-68 (1992).

<sup>93</sup> See above email between HR and deciding official "then we can play cleanup"

<sup>94</sup> *Buelna v. Department of Homeland Security*, 122 M.S.P.R. 262 para 27-28 (2014)

- a. The commander on the alleged Suspension of Access action, is a General Officer of the Arizona Army National Guard "federalized" and working for the Army National Guard, through alleged delegated signature authority to Mr. Mark Berglund of the Army National Guard. The State of Arizona may need to be joindered in this case. (Tab 1 at 45 and Tab 7 at 37)
- b. Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.<sup>95</sup>
- c. The appellant accepted a Department of the Army civilian billet in the National Guard Bureau<sup>96</sup> on August 26, 2021.
- d. All Department of the Army civilians are necessarily not U.S. Army or Army National Guard civilians. Furthermore, they only have investigative rights through the OIG of the Department of Defense and not the US Army, National Guard Bureau, or any other Branch under the purview of the Joint Chiefs of Staff. The National Guard Bureau is not the Army National Guard AND not the Air National Guard<sup>97</sup>

D. This document was never filed and I never lost SECRET clearance. Only official records from DODCAF can confirm. Appellant is currently working for a DOD Contractor with a SECRET clearance. Please see Motion to Compel Discovery (Tab 33) "I made explicit requests on 26 January 2022 (attached) together with Tab 23 at 52 (I certify that I have no additional documents on file for Mr. Akerman. Any other security documents that may be in Mr. Akerman's official security file will be provided to him via the FOIA request he submitted."

E. The Board must test pertinent facts again, once authoritative information is received.

<sup>95</sup> 10 U.S. Code § 12405 - National Guard in Federal service

<sup>96</sup> As a Joint Activity under the control of the Chief of the National Guard Bureau, reporting directly to the Secretary of Defense and the Joint Chiefs of Staff, the National Guard Bureau is staffed by both members of the military and civilians from the Military Departments, including but not limited to the Department of the Army and the Department of the Air Force.

<sup>97</sup> 10 U.S. Code § 10506(a)(2) - Other senior National Guard Bureau officers assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

**IV. THE APPLICATION OF THE LAW TO THE FACTS:<sup>98</sup>**  
**IV.2. THE DECISION TO SUSTAIN THE CHARGES OF THE INDEFINITE**  
**SUSPENSION:**

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner". An agency must give the employee a notice containing the charges as well as an explanation of its evidence and provide the employee an opportunity to respond. A failure to take any of these steps will result in the action being reversed on the basis that it violates the employee's minimum due process rights.

An indefinite suspension means placing an employee in a temporary status without duties and pay for an indeterminate period of time. To sustain an indefinite suspension, the agency must show that: (1) it imposed the suspension for an authorized reason; (2) the suspension has an ascertainable end (an event that will trigger the conclusion of the suspension); (3) the suspension bears a relationship (nexus) to the efficiency of the service; and (4) the penalty is reasonable.<sup>99</sup>

For the reasons set forth below, the AJ's initial decision AFFIRMING the agency's action, and the agency's action, must be reviewed and reversed:

A. The deciding official, a Nevada Air National Guard Officer, does not have the termination authority needed to decide on the proposed suspension of a Tenured Department of the Army Civilian in the National Guard Bureau.

B. THE PROPER BURDEN-SHIFTING FRAMEWORK MUST BE USED WHEN ANALYZING THIS CASE AS A WHOLE. Appellant maintains that the burden does not shift to the organization after appellant proves discriminatory motive per combination of new and existing stare decisis.<sup>100 101 102</sup>

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<sup>98</sup> 5 CFR § 1201.115(b): The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case.

<sup>99</sup> *Hernandez v. Department of the Navy*, 120 M.S.P.R. 14, ¶ 6 (2013).

<sup>100</sup> In *Southerland v. Department of Defense*, 2011 MSPB 92 (October 5, 2011), it interpreted the Americans With Disabilities Act Amendments Act (ADAAA) and held that if an employee is not challenging the agency's failure to make reasonable accommodation and does not require a reasonable accommodation, the analysis should proceed under the "regarded as" prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.

<sup>101</sup> *Dabb v. Wilkie, Secretary of Veteran Affairs*, No. 18-882 (Apr. 6, 2020)

<sup>102</sup> *Ford v. DeJoy*, 4:20-cv-00778-NAD (N.D. Ala. Dec. 27, 2021)

- C. Preponderant evidence requires that a reasonable person consider the record as a whole.<sup>103</sup>
- a. What was the requirement of the position? The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge.<sup>104</sup>
  - b. The appellant never failed to meet a condition of employment, including the Suspension of Access. Until the FOIA request is returned from DODCAF (See II.C above), we can only rely on this email: On Thu, Sep 23, 2021 at 3:50 PM Morris, Sematar A CIV NG NGB ARNG (USA) <sematar.a.morris.civ@mail.mil> wrote: "Don't see anything in DISS with his clearance. It says, Adjudication for Top Secret in progress with DoD CAE." (Enclosure 19 from the agency). The notice must state the specific instances of poor performance that are the basis for the action.<sup>105</sup>
  - c. The AJ erred in finding that the agency's charge is the appellant's "failure to obtain and/or maintain a condition of employment, a Top Secret clearance and access to classified information and systems". (Initial Decision page 10)
- D. The Board must test pertinent facts again, in consideration of the aforementioned and after all authoritative information is received:<sup>106</sup>
- a. Decision-Maker Must Listen: The decision maker did not consider all evidence in response in writing or in alleged hearing. Alleged hearing was presented to the appellant as an investigative hearing after OIG was investigating claims of PPD-19 violations. Agency files required by statute do not contain all appellant responses, as highlighted.
  - b. Constitutional Right to Notice: The agency must effectuate the suspension no earlier than 30 days after the last opportunity to respond. Because of Notice leave and the agency decision to place the appellant involuntarily out of the office, the appellant is also entitled to more information as part of that notice. The last

<sup>103</sup> 5 C.F.R. § 1201.56(b)(1)(ii)

<sup>104</sup> *Nazelrod v. Justice*, 54 MSPR 461, 463-68 (1992)

<sup>105</sup> *Greene v. Department of Health and Human Services*, 48 M.S.P.R. 161, 166 (1991); see also *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985); *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672, 680-81 (1991).

<sup>106</sup> 5 U.S.C. § 7513

opportunity was afforded 30 March 2022. Suspension was sustained 12 April 2022 to begin 25 April 2022, while appellant was sick with COVID and denied sick leave (Before this court under separate IRA appeal). See section 8 above.

