

IN THE SUPREME COURT OF THE UNITED STATES

No. 23A _____

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

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

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

VOLUME THREE: IRREPAIRABLE HARM

Volume 3, encompassing Appendices J through M, chronicles the intricate journey of Martin Akerman through various stages of legal proceedings, underscoring the theme of irreparable harm faced by a pro se applicant. This compilation paints a vivid picture of the challenges encountered due to the publication of erroneous records, administrative errors, and the complexities of navigating whistleblower and retaliation claims within the framework of federal employment law.

In accordance with the principles established in *Merrill v. Milligan*, 142 S. Ct. 89, 880 (2022), this volume substantiates a

compelling case for granting a stay pending certiorari for Martin Akerman. The criteria set forth by Justice Kavanaugh in his concurrence are notably met in this instance.

> **Appendix J:** April 26, 2022 - Second MSPB Stay Proceedings:

The initiation of these stay proceedings at the MSPB is relevant to the chronology of Akerman's legal battles and the ensuing procedural challenges.

Appendix J consists of documents pertaining to the second set of stay proceedings initiated by Martin Akerman at the Merit Systems Protection Board (MSPB) on April 26, 2022, which were later erased from the MSPB e-Appeal system. This erasure is critical as it impacts the visibility and traceability of these proceedings in the legal chronology of Akerman's case.

> **Appendix K:** March 14, 2022 - Continuation of MSPB

Whistleblower Claims: The continuation of Akerman's whistleblower claims filed with the MSPB (DC-1221-22-0445-W-1) demonstrates the persistent nature of his grievances and the challenges in obtaining redress through administrative channels.

> **Appendix L:** March 14, 2022 - MSPB Whistleblower Claims Filed:

The filing of initial whistleblower claims

(DC-1221-22-0257-W-1) with the MSPB underscores the beginning of a formal legal process to address Akerman's workplace grievances, relevant to understanding the procedural and constitutional questions raised.

Appendices L1 and L2 are pivotal in understanding the complex dynamics of whistleblower litigation under the Twombly and Iqbal (Twiqbal) standards. These standards, which set the plausibility threshold for stating a claim in federal court, become particularly challenging when factual records are compromised. In cases like Martin Akerman's, where lower court records are essential yet inaccessible due to spoliation, meeting the Twiqbal standard becomes a formidable task. These appendices showcase how the absence of crucial records can significantly hinder a party's ability to enhance facts and allegations to meet this heightened pleading requirement. The detailed documentation within these appendices sheds light on the procedural intricacies and challenges faced in whistleblower claims, illustrating the practical implications of Twiqbal in the context of limited access to essential records.

> **Appendix M:** February 28, 2022 - Missing MSPB Stay Proceedings
Begin: The commencement of the MSPB stay proceedings (DC-1221-22-0257-S-1) marks the origin of Akerman's legal

challenges in the administrative arena, laying the foundation for the subsequent appeals and legal proceedings.

Appendix M showcases the initiation of the MSPB stay proceedings (DC-1221-22-0257-S-1) in Martin Akerman's case. This document is now missing in MSPB records. Significantly, this document illuminates the challenges Akerman faced due to the publication of erroneous records. These inaccuracies in publicly accessible databases like LexisNexis, and in the portrayal of lower court records in MSPB and EEOC, cast a misleading light on the merits of the case. The misrepresentation of facts and proceedings not only complicates Akerman's efforts to secure representation by a qualified attorney or amicus but also poses a risk of irreparable harm. By distorting the case's appearance and substance, these inaccuracies hinder the proper understanding and evaluation of the case's validity, thereby impacting Akerman's ability to effectively navigate and address his legal challenges.

> **Appendix J:** April 26, 2022 - Second MSPB Stay Proceedings:

The initiation of these stay proceedings at the MSPB is relevant to the chronology of Akerman's legal battles and the ensuing procedural challenges.

Appendix J consists of documents pertaining to the second set of stay proceedings initiated by Martin Akerman at the Merit Systems Protection Board (MSPB) on April 26, 2022, which were later erased from the MSPB e-Appeal system. This erasure is critical as it impacts the visibility and traceability of these proceedings in the legal chronology of Akerman's case.

Initiation of Second MSPB Stay Proceedings: On April 26, 2022, Akerman initiated a second round of stay proceedings with the MSPB, marking an important procedural step in his legal battles. These proceedings were aimed at addressing issues related to his suspension, reflecting the ongoing procedural challenges and complexities in his case.

Erasure of the MSPB Docket: Significantly, the docket related to these stay proceedings is no longer available in the MSPB e-Appeal system. The erasure of this docket is a notable development, as it affects the documentation and accessibility of Akerman's legal actions. This erasure is particularly crucial

as it obscures a key effort by Akerman to obtain a stay during the critical period when his suspension began.

Importance of Documenting the Stay Attempt: The documentation of the second MSPB stay attempt is vital in illustrating Akerman's proactive efforts to address his suspension. It underscores the necessity of such actions in the context of his broader legal strategy and the challenges encountered in navigating federal employment law. The attempt to obtain a stay is indicative of the proactive steps Akerman took to safeguard his rights and interests during a pivotal phase of his employment dispute.



U.S. MSPB Merit Systems Protection Board e-Appeal Online

September 25, 2023

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Case View

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY DC-0752-22-0376-S-1

Case Status:Regional Closed

7 documents returned

Tab	Download/View	Doc Info.	Submitted by	Date Issued/Received
Petition for Review				
3	Download/View	Agency Representative Addition	Agency	8/3/2023
2	Download/View	Letter Responding Appellant's Filing	MSPB	4/29/2022
1	Download/View	Petition for Review	Appellant	4/29/2022
Initial Appeal				
4	Download/View	Agency Representative Addition	Agency	5/3/2022
3	Download/View	Certificate of Service	MSPB	4/29/2022
2	Download/View	Stay Decision	MSPB	4/29/2022
1	Download/View	Stay Request	Appellant	4/26/2022

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> **Appendix K:** March 14, 2022 - Continuation of MSPB Whistleblower Claims: The continuation of Akerman's whistleblower claims filed with the MSPB (DC-1221-22-0445-W-1) demonstrates the persistent nature of his grievances and the challenges in obtaining redress through administrative channels. These claims, under docket number DC-1221-22-0445-W-1, were part of ongoing grievances and challenges Akerman faced in his workplace. The document includes a comprehensive list of pleadings and motions related to the case, reflecting various aspects of federal employment law, whistleblower protections, and the rights of tenured employees.