- i. SF-50 was given to me after all other documents. (Tab 1 at 7)
- c. **Clear Charge and Specifications:** The appellant has proved that he was not provided clear charge and specifications. See section 8.2 above and evidence of shifting charge and specifications throughout this petition.
- d. **Establishment of Performance Expectations:** The appellant has proved that he was not provided attainable means of returning from suspension, pending records from a separate IRA case with 69 claims before the Board. See section 8.3 above.
- e. **Labels Must be Proven:** The agency never proved the label of "failed". See II.E.
- f. **Constitutional Right to a Meaningful Reply Opportunity:** Appellant was only given 5 days to reply (25-30 March 2022). Appellant was not given any days if we consider that the email regarding OPM LMER was presented after the final suspension.
- g. **Statutory Entitlement of a Reasonable Reply Opportunity:** Appellant was only given 5 days to reply (25-30 March 2022). Was not given any days if we consider that the email regarding OPM LMER was presented after the final suspension.
- h. **Regulatory Entitlement of a Reasonable Reply Opportunity:** Appellant was only given 5 days to reply (25-30 March 2022). Was not given any days if we consider that the email regarding OPM LMER was presented after the final suspension.
  - i. **ADDITIONALLY:** Use of a biased coordinator to arrange for the suspension and removal of the appellant throughout the case at bar constitutes persistent ex parte communications which were present throughout the Notice Period.
- i. **Regulatory Entitlement of Notice:**<sup>107</sup>

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<sup>107</sup> 5 C.F.R. §§ 752.203(b), 752.404(b).

- i. OPM regulations set the entitlement of the employee to minimally be informed of their right to review the material which is relied on to support the reasons for the action given in the notice. THIS WAS NOT AFFORDED
- ii. OPM regulations set the entitlement of the employee to receive in writing the reason(s) for the decision before the effective date of the action. THIS WAS NOT AFFORDED
- iii. The agency must advise the employee of any grievance rights available in the notice of decision before the effective date of the action. THIS WAS NOT AFFORDED
- iv. The agency must maintain copies of a minimal set of records and shall furnish them upon request. THIS WAS NOT AFFORDED

E. The appellant requests petition for review as he was able to clearly establish and prove claims or discrimination and violations of due process, including ex parte communications, improper interference (D.h.i. above), and withholding information. All preventing opportunity to be heard "at a meaningful time and in a meaningful manner". A failure to take any of these steps will result in the action being reversed on the basis that it violates the employee's minimum due process rights. (Tab 40 Status Conference)

**IV. THE APPLICATION OF THE LAW TO THE FACTS:<sup>108</sup>**  
**IV.3. THE DECISION TO SUSTAIN THE CHARGED MISCONDUCT AND**  
**AFFIRM THE DECISION TO SUSPEND.**<sup>109 110 111 112</sup>

- A. THE AJ REACHED DECISION AFTER SHIFTING BURDEN TO THE AGENCY. THIS IS NOT IN LINE WITH THE ANALYSIS FRAMEWORK AFFORDED TO THE APPELLANT PER POTENTIALLY PRECEDENTIAL ARGUMENT ESTABLISHED ON THE BASIS OF RECENT STARE DECISIS<sup>113 114 115</sup>(See IV2.B. above)
- B. The Decision contained many issues of material fact and misapplication of the law as explained in sections IV1 & IV2. The appellant was not afforded meaningful time or a meaningful manner to respond.
- a. The appellant was able to prove errors of law and fact related to the charge and specification, notice, and misinformation around dates and times.
  - b. The appellant was able to prove errors of law and fact regarding the lack of authority of the officials in both decisions, also proving improper interference.

<sup>108</sup> 5 CFR § 1201.115(b): The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case.

<sup>109</sup> 5 CFR § 1201.115(c): The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

<sup>110</sup> 5 U.S. Code § 7701(c)(2): The agency's decision may not be sustained if the employee or applicant for employment shows harmful error in the application of the agency's procedures in arriving at such a decision, shows that the decision was based on any prohibited personnel practice described in 5 U.S. Code § 2302(b), or shows that the decision was not in accordance with law.

<sup>111</sup> Some recent laws and stare decisis may require that MSPB establish this case as Precedential.

<sup>112</sup> 5 CFR § 1201.115(e): Notwithstanding the above provisions in this section, the Board reserves the authority to consider any issue in an appeal before it.

<sup>113</sup> In *Southerland v. Department of Defense*, 2011 MSPB 92 (October 5, 2011), it interpreted the Americans With Disabilities Act Amendments Act (ADAAA) and held that if an employee is not challenging the agency's failure to make reasonable accommodation and does not require a reasonable accommodation, the analysis should proceed under the "regarded as" prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.

<sup>114</sup> *Babb v. Wilkie*, Secretary of Veteran Affairs, No. 18-882 (Apr. 6, 2020)

<sup>115</sup> *Ford v. DeJoy*, 4:20-cv-00778-NAD (N.D. Ala. Dec. 27, 2021)

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE**

**MARTIN AKERMAN, pro se,  
Appellant,**

**DOCKET NUMBER  
DC-0752-22-0376-I-1**

**V.**

**DEPARTMENT OF THE ARMY,  
Agency.  
(DISPUTED)**

**DATE: September 6, 2022**

**Martin Akerman, Arlington, Virginia, pro se.**

**Bernard E. Doyle, and Jenny Lin Naylor, Arlington, Virginia, for the  
agency.**

**INITIAL DECISION BY**

**Melissa Mehring  
Administrative Judge**

**PETITION FOR REVIEW OF INITIAL DECISION**

**DISCLOSURE OF POTENTIAL CONFLICT**

The appellant knows Mr. Raymond Limon through mutual membership in, and a mentorship program provided by, the National Association of Hispanic Federal Executives (NAHFE), where in 2020, prior to Mr. Raymond's appointment to the MSPB, the NAHFE president introduced Mr. Limon to the appellant in order to help the appellant prepare for Senior Executive Service in a mentorship capacity. Despite the limited interaction, with 3 Board members, the Board may wish to recuse Mr. Limon from this Review and still maintain a quorum. The appellant knows of no other such potential conflict.

**5 USC § 2302(b) CASES NOT BEFORE THE BOARD IN THIS PETITION**

The appellant has several delineated cases spanning jurisdictions and time. Whistleblower allegations have been exhausted through OSC and were brought to the attention of MSPB as separate IRA appeals. Additionally, there are two whistleblower cases related to Presidential Policy Directive 19 that were severably appealable and appealed to the DOD and IC OIG.