Individual Right of Action Appeal: Filed on June 1, 2022, originally on May 3, 2022, this appeal was a critical element of Akerman's legal strategy, indicating ongoing disputes regarding his employment and treatment in the workplace.

Whistleblower Claims: The document lists several instances where Akerman raised concerns or reported practices he believed were illegal or improper. These include issues related to personnel actions, security clearance matters, and compliance with federal laws.

Allegations of Retaliation: Akerman's claims suggest that there were attempts to retaliate against him, possibly in response to

his whistleblowing activities. This is evident from the various motions and appeals he filed, highlighting the complexities and challenges he faced.

Legal Proceedings and Documents: The document is a detailed record of legal proceedings, including motions for extensions, jurisdictional orders, and agency responses. This detailed documentation reflects the procedural aspects of Akerman's legal journey.

Policy and Regulation References: The document references various laws, policies, and regulations, such as 5 USC§ 5502, 10 USC§ 1034, and others, indicating the legal framework within which Akerman's claims and the subsequent actions were situated.

FILED

Roseboro Brief 7

2022 OCT 20 P. 14 55

W1.Claims 70, 71 and 72 Unanswered Whistleblower Claims attached to DC-1221-22-0257-W-1 due to failed Air Force joinder attempt caused by MSPB (DC-1221-22-0445-W-1)(Action 22 of 50)

1. Docket Case View for DC-1221-22-0445-W-1
2. 2022-06-01originally filed 2022-05-03: Individual Right of Action Appeal (See Pages 4 and 54 of 55)

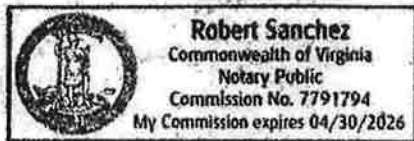
Ghostwriting Certificate - LOCAL RULE 83.1(M) CERTIFICATION (2022-10-20)

I, Martin Akerman, the Plaintiff, declare under penalty of perjury that no attorney has prepared, or assisted in the preparation of this ROSEBORO BRIEF.

County/City of Arlington
 Commonwealth/State of Virginia
 The foregoing instrument was acknowledged before me this 20 day of Oct, 2022 by Martin Akerman (name of person seeking acknowledgment)
 Notary Public: Robert Sanchez
 My Commission Expires: 30 April 2024

(Handwritten signature in a circle)
20 OCTOBER 2022

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 OCT 20 2022





U.S. MSPB Merit Systems Protection Board
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October 20, 2022

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Case View

MARTIN AKERMAN v. DEPARTMENT OF THE AIR FORCE
DC-1221-22-0445-W-1

Case Status:Regional Pending

38 documents returned

Tab	Download/View	Doc Info.	Submitted by	Date Issued/Received
Initial Appeal				
38	Download/View	Notice of Hearing in District Court	Appellant	10/4/2022
37	Download/View	Motion for Initial Decision on the Written Record	Appellant	8/28/2022
36	Download/View	Notice of Civil Action in District Court	Appellant	7/10/2022
35	Download/View	Agency Jurisdiction Response	Agency	6/26/2022
34	Download/View	Agency Notice Of Medical Emergency And Motion To Request Additional Extension	Agency	6/25/2022
33	Download/View	Motion to Dismiss Agency Response as Untimely and for the AJ to recuse themselves	Appellant	6/24/2022
32	Download/View	Order Granting Extension of Time	MSPB	6/22/2022
31	Download/View	Agency - Motion for 3-Day Extension for Jurisdiction Response	Agency	6/21/2022
30	Download/View	Agency Representative Addition	Agency	6/6/2022
29	Download/View	Objection to Allowing More Time for Response to Jurisdictional Order	Appellant	6/3/2022
28	Download/View	Motion to include tabs 1-12	Appellant	6/1/2022
27	Download/View	Supporting Evidence of Fraud	Appellant	6/1/2022
26	Download/View	Motion to Joinder the National Security Agency	Appellant	6/1/2022
25	Download/View	22 of 50	Appellant	6/1/2022
24	Download/View	Motion for Interim Relief	Appellant	6/1/2022
23	Download/View	Order Regarding Docketing of New Appeal	MSPB	6/1/2022
22	Download/View	Response to Agency Motion to Dismiss	Appellant	6/1/2022
21	Download/View	Supplement to 2 of 50	Appellant	6/1/2022
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19	Download/View	24 of 50	Appellant	6/1/2022
18	Download/View	13 of 50	Appellant	6/1/2022
17	Download/View	11 of 50	Appellant	6/1/2022
16	Download/View	1 of 50	Appellant	6/1/2022
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14	Download/View	10 of 50	Appellant	6/1/2022
13	Download/View	9 of 50	Appellant	6/1/2022
12	Download/View	21 of 50	Appellant	6/1/2022
11	Download/View	Action 38 of 50	Appellant	6/1/2022
10	Download/View	Order and Summary of Status Conference	MSPB	6/1/2022
9	Download/View	Document to Help with Status Conference	Appellant	6/1/2022
8	Download/View	Order	MSPB	6/1/2022
7	Download/View	Order to Show Cause - Jurisdiction	MSPB	6/1/2022
6	Download/View	Agency Response to Appellant Request for Joinder	Agency	6/1/2022
5	Download/View	Pleading for Multiple Respondents and 2302(b)(8)	Appellant	6/1/2022
4	Download/View	Pleading and Status Conference Request	Appellant	6/1/2022
3	Download/View	Jurisdiction Order	MSPB	6/1/2022

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1	Download/View	Initial Appeal	Appellant	6/1/2022

MSPB Website | Privacy Act

MARTIN AKERMAN v. DEPARTMENT OF THE AIR FORCE

Docket # DC-1221-22-0445-W-1

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Summary Page

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Docket Number : DC-1221-22-0445-W-1

Pleading Title : 22 of 50

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

▶ SCANNED ◀
OCT 20 2022

Details about the supporting documentation

N/A

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Online Interview

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

See attached pleading text document

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

Yes

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

Yes

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

MARTIN AKERMAN,
Appellant,

DOCKET NUMBER
DC-1221-22-0445-W-1

V.

DEPARTMENT OF THE AIR FORCE,
NATIONAL SECURITY AGENCY (DOD CAF)
Agencies.

DATE: 1 June 2022

INDIVIDUAL RIGHT OF ACTION APPEAL

BACKGROUND

1. On 11 September 2012, the Diplomatic Security Service granted me a SECRET clearance.
2. On 8 November 2019, the Department of Defense granted me a SECRET clearance.
3. On 9 April 2020, DoD closed investigation case # 2020278389.
4. On 16 April 2021, I was granted an interim TS clearance.
5. 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.
6. 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 HR confirmed my Clearance.
7. On 11 August 2021, I informed OSC that I accepted the tentative offer for employment with the National Guard Bureau.
8. On 13 August 2021 at 10:03, TSgt Santa confirmed that I have an interim Top Secret clearance.

9. On 13 August 2021 at 10:09, TSgt Santa informed me that my interim TS clearance fell off.
10. On 17 August 2021 @ 10:59, I contacted OSC to inform them that the Air Force was about to perpetuate retaliation through the transfer form 75 to the National Guard.
11. On 17 August 2021 @12:09, OSC requested the 29 May 2021 disclosure from my work email address.
12. On 17 August 2021 @13:12, I informed OSC that the Agency took a strange action related to my clearance.
13. On 26 August 2021, I received the final job offer with the National Guard Bureau.
14. On 17 September 2021, I completed a favorable mental health evaluation

JURISDICTION AND PROOF

The Action the Agency Took (5)

15. On 17 August 2021 at 12:30, I was invited to an emergency meeting regarding my Security Clearance.
 - a. The agency fabricated a security clearance matter to interfere with my future employment.
 - b. The agency prevented me from responding the DOD CAF
 - c. The agency failed to inform me of a security clearance matter

Protected Disclosures or Activities (1-3)

16. On 3 May 2021, I wrote an email to management highlighting personnel aligned to offices not authorized by existing law and proposed actions to bring offices into compliance. 5 U.S.C § 5502 prohibits payment for services...from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law.

17. On 12 May 2021, I provided Ms. Vidrine and Team language for the PGL summary of the new merger that goes against the law in the eyes of many.
18. On 14 May 2021, I sent Col McDaniel an email showing him a discrepancy in my PD and in the PDs of my staff. Col McDaniel agreed to take a look.
19. On 19 May 2021 @ 1235, I declined a "Feedback" meeting rightfully perceiving that this was shaping up to be an adverse action. In my invite-decline email I sent Col McDaniel all of the gaps in our office and mentioned that I am doing my job as Director of SAF/COS, advising us on law and policies related to the functions of our office during this transition. Asked for this not to turn into an adversarial relationship.
20. On 26 May 2021, I replied to SAF/AA regarding the Memorandum for Record of the 25 May meeting. I disclosed the following: - Col McDaniel mentioned that he and Ms. Vidrine had a call with HR Monday and she requested that Col McDaniel create a Written Admonishment - I asserted that I was performing duties in accordance with those outlined in my PD - SAF/AA confirmed that PDs should be made up to date and current, with accurate job descriptions and reviewed at least annually - SAF/AA advised me of my right to have the action reviewed and to file grievance, making additional point to highlight AFI on personal remedy.
21. On 29 May 2021, I wrote an email to my Mentors in the Air Force expressing concern for Col McDaniel and Ms. Vidrine asked him to violate 10 USC 1034.
22. On 4 June 2021, Col McDaniel asked me to inform my staff that they are receiving cash awards. I clear up with Col McDaniel that this is only for Corey and Eryka. This continues to violate 5 U.S.C § 5502.
23. On 14 June 2021, after Colonel McDaniel Threatens to issue a Letter of Reprimand to me, I forward the threat and request for Ms Vidrine and Ms Knausenberger to be present at the "Decision Follow-up" as well as the AFDW Dispute Resolution Service.
24. On 16 June 2021, the Office of Special Counsel confirmed receipt of disclosure (DI-21-0627) and prohibited personnel practice complaint (MA-21-1602).
25. On 1 July 2021, I reported another PPP to OSC via email: Col Vasquez threatened to issue me another reprimand because I asked for a written version of the UMD that Ms. Vidrine mentioned on the morning call, and because I relayed messages from Callie and AA to Nicholas about his Loan Repayment.
26. On 11 August 2021, I reported a PPP to OSC via email: Col Kehoe entered information into my Performance Plan without my permission.

27. On 17 August 2021 @ 10:59, I contacted OSC to inform them that the Air Force was about to perpetuate retaliation through the transfer form 75 to the National Guard.
28. On 17 August 2021 @12:09, OSC requested the 29 May 2021 disclosure from my work email address.

Date of Complaint to OSC and Amendments (7a)

29. On 16 June 2021, the Office of Special Counsel confirmed receipt of disclosure (DI-21-0627) and prohibited personnel practice complaint (MA-21-1602).
30. On 28 June 2021, I reported PPP to OSC via phone: I reported that I am not being allowed to report to the boss listed on my PD and that Col Vasquez was placed in the role of Deputy temporarily.
31. On 30 June 2021, I spoke to OSC on the phone and sent evidence of all wrongdoing that we discussed related to the case.
32. On 1 July 2021, I reported another PPP to OSC via email: Col Vasquez threatened to issue me another reprimand because I asked for a written version of the UMD that Ms. Vidrine mentioned on the morning call, and because I relayed messages from Callie and AA to Nicholas about his Loan Repayment.
33. On 2 July 2021, I completed the OSC intake interview. (attached)
34. On 11 August 2021, I reported a PPP to OSC via email: Col Kehoe entered information into my Performance Plan without my permission.
35. On 11 August 2021, after accepting the offer for employment with the National Guard Bureau, I contacted OSC to request the following in ADR: 1. The 2 records on my permanent employee file: These need to be removed completely as if they never happened. Deletion of any additional records that may be entered. 2. Legal Fees to date - \$1097 3. Student Loan Repayment: I want to be sure I am paid for the \$40,000 of loan repayment. I have completed a little under 2 years of the 3 years of service. a. Ideally, the full \$40,000 is paid without need for a final year of service (willing to give up Legal Fees if this route is taken) b. At a minimum I would want the amount proportional to the months of service as per my agreement (roughly \$25,000). \$10,000 was paid to date. 4. No further input from Ms Vidrine or her staff into my employee file.

36. On 17 August 2021 @ 10:59, I contacted OSC to inform them that the Air Force was about to perpetuate retaliation through the transfer form 75 to the National Guard.
37. On 17 August 2021 @12:09, OSC requested the 29 May 2021 disclosure from my work email address.
38. On 18 August 2021, I emailed OSC highlighting fraud in the provided SF75 transfer document.
39. On 26 August 2021, I emailed OSC to report a PPP related to my security clearance.