### **MATTERS UNDER EEOC AND DISTRICT COURT JURISDICTION**

There is a case in District Court related to a variety of exhausted claims. This case was originally filed as a mixed appeal. The MSPB rejected the discrimination elements. I returned the case to the agency for further processing with EEOC and received no answer. I informed the EEOC of my intent to sue on the grounds of discrimination and filed an amended claim in District Court.

**I AM SENDING THIS PETITION TO EEOC (COPY OPM) TO GET LEGAL REVIEW AND CONFIRMATION THAT I HAVE MET EEOC EXHAUSTION REQUIREMENTS FOR DISTRICT COURT (BEFORE 30 DAYS).<sup>1</sup> PLEASE SEE ITEM I.C. ON PAGE 14**

Office of Federal Operations  
Equal Employment Opportunity Commission  
131 M Street, N.E.  
Suite 5SW12G  
Washington, D.C. 20507

### **SUFFICIENT DETAIL FOR THE BOARD TO OVERTURN "AND/OR" REMAND BUT NOT TO CONSIDER THE CASE AS A WHOLE**

The appellant has been waiting for a series of authoritative files from the agencies that represent new significant evidence or legal argument that was not available when the record was closed, as described in the petition under "Pending And New Evidence". However, because the appellant is able to make a strong case without the files and because the MSPB has the authority to acquire and grant the appellant the same records by way of direct request or Order to Compel the agency to produce the files, in the interest of timeliness and to reduce administrative burden on all parties, the appellant requests the Board request the files, share the files with all parties, and render a Final Decision after all files and Legal Review from EEOC are received.<sup>2</sup>

### **DOCUMENT FORMAT AND READABILITY (39 PAGES)**

Facts and arguments requiring review by the Board will be bold/underlined with footnotes.<sup>3</sup>  
The appellant is claiming that the Administrative Judge failed to consider the evidence as a whole and did not draw appropriate inferences, resulting in erroneous conclusions.

<sup>1</sup> THE SCOPE OF THIS CASE DOES NOT APPEAR TO PROVIDE TOLLING WITH EEOC.

<sup>2</sup> 5 U.S. Code § 7701(c)(2)

<sup>3</sup> 5 CFR § 1201.114: A petition or cross petition for review states a party's objections to the initial decision, including all of the party's legal and factual arguments, and must be supported by references to applicable laws or regulations and by specific references to the record. To simplify the analysis of this complex case for the Board, pro se petitioner (appellant) will follow this bold/underline and footnote format, making references to applicable laws or regulations and specific references to the record in parenthesis.

**BASIS FOR REVIEW**

1. The appellant humbly petitions the Board for the review of:
  - 1.1. **I. Adherence to MSPB Procedures;**<sup>4</sup>
  - 1.2. **II. Pending and New Evidence and Legal Arguments;**<sup>5</sup>
  - 1.3. **III. Erroneous Findings of Material Fact;**<sup>6</sup>
  - 1.4. **IV. The Application of the Law to the Facts;**<sup>7</sup>
    - 1.4.1. **IV.1. The Decision to SUSTAIN the Charges of the Alleged Security Clearance Suspension;**
    - 1.4.2. **IV.2. The Decision to SUSTAIN the Charges of the Indefinite Suspension;**
    - 1.4.3. **IV.3. The Decision To Sustain The Charged Misconduct And AFFIRM The Decision To Suspend;**<sup>8 9</sup>
  - 1.5. **V. The Decision to AFFIRM the Decision to Suspend (including I-IV above)**<sup>10</sup>

<sup>4</sup> 5 CFR § 1201.115(c): The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

<sup>5</sup> 5 CFR § 1201.115(d): New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. The information contained in the documents was unavailable despite due diligence when the record closed.

<sup>6</sup> 5 CFR § 1201.115(a): The initial decision contains erroneous findings of material fact.

<sup>7</sup> 5 CFR § 1201.115(b): The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case.

<sup>8</sup> 5 CFR § 1201.115(c): The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

<sup>9</sup> 5 U.S. Code § 7701(c)(2): The agency's decision may not be sustained if the employee or applicant for employment shows harmful error in the application of the agency's procedures in arriving at such a decision, shows that the decision was based on any prohibited personnel practice described in 5 U.S. Code § 2302(b), or shows that the decision was not in accordance with law.

<sup>10</sup> Some recent laws and stare decisis may require that MSPB establish this case as Precedential.

## BACKGROUND

### 2. Employment Background

- 2.1. The appellant was a tenured Federal Civilian Employee with constitutional property rights to his position as well as related entitlements and employment protections<sup>11</sup>.
- 2.2. The appellant accepted a Department of the Army civilian billet in the National Guard Bureau<sup>12</sup> on August 26, 2021. (Tab 40 at 28)
- 2.3. The appellant transferred to the National Guard Bureau in the Department of Defense<sup>13</sup>.
  - 2.3.1. The National Guard Bureau is not the Army National Guard AND not the Air National Guard<sup>14</sup>.
- 2.4. The appellant worked with but not for the Army National Guard as the Chief Data Officer of the National Guard Bureau,<sup>15</sup> (Tab 40 at 44)
  - 2.4.1. The National Guard Bureau is not a National Guard Element under the purview of a State or Territory in the United States.<sup>16</sup>

<sup>11</sup> The Fifth and Fourteenth Amendments state that a person may not be deprived of property by the government without "due process of law," or fair procedures.

<sup>12</sup> As a Joint Activity under the control of the Chief of the National Guard Bureau, reporting directly to the Secretary of Defense and the Joint Chiefs of Staff, the National Guard Bureau is staffed by both members of the military and civilians from the Military Departments, including but not limited to the Department of the Army and the Department of the Air Force.

<sup>13</sup> 10 U.S. Code § 10501(a) - National Guard Bureau: There is in the Department of Defense the National Guard Bureau, which is a joint activity of the Department of Defense.

<sup>14</sup> 10 U.S. Code § 10506(a)(2) - Other senior National Guard Bureau officers: The Director and Deputy Director, Army National Guard, and the Director and Deputy Director, Air National Guard, shall assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

<sup>15</sup> 10 U.S. Code § 10501(b) - National Guard Bureau: The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

<sup>16</sup> 10 U.S. Code § 12406 - National Guard in Federal service: Whenever (1) the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign

3. Respondents<sup>17</sup>

- 3.1. The proposing official on the Indefinite Suspension action is a Department of the Air Force Senior Executive working for the National Guard Bureau. The Air Force and/or the National Guard Bureau should be joindered in this case.
- 3.2. The deciding official on the Indefinite Suspension action is a General Officer of the Nevada Air National Guard "federalized" and working for the National Guard Bureau. The State of Nevada, the Air Force, and/or the Department of Defense should be joindered in this case.
- 3.3. The Colonel that took prohibited discriminatory actions and documented the Memorandum for Record related to the Merged Notices on 14 February 2022 and the decision to place the appellant on Notice Leave is an Officer of the State of Arkansas Army National Guard "federalized" and working for the National Guard Bureau. The State of Arkansas and/or the Department of Defense should be joindered in this case.
- 3.4. The commander on the alleged Suspension of Access action, is a General Officer of the Arizona Army National Guard "federalized" and working for the Army National Guard, through alleged delegated signature authority to Mr. Mark Berglund of the Army National Guard. Additionally, The State of Arizona may need to be joindered in this case.