Why the Disclosure was a Contributing Factor (6)

40. The Agency knew or had constructive knowledge of the disclosures. I was regarded as a whistleblower.
41. The Agency acted within a limited period of time so that a reasonable person would conclude the disclosures were a factor in the action(s) taken.
42. Absent the disclosure, the Agency would not have taken the action(s), or would have taken the action(s) in a manner more aligned with their own policy.
43. The Office of Special Counsel investigated these contributing factors.

Date OSC Informed me they were terminating my Complaint (7b)

- 44. OSC informed me that they were terminating my Complaint on 28 February 2022.
- 45. I responded that I did not request the closure.
- 46. OSC kept the Complaint open for me and continued investigating until 11 March 2022.
- 47. OSC closed the Complaint on 11 March 2022 and requested that I use the 28 February 2022 Individual Right of Action letter.

Belief in the Truth of the Disclosure (4)

- 48. I believe in the truth of the disclosures.

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 1 June 2022



Martin Akerman

Staff in SAF/CO believe they work for offices other than what is listed in personnel records, namely the Unit Manning Document and Classified Position Descriptions.

5 USC § 5502 - Unauthorized office; prohibition on use of funds

(a) Payment for services may not be made from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law. - Offices to where many SAF/COS and SAF/COP employees and salaries were diverted continue to work in other unauthorized offices. SAF/COA, SAF/COD, SAF/COL do not exist as of this writing (1 July 2021) and staff still are told they work for these offices and not the ones for which they have been appropriated.

30 April 2021, SAF/CO leadership was informed by Ms. Vidrine that SAF/CO would be moving to SAF/CN.

3 May 2021, I conducted a review with my team (SAF/COS) of what needs to come together for a successful transition. I wrote an email highlighting personnel aligned to offices not authorized by existing law and proposed actions to bring offices into compliance.

6 May 2021, I had an Outstanding Performance Review. Ms. Vidrine Asked me to give Major Sullivan precise language related to Views of others in the SAF/CN SAF/CO merger.

It is policy to explain the views of others so that decision makers can have all the information they need to make decisions (Air Force Headquarters Operating Instruction 33-3). I observed a PGL coordination document (Staff Summary Sheet) without key "views of others".

On 12 May 2021, I directed Major Sullivan to include 3 specific views of others:

1. View of Congress and the Federal Audit/Evaluation community is that CDOs must be unbiased, unfettered, uninfluenced, and fully objective in performing change leadership and statutory reporting responsibilities. The Secretary of the Air Force formed SAF/CO as an independent SAF office in March of 2019 (PGL 18-21).
2. Title 44 U.S. Code § 3520 requires that the Chief Data Officer of the Department of the Air Force submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives an annual report on the compliance of the Department with the requirements of subchapter 3520. This

Evaluation includes information on each requirement that the Air and Space Forces could not carry out and, if applicable, what the Department needs to carry out such requirements. One of these is an evaluation and report to Congress on the impact of the infrastructure of the Department on data asset accessibility and coordination with the Chief Information Officer of the Department to improve such infrastructure to reduce barriers that inhibit data asset accessibility. (requirement 10)

3. The Department of Defense is currently conducting an assessment of the establishment of the DoD CDO as independent from the DoD CIO, to serve as the Principal Staff Assistant for enterprise data management and data analytic issues. (Final Report Due: 1 July 2021)

13 May 2021, I explained the importance of informing Air Force decision-makers on the role of the CDO in the eyes of Congress and the Audit/Evaluation community and I was ridiculed on the morning call for insisting on Views of Others to inform the merger. Ms. Vidrine and Colonel McDaniel rejected the "Views of Others"

14 May 2021, when the Acting Secretary ordered the merger of SAF/CO and SAF/CN, it became clear there would be no action to sanction offices. A larger cover-up and mismanagement including Position Descriptions and Classification was present across SAF/CO.

A merger with SAF/CN does not sanction SAF/COA, SAF/COD, or SAF/COL. An updated and approved UMD and Mission Directive would sanction SAF/COA, SAF/COD, and SAF/COL together with the staff aligned to those offices.

5 CFR § 511.701 Effective dates generally. (a) Agency classification actions. (1)(i) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action. The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

*5 USC § 5107 -Classification of positions
Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office.*

5 CFR § 2635.101 -

(b)(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(b)(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(b)(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

AFPD 38-2 - Manpower and Organization

(2.2.) The Air Force will manage UMDs in accordance with congressionally authorized end strength, to include the centrally managed accounts and will simultaneously comply with guidance contained in the Defense Officer Personnel Management Act (DOPMA) and the Reserve Officer Personnel Management Act (ROPMA), Titles 10 and 32, United States Code and congressionally mandated officer and/or enlisted manpower levels (also referred to as 'ceilings').

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.

20 May 2021, I was told that SF50s would be corrected after the merger with SAF/CN is completed.

21 May 2021, I requested a meeting with Ms. Vidrine and Colonel McDaniel to discuss Position Descriptions, Unit Manning Document and Organizational Alignment for all COS staff.

24 May 2021 @1400 Hrs, Ms. Vidrine met with Col McDaniel and Human Resources and Ms. Vidrine told Col McDaniel to write an Admonishment.

24 May 2021 @1630 Hrs, Colonel McDaniel rescheduled the "Feedback Meeting" to 25 May 2021.

25 May 2021, I arrived at the Pentagon to discuss PDs and organizational alignment and was surprised with a Written Admonishment intended to modify my behavior in the future (cause me to not question the mismanagement of SAF/CO (SAF/CND) and prevent me from reporting the violations), it was a corrective action and therefore is a covered personnel action for purposes of the Whistleblower Protection Act. (abuse of authority and fraud)

29 May 2021, I sent an email to my Mentors, officially assigned to me by the Air Force.

4 June 2021, A member of my team approached me about not being allowed to be on Enlisted Reserve orders in SAF/CO -- highlighting Ken Yale (Major Ken Yale) on Officer Reserve Orders in SAF/CO, inequality as it relates to him, and potential violation of 5 USC 5536 as he called into a meeting as a Civilian while on Reserve orders.

Federal law (5 USC 5536) prohibits a Reservist on active duty from working in a civilian capacity with the government at the same time. A GS employee cannot concurrently receive pay for their civilian position while also executing active duty orders.

8 June 2021, I requested an Informal Review of the Written Admonishment so the matter could be resolved within SAF/CO.

10 June 2021, Colonel McDaniel responded to the Informal Review and started to threaten me with another reprimand. I requested Dispute Resolution through the Air Force District of Washington.