4. Use of State National Guard Forces to Break Federal Employment Laws

- 4.1. Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.<sup>18</sup>

nation; (2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or (3) the President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

<sup>17</sup> Rule 19. Required Joinder of Parties

<sup>18</sup> 10 U.S. Code § 12405 - National Guard in Federal service

## ARGUMENTS

5. The Constitution sits above all other laws, rules, and regulations.<sup>19</sup>
  - 5.1. Justice, Tranquility, and defense (modern spelling) sit below the Constitution of the Union. Constitutional rights supersede National Security rules.<sup>20</sup>
  - 5.2. The needs of the Union, Justice, and Tranquility come before defense:
    - 5.2.1. Any duly established body of justice should not be prevented from rattling the shackles of Tranquility and defense and any other subservient part of the formed Union.<sup>21</sup>
    - 5.2.2. A body without authority to question defense or Tranquility is not a body of justice.<sup>22</sup>
      - 5.2.2.1. Laws that insure domestic Tranquility supersede laws that provide for the common defence.
      - 5.2.2.2. Similarly, in separate analysis of the transition from the Union and Justice and Tranquility to defence, when taken as a description in part of the whole:
        - 5.2.2.2.1. A body without authority to question a part of the Union is not a body of Justice.<sup>23</sup>
6. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."<sup>24</sup>

<sup>19</sup> Both the letter and spirit of the Constitution speak one truth: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

<sup>20</sup> "We the People of the United States, in Order to form a more perfect Union, ..., do ordain and establish this Constitution for the United States of America."

<sup>21</sup> Spirit of all, but namely the 2nd, Amendments

<sup>22</sup> "...establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity..."

<sup>23</sup> Spirit of the 10th and 14th Amendment

<sup>24</sup> Letter of the 9th Amendment putting the RIGHTS OF PEOPLE before Justice, before defence.

## 7. Constitutional Right to a Meaningful Reply Opportunity <sup>25</sup>

The agency must provide a notice of proposed action and a reasonable opportunity to reply 30 days before any action can be taken. It has been established and accepted that the appellant has a property right to his position and has not committed a crime for which a prison sentence may be imposed so the appellant has an inalienable right to a Meaningful Reply Opportunity.<sup>26</sup>

### 7.1. Decision-Maker Must Have Power to Decide:

7.1.1. The decision will be valid if it has "the knowledge and approval of an official with termination authority." This power to terminate is derived from the power to appoint.<sup>27</sup>

7.1.2. The reply cannot be an empty formality in which the employee speaks and no one with the power to affect the outcome listens.<sup>28</sup> An agency decision where the deciding official lacks the power to cancel or mitigate the action is unconstitutional.

7.1.3. The deciding official must be able to invoke his or her discretion as to whether the proposed penalty is warranted.<sup>29</sup>

7.1.3.1. Officials – no matter how pure their own motives – have the responsibility to ensure that the action has not been corrupted by someone else in the process who has a prohibited motive.

### 7.2. Decision-Maker Must Listen

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<sup>25</sup> Ward v. U.S. Postal Service, 634 F.3d 1274, 1280 (Fed. Cir. 2011). "There is no constitutionally relevant distinction between ex parte communications relating to the underlying charge and those relating to the penalty." In both cases, if the communications introduce new and material information, they "run astray of the due process requirements of notice and an opportunity to be heard." If no substantive (constitutional) rights were violated, then the Board must examine if procedural rights set forth in statute or regulation were violated.

<sup>26</sup> For chapter 75 actions, the agency may effectuate the removal in less than 30 days if there is reasonable cause to believe the employee has committed a crime for which a prison sentence may be imposed. 5 U.S.C. § 7513(b)(1) and (2).

<sup>27</sup> Vandewall v. Department of Transportation, 55 M.S.P.R. 561, 564 (1992).

<sup>28</sup> Lange v. Department of Justice, 119 M.S.P.R. 625, para 23 (2013)

<sup>29</sup> Buelna v. Department of Homeland Security, 122 M.S.P.R. 262 para 27-28 (2014)

- 7.2.1. Due process requires that the deciding official must read the written reply.<sup>30</sup>
- 7.2.2. The agency must consider the relevant Douglas factors when reaching a decision on the appropriate penalty.<sup>31</sup>
  - 7.2.2.1. The agency either has no policy or has a zero-tolerance policy as it relates to assigning staff to other duties, as required per the Administrative Leave Act of 2016 (5 U.S. Code § 6329h).<sup>32</sup>

## 8. Constitutional Right to Notice

### 8.1. Right to an Opportunity

- 8.1.1. The 30-day-minimum notice must come after a reasonable opportunity to reply.
- 8.1.2. The 30 day notice must be provided 30 days before any action can be taken.
- 8.1.3. Due process requires notifying the employee of what the official will consider when deciding.<sup>33</sup>

### 8.2. Clear Charge and Specifications

<sup>30</sup> Hodges v. U.S. Postal Service, 118 M.S.P.R. 591, para 6 (2012); Alford v. Department of Defense, 118 M.S.P.R. 556, para 5-7 (2012)

<sup>31</sup> Hilliard v. U.S. Postal Service, 111 M.S.P.R. 634, ¶ 7 (2009) (holding that an agency's failure to consider relevant Douglas factors of which it was aware warrants an award of attorney fees), aff'd, 403 F. App'x 504 (Fed. Cir. 2010); Halper v. U.S. Postal Service, 91 M.S.P.R. 170, ¶ 7 (2002) (explaining that a failure to consider all of the relevant Douglas factors will result in the adjudicator performing the assessment using the Douglas factors and modifying the penalty if necessary).