14 June 2021, I was told I would be Reprimanded and I was denied Dispute Resolution through the Air Force District of Washington by Colonel McDaniel. I was given a memo by Ms Vidrine to highlight that Colonel McDaniel would be my supervisor until 15 June 2021, Col Vasquez would be interim Supervisor until Col Kehoe arrives on 6 July.

16 June 2021, Management filed Form DG-76 and placed a second Reprimand in my Official Personnel Folder.

1 July 2021, Ms Vidrine told everyone on the SAF/CO Leadership call that the UMD was being processed to correct 2 different wrongs:

1. Establish the missing offices
2. Properly align billets and funded personnel to those offices

1 July 2021, I asked for a written version of the UMD that Ms. Vidrine mentioned on the call.

1 July 2021, I was asked to call Colonel Vasquez and he threatened to issue me another reprimand because I asked for a written version of the UMD and because I relayed a message from a staff member and from Human Resources about Loan Repayments. I requested Dispute Resolution through the Air Force District of Washington.

2 July 2021, I found some UMD documents on our network folder that if verified would show that the organization did take steps to correct part of the wrongs as mentioned on the 1 July 2021 call. I requested a meeting for Leaders in SAF/CO to review 3 pending matters related to Civilian Position Descriptions and Performance Planning ahead of the arrival of the New Deputy, Colonel Kehoe:

1. Make sure Erycka Reid's PD is either swapped officially with Russ Jimeno or updated and aligned to COS. Col Vasquez may have visibility into this. It is my job as her Supervisor to do this for her.
2. I want to make sure that Ken Yale's billet is officially coded to be supervised by Col Sanchez in COA and off my plate. I have no visibility and would like this assurance so I am not responsible for something related to his performance later.
3. My PD shows I am the Director of Strategy and Staff. I was handed another PD after the 25 May 2021 reprimand, without Classification, that shows the Director of Strategy as non-supervisory (Level 8).

2 July 2021, Colonel Vasquez denied the meeting and advised me that we will look at PD's after the UMD comes back.

5 USC 2302 - Prohibited personnel practices

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).

(a)(2)(A)(iii) For the purpose of this section—"personnel action" means— an action under chapter 75 of this title or other disciplinary or corrective action;

(a)(2)(D) "disclosure" means 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

(b)(8)(A) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—any disclosure of information by an employee or applicant which the employee or applicant reasonably believes 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,

(b)(9)(A)(i) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—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—the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—with regard to remedying a violation of paragraph (8)

(b)(9)(C)Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—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—

(b)(9)(D)Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—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—

(c)(1)(B)In this subsection—the term “whistleblower protections” means the protections against and remedies for a prohibited personnel practice described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

10 USC § 129 - Civilian personnel management

(a)The civilian personnel of the Department of Defense shall be managed each fiscal year primarily on the basis of and consistent with (1) the total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject solely to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.

(b)With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.

10 USC § 129a - General policy for total force management

(g)(1)(A)Performance of Civilian Functions by Military Personnel.—Functions performed by civilian personnel should not be performed by military personnel except—if the Secretary of the military department concerned determines in writing based on mission requirements that the performance of such functions by military personnel is cost-effective, taking into account the

fully-burdened costs of the civilian, military, and contractor workforces, including the impact of the performance of such functions on military career progression or when required by military necessity.

(g)(1)(B) Performance of Civilian Functions by Military Personnel.—Functions performed by civilian personnel should not be performed by military personnel except—(if) such functions may be performed by military personnel for a period that does not exceed one year if the Secretary of the military department concerned determines that—

(i) the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress; and

(ii) the military department concerned is in compliance with the policies, procedures, and analysis required by this section and section 129 of this title.

(g)(2) Performance of Civilian Functions by Military Personnel.—In determining the workforce mix between civilian and military personnel, the Secretary of a military department shall reserve military personnel for the performance of the functions that, in the estimation of the Secretary, are required to be performed by military personnel in order to achieve national defense goals or in order to enable the proper functioning of the military department. In making workforce decisions, the Secretary shall account for the relative budgetary impact of military versus civilian personnel in determining the functions required to be performed by military personnel.

10 USC 1034 - Protected communications; prohibition of retaliatory personnel actions

(b)(1)(B) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.— *No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing— a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—*

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (j)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command;

(v) a court-martial proceeding; or

(vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or

(b)(1)(C) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.— *No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing— testimony, or otherwise participating in*

or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

(c)(2)(B)INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.— A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of— gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

DoDI 1400.25-V511 - DoD Civilian Personnel Management System: Classification Program

(3)(b)It is DoD policy that - DoD supervisors and managers who direct the work of an organizational unit are responsible and accountable for organizing work in an efficient, effective manner and for using resources to carry out the missions of their organizations. They will ensure that employees have copies of their PDs and will objectively, expeditiously, and fairly consider employee concerns over the accuracy of their PDs, the classification of their positions, and formal classification appeals.

AFPD 36-1- Appropriated Funds Civilian Management and Administration

(2.2.) All recruitment and placement programs must be in full compliance of Merit System Principles and avoidance of prohibited personnel practices.

(2.3.) Assign duties and responsibilities to individual civilian positions to accomplish the air and space defense mission in an orderly, efficient, and economical manner.

(2.3.1.) Responsibilities of each position will be defined clearly and will not conflict with or duplicate the duties and responsibilities of any other position.

(2.3.2.) Duties and responsibilities of each position will be adequately documented, certified as accurate by the supervisor, certified as properly classified by the classifier on AF Form 1003, Air Force Core Personnel Document, and maintained in the office exercising classification authority.

(2.4.) Delegate civilian personnel management and administration authorities to the lowest practical level, unless prohibited by statute or other governmental regulations and guidance applicable to the Air Force.

AFI 36-1401- Civilian Position Classification

7

occupational information and impact on the grade level of subordinate positions when requested. (T-0).

8

(1.3.) SCPDs. The Air Force Standard Core Personnel Documents (SCPDs) are mandatory for use when the SCPD appropriately describes the duties of the position as determined by Air Force Personnel Center (AFPC).

(2.6.) Managers and Supervisors shall:

(2.6.1.) Define duties, responsibilities and authorities to positions to achieve optimum balance of economy, effectiveness, productivity in conformance with the objectives of sound position management and organizational structure. (T-0).

(2.6.2.) Consider the impact on all other positions before assigning new duties to any position that will result in a grade change. (T-3).

(2.6.3.) Advise the servicing manpower and personnel offices and other appropriate staff offices promptly of proposed organizational and position changes and furnish organization charts and other material pertinent to the change. (T-3).

(2.6.4.) Prepare accurate position descriptions (CPD/Core Personnel Document/SCPD/Standard Core Personnel Document) using AF Form 1003 for subordinate positions in a current approved AF format. The responsibility for accuracy and adequacy of the description of duties must not be regarded lightly. Duty descriptions serve as a basis for setting pay and the commitment of public funds. Implement applicable SCPDs. (T-1).

(2.6.5.) Maintain familiarity with the classification and qualification standards for those occupations that constitute the core of the subordinate organization. (T-3).

(2.6.6.) Maintain current CPDs/SCPDs for subordinate positions and provide CPDs/SCPDs to employees. (T-1).

(2.6.7.) Advise employees of their assigned duties and responsibilities, grade controlling aspects of their positions, their right to review classification standards, and their grievance and classification appeal rights. (T-0).

(2.6.8.) Review CPDs/SCPDs at least annually with employees to ensure the CPD/SCPD contains an accurate and adequate statement of each major duty currently assigned and performed. Ensure CPDs/SCPDs are updated while the position is occupied to minimize impact to hiring timeline. (T-3).

(2.6.9.) Review draft classification standards and guides for accuracy and adequacy of occupational information and impact on the grade level of subordinate positions when requested. (T-0).

(2.6.10.) Support the classification program by explaining and supporting classification decisions to employees.

(2.6.11.) Ensure CPDs/SCPDs (AF Form 1003) are signed by a supervisor in the position's chain of command. (T-0).

(2.6.12.) Participate in the classification process by providing the personnel specialist the necessary information to determine the classification of all new and changed positions.

AFI 36-129 - Civilian Personnel Management and Administration

(2.13.) Functional Managers and Comptrollers should:

(2.13.2.) Assist managers and supervisors with managing the Unit Manpower Document.

(2.13.3.) Develop and defend a Civilian Employment Plan that effectively consolidates funding, utilization, and projections for civilian resources.

(2.13.4.) Design position structures that blend the skills and assignments of employees with the goal of successful mission/program/budget objectives.

(2.13.5.) Develop the financial management Execution Plan, which is the principal vehicle used to identify projected execution for the upcoming fiscal year. The execution plan assesses the organization's funding requirements necessary to meet the Civilian Employment Plan.

(2.19.3.) Each first-level supervisor will maintain records and files as prescribed in this Instruction. Higher-level supervisors will not maintain duplicate sets of records, unless approved locally by the head of the organization (for example, Civil Engineering Commander, Supply Commander, 3-letter Director, etc.). Each supervisor will ensure records are protected to ensure employee privacy. These responsibilities may not be delegated to administrative personnel.

(5.1.4.) Civilian Resource Management. Management officials at every level must work together with the appropriate civilian personnel, manpower and financial management advisors to ensure civilian resources are managed within budget while managing mission needs. Cost effectiveness, operational economy, efficiency, skills, career paths, employee development and motivation, recruitment and retention of competent employees are essential. When necessary an analysis and impact downsizing or closure must be assessed.

(5.5.) Fiscal Year Planning. Effective management of civilian employment starts the fiscal year with a baseline strength/dollar amount and ends the fiscal year with the final strength/dollar amount expended. These numbers are compared against the beginning of the next fiscal year's manpower allocation and documents the civilian pay dollars expended as a percentage of the budget for the fiscal year in which it was allocated. It is the goal of civilian employment planning

to end the year as close to that final number as possible (for example, work-years and/or civilian pay dollars). The challenge of employment planning is to gain control of the civilian employment program at the beginning of the fiscal year, confront challenges and problems encountered along the way, and effectively manage civilian resources throughout the fiscal year.

(5.6.) Civilian Pay Funding. Civilian pay funding is a joint effort between Financial Management, Manpower, and Civilian Personnel Offices. Initial distribution of dollars and the Civilian Employment Plan should be aligned at the start of the fiscal year.

(5.7.) Civilian Employment Plan. The primary purpose of the Civilian Employment Plan is to provide a plan for execution of fiscal year civilian end strength, work-years, and funding. The Civilian Employment Plan is a joint document between AI, Manpower and Financial Management that is used to track and report civilian employment and resources, using a balance between dollars and work-years. The Civilian Employment Plan should:

(5.7.1.) Reflect the funded work-years as approved in the President's Budget and may include AF corporate changes, correction of programming errors or misdirected mission changes, as well as MAJCOM transfers.

(5.7.2.) Provide a baseline to measure civilian work-year/budget execution, measures progress on a regular basis.

(5.7.3.) Provide a month-to month review and oversight of planned and actual work-year execution.

(5.7.4.) Track gains and losses in employment levels (for example, inbound and outbound civilians) using a standardized spreadsheet or locally developed data system product.

(5.7.5.) Track civilian manning (both authorized and assigned) and the expenditure of civilian pay dollars, including both actual and projected actions.

(5.7.6.) Identify issues affecting execution (for example, over-execution, under-execution, and mismatches in manning and funding, Future Years Defense Program changes).

(8.3.2.) Position Description. Supervisors keep copies of AF Form 1003, Air Force Core Personnel Document. Retain these documents in the Supervisor's Employee Work Folder to document the employee's position in the organization. The file may also contain copies of organizational charts, official statements of the functions of the organization, and staffing authorization documents.

AFPD 38-2 - Manpower and Organization

(2.2.) The Air Force will manage UMDs in accordance with congressionally authorized end strength, to include the centrally managed accounts and will simultaneously comply with guidance contained in the Defense Officer Personnel Management Act (DOPMA) and the Reserve Officer Personnel Management Act (ROPMA), Titles 10 and 32, United States Code and congressionally mandated officer and/or enlisted manpower levels (also referred to as 'ceilings').

When implementing Discipline and Adverse Actions of Civilian employees, supervisors are required to gather, analyze, and carefully consider available facts and circumstances before taking or recommending disciplinary action, and then communicating to civilian employees the overall expectations governing conduct and responsibilities in accordance with the provisions of AFI 36-704. The Written Admonishment was a deliberate reprisal and corrective action for the lawful disclosure of information in a protected situation, where I reasonably believed there was and continues to be a violation of law, rule, and regulation. (10 USC 1034, 5 USC 2302). The manner in which members of the SAF/CO and SAF/AA staff responded to requests for information (several times with disinformation and threats) suggests that Colonel McDaniel and Ms. Vidrine involved additional staff in a conspiracy to alter and conceal records.