<sup>32</sup> See Cunningham v. U.S. Postal Service, 112 M.S.P.R. 457, ¶ 6 (2009) (explaining that if an agency imposes a removal action under a zero tolerance policy without giving bona fide consideration to the appropriate Douglas factors, its penalty determination is not entitled to deference);

<sup>33</sup> Lopes v. Department of the Navy, 116 M.S.P.R. 89, para 24-33 (2012)

- 8.2.1. The notice must state the specific instances of poor performance that are the basis for the action.<sup>34</sup>
- 8.2.2. The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge.<sup>35</sup>
- 8.2.3. The agency must prove that the adverse action will promote the efficiency of the service.<sup>36</sup>
- 8.2.4. Labels must be proven.<sup>37</sup>
  - 8.2.4.1. The agency must, and did not yet, prove that I failed to obtain

### 8.3. Establishment of Performance Expectations

- 8.3.1. The extent to which an employee is on notice of the agency's expectations is a factor in determining the appropriateness of the penalty.<sup>38</sup> This means that if the agency did not express a performance expectation to the employee, the lack of notification would be considered as a mitigating factor when deciding if the agency's action was appropriate.<sup>39</sup>
- 8.3.2. An agency cannot require that an employee perform better than the standards that have been communicated to the employee.<sup>40</sup>

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<sup>34</sup> *Greene v. Department of Health and Human Services*, 48 M.S.P.R. 161, 166 (1991); see also *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985); *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672, 680-81 (1991).

<sup>35</sup> *Nazelrod v. Justice*, 54 MSPR 461, 463-68 (1992)

<sup>36</sup> 5 U.S.C. § 7513(a). The action must be taken "only for such cause as will promote the efficiency of the service."

<sup>37</sup> *King v. Nazelrod*, 43 F.3d 663, 666-67 (Fed. Cir. 1994) - The U.S. Court of Appeals for the Federal Circuit has held that an agency must prove every element of a charge, including intent if that is an element. For example, if an agency uses the label of "theft" as its charge, then the agency must prove that the employee "intended to permanently deprive the owner of possession" of the item in question.

<sup>38</sup> *Fairall v. Veterans Administration*, 844 F.2d 775, 776 (1987); *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 306 (1981).

<sup>39</sup> *Fairall v. Veterans Administration*, 33 M.S.P.R. 33, 45-46 (1987).

<sup>40</sup> *Shorey v. Department of the Army*, 77 M.S.P.R. 239, 244 (1998).



9. The severity of the penalty together with the lack of due process amount to a constructive discharge (removal).<sup>41</sup>

9.1. A CONSTRUCTIVE DISCHARGE OCCURS WHEN AN EMPLOYEE RESIGNS FROM HIS/HER EMPLOYMENT BECAUSE (S)HE IS BEING SUBJECTED TO UNLAWFUL EMPLOYMENT PRACTICES. IF THE RESIGNATION IS DIRECTLY RELATED TO THE RESPONDENT'S UNLAWFUL EMPLOYMENT PRACTICES, IT IS A FORESEEABLE CONSEQUENCE OF THOSE PRACTICES AND CONSTITUTES A CONSTRUCTIVE DISCHARGE. COMMISSION DECISION NO. 72-2062, CCH EEOC DECISIONS (1973) § 6366. RESPONDENT IS RESPONSIBLE FOR A CONSTRUCTIVE DISCHARGE IN THE SAME MANNER THAT IT IS RESPONSIBLE FOR THE OUTRIGHT DISCRIMINATORY DISCHARGE OF A CHARGING PARTY.<sup>42</sup>

9.2. Agency's coercive actions made working conditions so difficult or unpleasant that a reasonable person in that employee's position would have felt compelled to resign, retire, or take demotion.

9.2.1. UNLAWFUL INDEFINITE SUSPENSION AND AN UNLAWFUL SUSPENSION OF CLEARANCE.<sup>43</sup>

9.2.2. Unlawful Placement On Notice Leave And Coercive Actions To Prevent Income To The Appellant.<sup>44</sup>

9.2.3. UNLAWFUL COERCIVE ACTIONS RELATED TO DUE PROCESS AND RIGHTS.<sup>45</sup>

9.2.4. GENERALLY HOSTILE WORK ENVIRONMENT.

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<sup>41</sup> Not before the court in this case for remedy. This is before the District Court, as exhausted through EEOC. Appellant raises the constructive discharge to state the case and impact of the agency actions as a whole.

<sup>42</sup> EEOC 612.9(a) - Constructive Discharge

<sup>43</sup> Partially before this court. MIXED APPEAL WAS REJECTED

<sup>44</sup> Due Process related to Notice Leave is before this court under *Pending and New Evidence and Legal Arguments*. Case is being addressed by MSPB under an Individual Right of Action Appeal.

<sup>45</sup> Partially before this court. MIXED APPEAL WAS REJECTED

10. **Statutory Entitlement to a Reasonable Reply Opportunity<sup>46</sup>**

- 10.1. An employee against whom an action is proposed is entitled to at least 30 days' advance written notice.<sup>47</sup>
- 10.2. An employee against whom an action is proposed is entitled to a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.<sup>48</sup>
- 10.3. An employee against whom an action is proposed is entitled to copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material upon request.<sup>49</sup>
- 10.4. The agency proposing the action shall maintain copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material to be furnished to the employee affected upon the employee's request.<sup>50</sup>

11. **Regulatory Entitlement to a Reasonable Reply Opportunity**

- 11.1. OPM regulations set the minimum standard for a reply period at not less than 24 hours.<sup>51</sup>

12. **Regulatory Entitlement to Notice:<sup>52</sup>**

- 12.1. OPM regulations set the entitlement of the employee to minimally be informed of their right to review the material which is relied on to support the reasons for the action given in the notice.
- 12.2. OPM regulations set the entitlement of the employee to receive in writing the reason(s) for the decision before the effective date of the action.

<sup>46</sup> 5 CFR § 752.404

<sup>47</sup> 5 U.S. Code § 7513(b)(1)

<sup>48</sup> 5 U.S. Code § 7513(b)(2)

<sup>49</sup> 5 U.S. Code § 7513(e).

<sup>50</sup> 5 U.S. Code § 7513(e).

<sup>51</sup> 5 C.F.R. §§ 752.203(b), 752.404(b).

<sup>52</sup> 5 C.F.R. §§ 752.203(b), 752.404(b).

12.3. The agency must advise the employee of any grievance rights available in the notice of decision before the effective date of the action.

12.4. The agency must maintain copies of a minimal set of records and shall furnish them upon request.

13. Agency not Following Procedures<sup>53</sup>

13.1. At a minimum, the pro se appellant claims that the agency did not follow Procedures when allegedly issuing the proposed notice to suspend the clearance.

13.2. At a minimum, the pro se appellant claims that the agency did not follow Procedures when allegedly filing a decision to suspend the clearance.<sup>54</sup>

13.3. At a minimum, the pro se appellant claims that the agency did not follow Procedures when placing the appellant on Notice Leave.<sup>55</sup>

13.4. AT A MINIMUM, THE PRO SE APPELLANT CLAIMS THAT THE AGENCY DID NOT FOLLOW PROCEDURES WHEN DISALLOWING OFFICIAL TIME TO PREPARE A RESPONSE TO EEO, OR EEOC, AND NOT RESPONDING TO EEO COUNSELOR OR REQUEST TO RETURN CASE.<sup>56</sup>

13.5. At a minimum, the pro se appellant claims that the agency did not follow procedures when issuing the proposed notice to indefinitely suspend the appellant.<sup>57</sup>

13.6. At a minimum, the pro se appellant claims that the agency did not follow Procedures when deciding to sustain the indefinite suspension.

<sup>53</sup> 5 U.S.C. § 7701(c)(2). The agency action will not be sustained if the employee was harmed by the agency's failure to follow procedures or if the agency decision was reached as a result of the commission of a prohibited personnel practice

<sup>54</sup> FOIA Request under *Pending and New Evidence and Legal Arguments.*

<sup>55</sup> Case not before this court in this case. Included 13.3 as required documents were denied. See *Pending and New Evidence and Legal Arguments.*

<sup>56</sup> IRA case not before this court in this case. MIXED APPEAL WAS REJECTED

<sup>57</sup> IRA case not before this court in this case. MIXED APPEAL WAS REJECTED

14. Merit Principles

- 14.1. Merit principles must be adhered to in all performance-based actions.<sup>58</sup> Employees should be protected against reprisal for the lawful disclosure of information which the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.<sup>59</sup> Officials – no matter how pure their own motives – have the responsibility to ensure that the action has not been corrupted by someone else in the process who has a prohibited motive.

**SHIFTING CHARGES AND DENIED DOCUMENTS**

15. The appellant continues to request all documents afforded by regulation. The agency owes the appellant an accurate Position Description, as provided to OPM for the job posting. The agency owes a single file with all documents required by either 5 U.S. Code § 7513 or 5 U.S. Code § 7532, as applicable. The agency owes the appellant a series of records as afforded by 5 U.S. Code § 6329b. The specific charge and not the factual recitation controls the agency's burden of proof. The recitation and proof must match the charge.<sup>60</sup> This constitutes an issue of material fact as the agency must prove that any adverse action will promote the efficiency of the service.<sup>61</sup>
- 15.1. The agency claims that there is a concern around National Security related to appellant's employment. The agency denied cause and procedure documents.
- 15.2. The agency denied documents and the chance to speak to the commander as afforded by 5 U.S. Code § 7532.
- 15.3. The agency denied documents related to the decision to keep the employee involuntarily out of the office while on Notice Leave, any notice of extensions, notice of placement, and notice of delays as afforded by 5 U.S. Code § 6329b.

<sup>58</sup> *Lovshin v. Department of the Navy*, 767 F.2d 826, 840-41 (1985) (explaining that "Congress intended that merit principles must be adhered to by agencies in all performance-based actions" and "Congress itself designed a statutory framework which implements merit principles in connection with chapter 75 actions").

<sup>59</sup> 5 U.S. Code § 2301

<sup>60</sup> *Nazelrod v. Justice*, 54 MSPR 461, 463-68 (1992)

<sup>61</sup> 5 U.S.C. § 7513(a). The action must be taken "only for such cause as will promote the efficiency of the service."

**V. THE DECISION TO AFFIRM THE DECISION TO SUSPEND**

- A. At a minimum, the appellant has proven that the agency did not follow their own policy.
  - a. The agency must consider the relevant Douglas factors when reaching a decision on the appropriate penalty.<sup>114</sup>
    - i. The agency either has no policy or has a zero-tolerance policy as it relates to assigning staff to other duties, as required per the Administrative Leave Act of 2016 (5 U.S. Code § 6329b).<sup>115</sup>
- B. The appellant is petitioning for review of the Administrative Judge's Initial Decision to sustain the charged misconduct and AFFIRM the National Guard Bureau's decision to indefinitely suspend the appellant, an action taken by the agency that when considered with other prohibited practices resulted in a constructive discharge. The appellant petitions for review as outlined in the above.

**DECLARATION**

I, Martin Akerman, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6 September 2022

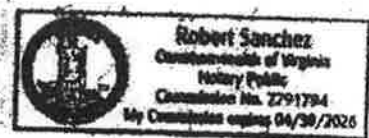


Martin Akerman

<sup>114</sup> Hilliard v. U.S. Postal Service, 111 M.S.P.R. 634, ¶ 7 (2009) (holding that an agency's failure to consider relevant Douglas factors of which it was aware warrants an award of attorney fees), aff'd, 403 F. App'x 504 (Fed. Cir. 2010); Halper v. U.S. Postal Service, 91 M.S.P.R. 170, ¶ 7 (2002) (explaining that a failure to consider all of the relevant Douglas factors will result in the adjudicator performing the assessment using the Douglas factors and modifying the penalty if necessary).

<sup>115</sup> See Cunningham v. U.S. Postal Service, 112 M.S.P.R. 457, ¶ 6 (2009) (explaining that if an agency imposes a removal action under a zero tolerance policy without giving bona fide consideration to the appropriate Douglas factors, its penalty determination is not entitled to deference);

County/City of Arlington  
 Commonwealth/State of Virginia  
 The foregoing instrument was acknowledged before me this 6 day of Sept 2022 by Martin Akerman  
 (name of person seeking acknowledgment)  
Robert Sanchez  
 Notary Public  
 My Commission Expires: 30 Sept 2026  
 Submission date: 2022-09-06 15:51:55



658818  
 20220606084234

**Reply to ES-931 Request for Wage and Separation**



Section I - Identification

SSN: ████████-2802      Name: AKERMAN, MARTIN  
 Position: IT SPECIALIST (POLICY AND PLANNING/DATA)      Date of ES: 08-05-2022

0931

Corrections to Section I Data:

Section II - Federal Agency

Verification of Federal Service: Y If No,

Duty State: VA

Employment Type: EMP ON LWOP/FURL/SUSP IN NON-PAY STAT FOR 31 MORE CONS DAYS

Base Period Wages

QTR	YR	Ending	Gross Wages	Hours	Weeks
2	2022	6/30/2022	\$20,275.20		
1	2022	3/31/2022	\$40,404.00		
4	2021	12/31/2021	\$46,284.00		
3	2021	9/30/2021	\$26,448.00		
2	2021	6/30/2021	\$50,822.36		
1	2021	3/31/2021	\$41,914.92		
Base and Total			\$228,148.48		

Duty Hours Work Week: 0  
 Duty Hours Workday: 0  
 Hourly Rate: 70.32  
 SF-8 Furnished: Yes

	Estimated Amt:	Paid Amt:	Hours Paid:	Date Paid:	Period From:	Period To:
Terminal Annual Leave Payment:	0	0	0			
Severance Payment:	0	0	0			
Incentive Payment:	0	0	0			

Date of Separation:

Last Day of Active pay: 04-23-2022

Reason for Separation: CLAIMANT IS CURRENTLY SERVING ON AN INDEFINITE SUSPENSION FOR FAILURE TO ATTAIN AND/OR MAINTAIN A CONDITION OF EMPLOYMENT - SECURITY CLEARANCE RELATED.