AFI 36-704

(2.5.) Air Force Legal Operations Agency, Labor Law Field Support Center:

(2.5.1.) For civilians covered by this Air Force Instruction, provides the following legal services at locations across the United States and overseas except at the Robins, Hill, Tinker, and Wright-Patterson Air Force Base, the National Guard Bureau, and Air Force Reserve Command bases. These organizations shall provide all labor and employment law services within their respective organizations with the exception of representation in federal court and Equal Employment Opportunity Commission class actions, which shall be in all instances the responsibility of the Labor Law Field Support Center. References to the Labor Law Field Support Center in this Instruction also refer to these legal offices.

(2.5.1.1.) Provides the full spectrum of labor and employment law expertise to ensure maximum flexibility for commanders in employing the civilian workforce in support of Air Force operations.

(2.5.1.2.) Except for those bases identified in 2.5.1 above, Labor Law Field Support Center reviews proposed actions, decision notices and Douglas Factor analyses in actions appealable to the Merit Systems Protection Board for legal sufficiency. At a minimum, the proposal and decision notices are to be reviewed and approved for legal sufficiency by the Labor Law Field Support Center before they are served on the employee.

(2.5.1.3.) Represents the Air Force at settlement discussions, Merit Systems Protection Board hearings and petitions for review, and related lawsuits in Federal and/or State courts. Provide installation legal offices and civilian personnel sections with copies of acknowledgment orders. Coordinate major case actions with the installation legal office and civilian personnel sections.

(2.5.1.4.) Works with SAF/GCA on matters involving the Office of Special Counsel.

(2.6.) Air Force General Counsel (SAF/GC):

(2.6.1.) Provides guidance and legal review on all policy issues covered by this instruction to the Secretary and members of the Secretariat and the Air Staff.

(2.6.2.) Provides legal support and guidance regarding all matters involving Civilian Senior Executives and Office of Special Counsel (OSC) matters.

Standard Form 50
Rev. 7/91
U.S. Office of Personnel Management
FPM Supp. 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) AKERMAN, MARTIN NMN	2. Social Security Number [REDACTED]	3. Date of Birth 04/08/1979	4. Effective Date 09/12/2021
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FIRST ACTION		SECOND ACTION	
5-A. Code 130	5-B. Nature of Action Transfer	6-A. Code	6-B. Nature of Action
5-C. Code KTM	5-D. Legal Authority Reg 319.901	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) 9S784-4228939	15. TO: Position Title and Number IT SPECIALIST (POLICY AND PLANNING/DATA MANAGEMENT) 557868-4164299
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8. Pay Plan GS	9. Occ. Code 2210	10. Grade or Level 15	11. Step or Rate 10	12. Total Salary \$172,500.00	13. Pay Basis PA	16. Pay Plan GS	17. Occ. Code 2210	18. Grade or Level 15	19. Step or Rate 10	20. Total Salary/Award \$172,500.00	21. Pay Basis PA
12A. Basic Pay \$143,598.00	12B. Locality Adj. \$28,902.00	12C. Adj. Basic Pay \$172,500.00	12D. Other Pay \$0	20A. Basic Pay \$143,598.00	20B. Locality Adj. \$28,902.00	20C. Adj. Basic Pay \$172,500.00	20D. Other Pay \$0				

14. Name and Location of Position's Organization AFELM DATA SVC CTR HS AHQ COMMAND: 13 STRATEGY OSC: COS PENTAGON ADM VA 20330 AUTH PAS: HB13FWFW	22. Name and Location of Position's Organization NATIONAL GUARD BUREAU JOINT STAFF NGB-J6, C4 SYSTEMS AND CIO DIRECTORATE ARLINGTON, VA 22204 809600G
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EMPLOYEE DATA			
23. Veterans Preference 1	1 - None 2 - 5-Point 3 - 10-Point/Disability 4 - 10-Point/Compensable	5 - 10-Point/Other 6 - 10-Point/Compensable/30%	24. Tenure 1
27. FEGLI D0 Basic + Option A	28. Annuitant Indicator 9 Not Applicable	25. Agency Use	26. Veterans Preference for RIF YES X NO
30. Retirement Plan K FERS and FICA	31. Service Comp. Date (Leave) 11/19/2016	32. Work Schedule F Full-Time	29. Pay Rate Determinant 0
33. Part-Time Hours Per Biweekly Pay Period			

POSITION DATA			
34. Position Occupied 1	1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved	35. FLSA Category E	E - Except N - Nonexcept
36. Appropriation Code 133GC8000001	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 SW	41. PON# OA	42.	43.
44. TDA DATA GB/W0B4AA/610/03			

45. Remarks
 Appointment affidavit executed 13-SEP-2021.
 Completed service requirement for career tenure from 25-NOV-2019 to 10-FEB-2020.
 Initial probationary period completed.
 OPF maintained by Civilian Personnel Records Center (CIVPRC), 305 Marshall Ave, Fort Riley, KS 66442.
 All information subject to verification upon receipt of Official Personnel Folder.
 Employee is automatically covered under FERS, FERS-RAE or FERS-FRAE
 Probationary period for supervisory (or managerial) position completed.
 Prior health and life insurance benefits remain in place. No new opportunity to elect or change. TSP may be changed by the employee at any time.
 Selected from 20210624-CAMJ-005, dated 24-JUN-2021.
 Health benefits coverage continues.
 Creditable Military Service: NONE
 Previous retirement coverage: Previously Covered.
 Frozen Service: NONE

46. Employing Department or Agency Office of the Chief of the National Guard (ARGB)	50. Signature/Authentication and Title of Approving Official Electronically Signed by: Debbie L. Forrester SUPV HUMAN RESOURCES SPECIALIST
47. Agency Code ARGB	48. Personnel Office ID 2241
49. Approval Date 09/10/2021	



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
(202) 804-7000

February 28, 2022

VIA ELECTRONIC MAIL
Martin Akerman
2001 North Adams St
Unit 440
Arlington, VA 22201
makerman@gmail.com

Re: OSC File No. MA-21-1602

Dear Mr. Akerman:

The U.S. Office of Special Counsel (OSC) terminated its inquiry into your allegations of violations of prohibited personnel practices under 5 U.S.C. § 2302(b)(8) and (b)(9) on February 28, 2022. The purpose of this letter is to notify you that you may file an "individual right of action" (IRA) appeal seeking corrective action from the Merit Systems Protection Board (Board).