Certification: I certify that I have examined this report and this report constitutes the findings of this agency under Federal Law (5 U.S.C. 8506(a)) and, to the best of my knowledge, it is a correct and

**TAKIJOSEPHINE.K.1021832207** Digitally signed by TAKIJOSEPHINE.K.1021832207

Signature of Official: \_\_\_\_\_ Title: \_\_\_\_\_ Date: 2022.06.13.07:33:24 -06'00' \_\_\_\_\_ Date: \_\_\_\_\_

Agency: 422-Amy

FIC-DEST 422-9100

Name of Parent Federal: AR

Servicing Civilian Personnel Office to which all UCFE inquiries for this individual should be addressed:

Agency Name: Dir Par Emp Service, Wash DC 20310

We intend to challenge this claim: Y

City, State, Zip: FL Riley, KS, 66442

UCPA Name: Maria Kline

Commercial: 1-888-792-7820

Fax: 785-240-3843



Martin Akerman <makerman.ngb@gmail.com>

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## DCSA Acknowledgement 22-04185

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DCSA Ft Meade DCSA Mailbox Privacy Act <dcsa.meade.dcsa.mbx.privacy-act@mail.mil> Tue, Mar 1, 2022 at 8:24 AM  
To: Martin Akerman <makerman.ngb@gmail.com>

Good Morning Martin Akerman:

This e-mail serves to acknowledge receipt of your request for records per the Freedom of Information Act and Privacy Act of 1974. Your request has been assigned tracking number

DCSA-M 22-04185 and placed in our queue for processing. We are required to respond to each request in the order in which it was received; this ensures no request is shown favoritism or given priority above another. We appreciate the opportunity to assist you in this matter.

Freedom of Information and Privacy Office for Adjudications

Defense Counterintelligence and Security Agency

600 10th Street

Fort George Meade, MD 20755

E-mail: [dcsa.meade.caf.mbx.privacy-act@mail.mil](mailto:dcsa.meade.caf.mbx.privacy-act@mail.mil)

Web: <https://www.dcsa.mil/contact/foia/foip/>

The information herein is For Official Use Only (FOUO) which must be protected under the Privacy Act of 1974, as amended. Unauthorized disclosure or misuse of this PERSONAL INFORMATION may result in criminal and/or civil penalties. If you received this message in error, please notify the sender by reply e-mail and delete all copies of the message.

**Certificate Of Service**

**e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.**

**Following is the list of the Parties in the case:**

<b>Name &amp; Address</b>	<b>Documents</b>	<b>Method of Service</b>
<b>MSPB: Office of the Clerk of the Board</b>	<b>Petition for Review</b>	<b>e-Appeal / e-Mail</b>
<b>Bernard E. Doyle Agency Representative</b>	<b>Petition for Review</b>	<b>e-Appeal / e-Mail</b>
<b>Jenny Lin Naylor Agency Representative</b>	<b>Petition for Review</b>	<b>e-Appeal / e-Mail</b>



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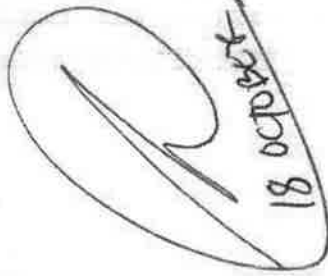
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ROSEBORO BRIEF 1 - MATERIAL FACTS

MIXED APPEAL

**III. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this answer: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the answer otherwise complies with the requirements of Rule 11.

  
18 OCT 2022

▶ SCANNED ◀

OCT 18 2022

SCANNED Certificate of Service  
OCT 18 2022 Defendants already have this information

From: [Redacted]  
Sent: Friday, October 14, 2022 2:44 PM  
To: [Redacted]  
Subject: FW: [URL Verdict: Neutral][Non-DoD Source] Re: Your complaint (FRNO 2022-10284)  
Attachments: 2022-10-14 Amended Complaint.pdf; DC220459W1-Tab 11-DocNum1963412.pdf

*[Handwritten signature]*  
18 October

Please add to the file for 2022005058.

From: Martin Akerman <makerman.dod@gmail.com>  
Sent: Friday, October 14, 2022 2:34 PM  
To: MSPB <MSPB@mspb.gov>; OFOEEOC <OFO.EEOC@EEOC.GOV>; WASHINGTON REGIONAL OFFICE <washingtonregionaloffice@mspb.gov>; Barghaan, Dennis (USAVAE) <Dennis.Barghaan@usdoj.gov>  
Subject: Re: [URL Verdict: Neutral][Non-DoD Source] Re: Your complaint (FRNO 2022-10284)

**CAUTION:** The sender of this message is external to the EEOC network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to [phishing@eoc.gov](mailto:phishing@eoc.gov).

Thank you for the response.  
Please kindly see the attached Amended Complaint as filed with the US District Court and current as of Today:

1. Petition for review in MSPB Docket No. DC-0752-22-0376-I-1 remains pending before the Board as Special Panel with EEOC # 2022005058 (also includes DC-0752-22-0376-S-1). This can be found as Contingent Claim (Jurisdiction 10) on page 13 of 16 of the attached - 120 days on 4 January 2023, 180 days on 5 March 2023 (unclear which is used to calculate exhaustion of Administrative Remedy).
2. DC-1221-22-0257-W-1, DC-1221-22-0445-W-1, DC-1221-22-0459-W-1 (71 Claims) are exhausted without Judicially Reviewable Action and before the District Court with the exception of Claim 40 (Tab 40) of DC-1221-22-0257-W-1 (See Jurisdiction 11 on page 13 of 16) and a question of another pending claim related to DC-1221-22-0459-W-1 as highlighted in the attached (DC220459W1-Tab 11-DocNum1963412).
3. DC-3443-22-0639-I-1 remains at MSPB without Agency response or Judicially Reviewable Action until 11 January 2023 as highlighted in Jurisdiction 12 on page 14 of 16.

Response from MSPB to EEOC is due 20 days from 26 September 2022 (Monday, 17 October 2022)

Very respectfully,  
Martin Akerman  
202-656-5601

On Fri, Oct 14, 2022 at 1:53 PM MSPB <MSPB@mspb.gov> wrote:

Dear Mr. Akerman,

This email is from the Office of the Clerk of the Board at MSPB's Headquarters in Washington, DC, in response to your email of October 12, 2022. This mailbox ([mspb@mspb.gov](mailto:mspb@mspb.gov)) exists for questions regarding MSPB

processes and procedures. Please do not copy this mailbox on correspondence with other entities. Additionally, please note, MSPB does not accept submissions by email; thus, no further action will be taken in response to your email below.

A review of our records indicates that you have several matters pending before the MSPB. Your petition for review in MSPB Docket No. DC-0752-22-0376-I-1 remains pending before the Board. Please note, on September 15, 2022, the Board issued an order that stated no additional pleadings should be filed by the parties at this time. The September 15, 2022 Order further provided that additional submissions from either party will be rejected unless the Board issues a subsequent notice inviting further pleadings.

Additionally, a review of our records indicates that your appeals in MSPB Docket Nos. DC-1221-22-0257-W-1, DC-1221-22-0445-W-1, DC-1221-22-0459-W-1, and DC-3443-22-0639-I-1 remain pending before the Washington Regional Office. If you have questions about the appeals that are pending before the Washington Regional Office, you should contact that office directly. Contact information for that office is below.

Washington Regional Office  
1901 S. Bell Street  
Suite 950  
Arlington, Virginia 22202  
(703) 756-6250 - telephone  
(703) 756-7112 - fax  
[washingtonregionaloffice@mspb.gov](mailto:washingtonregionaloffice@mspb.gov)

I hope this information is helpful to you.

MSPB/rc

---

**From:** Brandi, Nicholas O LTC USARMY NG NGB (USA)  
**Sent:** Wednesday, October 12, 2022 1:25 PM  
**To:** Martin Akerman  
**Cc:** [makerman.ngb@gmail.com](mailto:makerman.ngb@gmail.com); Barghaan, Dennis (USAVAE); [ofe.extensions@eeoc.gov](mailto:ofe.extensions@eeoc.gov); MSPB  
**Subject:** RE: [URL Verdict: Neutral][Non-DoD Source] Re: Your complaint (FRNO 2022-10284)

Mr Akerman,

No problem, I understand. Thank you for the reply.

The reason I asked the questions listed below is because by policy the Inspector General is precluded from intervening in matters with existing methods of redress, so the fact that you have taken it to the next level(s) is a good thing. In accordance with AR 20-1 (Inspector General Activities and Procedures), paragraph 1-4b (5) (g), the Inspector General is not the appropriate agency to investigate civilian Whistleblower Reprisal for Appropriated Fund Civilians, nor matters that have existing means of redress. The memo dated 14FEB22 provided you with several means of redress, and it appears you are exercising your rights under those provisions.

In short, your situation is in the right hands. From an IG perspective, I will consider the matter closed.

I wish you well in your endeavors.

LTC Nicholas Brandi  
Inspector General  
National Guard Bureau

---

**From:** Martin Akerman <[makerman.dod@gmail.com](mailto:makerman.dod@gmail.com)>  
**Sent:** Wednesday, October 12, 2022 12:01 PM  
**To:** Brandi, Nicholas O LTC USARMY NG NGB (USA) <[nicholas.o.brandi.mil@army.mil](mailto:nicholas.o.brandi.mil@army.mil)>  
**Cc:** [makerman.ngb@gmail.com](mailto:makerman.ngb@gmail.com); Barghaan, Dennis (USAVAE) <[Dennis.Barghaan@usdoj.gov](mailto:Dennis.Barghaan@usdoj.gov)>; [ofc.extensions@eoc.gov](mailto:ofc.extensions@eoc.gov); MSPB <[mspb@mspb.gov](mailto:mspb@mspb.gov)>  
**Subject:** [URL Verdict: Neutral][Non-DoD Source] Re: Your complaint (FRNO 2022-10284)

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

---

Hi Lt Col Brandi,

I am copying the Attorney for the US Government. Also copying MSPB and EEOC.

I believe this case has already gone beyond Administrative Remedy at your level and I don't want to appear to be taking a step backwards in the process by responding.

Thank you and I hope you are empowered and get an honest chance to fix the problems there.

V/r,  
Martin

On Wed, Oct 12, 2022 at 11:55 AM Brandi, Nicholas O LTC USARMY NG NGB (USA) <[nicholas.o.brandi.mil@army.mil](mailto:nicholas.o.brandi.mil@army.mil) < Caution-mailto:nicholas.o.brandi.mil@army.mil > > wrote:

CUI

Good morning,

I work with National Guard Bureau Office of the Inspector General (NGB-IG).  
I have your complaint and need to clarify a few things:

- 1) It appears that you previously submitted multiple complaints to the US Office of Special Council (OSC). Do you still have open cases with them?  
Are you still communicating with them?
- 2) aside from OSC, you were provided multiple avenues of redress in the MFR Notice of Proposed Indefinite Suspension dated 14FEB22. It is unclear to me which (if any) were pursued. Please tell me what avenue you pursued and the outcome.

3) You also requested Alternate Dispute Resolution. What was the outcome of that?

LTC Nicholas O. Brandi  
Chief, Assistance Branch

National Guard Bureau Inspector General (NGB-IG)  
111 South George Mason Dr. bldg 2 / Suite 3TS-400  
Arlington, VA 22204-1382

NIPR: [nicholas.o.brandi.mil@mail.mil](mailto:nicholas.o.brandi.mil@mail.mil) < Caution-mailto:nicholas.o.brandi.mil@mail.mil >

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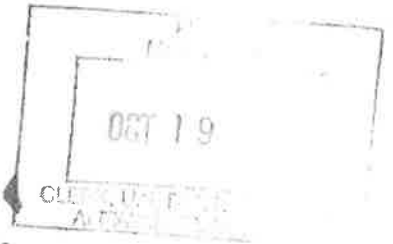
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POC: LTC Nicholas Brandi, 703-607-2508

CUI

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria DIVISION



▶ SCANNED ◀

OCT 18 2022

Akerman, pro se  
Plaintiff(s),

v.

Civil Action Number: 1:22-cv-696

Austin III, et al  
Defendant(s).

**LOCAL RULE 83.1(M) CERTIFICATION**

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of ROSEBORO BRIEF 1  
(Title of Document)

MARTIN AKERMAN  
Name of Pro Se Party (Print or Type)

[Signature]  
Signature of Pro Se Party

Executed on: 18 OCTOBER 2022 (Date)

OR

The following attorney(s) prepared or assisted me in preparation of \_\_\_\_\_  
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