You were a GS-15 Supervisory Information Technology Specialist in the Chief Data Office (SAF/CO) within the U.S. Department of Defense (DOD), Department of the Air Force (AF), Air Force Secretariat who served as the Director of Strategy and Staff for Strategy and Governance (COS), a component of SAF/CO.¹ You allege that the Chief Data Officer, Eileen Vidrine, and other agency officials retaliated against you when, in May of 2021, you began disclosing, both orally and in writing, that you believed the manner in which Ms. Vidrine went about reorganizing the SAF/CO was unlawful. In retaliation, you allege that the AF took the following actions against you: (1) Col Michael McDaniel, former Deputy Chief Data Officer, issued you an written admonishment on May 25, 2021 citing unprofessional conduct; (2) Col McDaniel issued you a letter of reprimand on June 15, 2021 for conduct unbecoming; (3) Col Ryan Kehoe, without seeking your input, issued you a 2022 performance plan that had different critical elements than those that were in your 2021 performance plan; (4) agency officials interfered with your student loan repayment benefits and service obligation date; 5) agency officials fraudulently changed your SF-50 to state that you were terminated from your position with the AF; and 6) agency officials interfered with your clearance, as you were directed to undergo a psychological evaluation in order to retain your clearance.

You further allege that the retaliation continued at your new position with the Army NGB after the Army learned of your OSC filing, and after you disclosed issues with a contractor providing services outside the scope of the contract. You allege the Army NGB took the following actions against you: (1) Kenneth McNeil, Chief Information Officer/Director of J6,

¹ In September of 2021, you started a new position as an Information Technology Specialist with the Office of the National Guard Bureau (NGB) within the U.S. Department of Defense, Department of the Army (Army).

U.S. Office of Special Counsel
MA-21-1602
Page 2 of 2

issued you a written counseling on January 19, 2022 for unprofessional conduct; (2) Mr. McNeil issued you a Notice of Proposed Indefinite Suspension on February 14, 2022 for failing to maintain your security clearance; and (3) Susanne Kidd, Army Security Branch Chief, failed to provide you with the time necessary to provide a response to DOD's reasons for suspending your access to classified information.

In your IRA appeal, you may seek corrective action from the Board under 5 U.S.C. §§ 1214(a)(3) and 1221 for any personnel action taken or proposed to be taken against you because of a protected disclosure or activity that was the subject of your OSC complaint. You may file the IRA appeal with the Board within 65 days after the date of this letter. The regulations concerning rights to file an IRA appeal with the Board can be found at 5 C.F.R. Part 1209.

If you choose to file an IRA appeal with the Board, you should include this letter as part of your submission to help show that you have exhausted OSC's administrative procedures. Please note, importantly, that OSC's decision to end the inquiry into your case may not be considered or otherwise held against you in the IRA appeal. See 5 U.S.C. § 1221(f)(2); *Bloom v. Dep't of the Army*, 101 M.S.P.R. 79, 84 (2006). Although the Board may order you to submit a copy of OSC's letter closing your case, the order must contain an explanation of why the closure letter is necessary and give you the opportunity to consent. See 5 U.S.C. § 1214(a)(2)(B); *Bloom*, 101 M.S.P.R. at 84.

If you wish to discuss this matter, please contact me at (202) 804-7028 or edrake@osc.gov.

Sincerely,



Emily M. Drake
Attorney
Retaliation & Disclosure Unit



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

Navigation Bar

◀ Add / Delete a Complaint

Prohibited Personnel Practices (PPP)

- About Filing a Complaint
- Select your PPPs
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- Your Complaint
 - Retaliation for Whistleblowing
 - Retaliation for Protected Activity
 - Obstruct Competition
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 - Encourage Withdrawal from Competition
 - Nepotism
 - Improper Political Recommendation
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 - Other Bases of Discrimination
 - Improper Personnel Actions
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 - Coerce Political Activity
 - Other

Attachments

- Consent
- Report Government Wrongdoing (Disclosure)
- Certification
- Submission

PART 1: IMPORTANT INFORMATION ABOUT FILING A COMPLAINT

Required Complaint Form. Complaints alleging a prohibited personnel practice or a prohibited activity must be submitted on this form, either by e-filing or by mail. Information not submitted on or accompanied by this form may be returned by OSC to the filer. The complaint will be considered filed on the date on which OSC receives the completed form. 5 C.F.R. § 1800.1, as amended.

No OSC Jurisdiction. OSC cannot take any action on complaints filed by employees of

- the FBI, CIA, DIA, NSA, National Geospatial-Intelligence Agency, ODNI, National Reconnaissance Office or other intelligence agencies excluded from coverage by the President;
- the Government Accountability Office;
- the Postal Rate Commission; and
- the uniformed services of the United States (*i.e.*, uniformed military employees). OSC does have jurisdiction over civilian employees of the armed forces.

Limited OSC Jurisdiction. For employees of some federal agencies or entities, OSC's jurisdiction is limited to certain types of complaints, as follows –

- FAA employees only for allegations of retaliation for whistleblowing under 5 U.S.C. § 2302(b)(8) and most allegations of retaliation for engaging in protected activities under 5 U.S.C. § 2302(b)(9).
- employees of government corporations listed at 31 U.S.C. § 9101 only for allegations of retaliation for whistleblowing under 5 U.S.C. § 2302(b)(8) and most allegations of retaliation for engaging in protected activities under 5 U.S.C. § 2302 (b)(9).
- U.S. Postal Service employees only for allegations of nepotism.
- TSA employees only for allegations of discrimination under § 2302(b)(1), retaliation for whistleblowing under 5 U.S.C. § 2302(b)(8), and most allegations of retaliation for engaging in protected activities under 5 U.S.C. § 2302(b)(9).

Election of Remedies. You may choose only one of three possible methods to pursue your prohibited personnel practice complaint: (a) a complaint to OSC; (b) an appeal to the Merit Systems Protection Board (MSPB) (if the action is appealable under law or regulation); or (c) a grievance under a collective bargaining agreement. If you have already filed an appeal about your prohibited personnel practice allegations with the MSPB, or a grievance about those allegations under the collective bargaining agreement (if the action is grievable under the agreement), OSC may lack jurisdiction over your complaint. 5 U.S.C. § 7121(g).



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Complaints Involving Discrimination.

- **Race, Color, Religion, Sex, National Origin, Age, and Disability (or Handicapping Condition):** OSC is authorized to investigate discrimination based upon race, color, religion, sex, national origin, age, or disability (or handicapping condition), as well as retaliation related to EEO activity. 5 U.S.C. § 2302(b)(1). However, OSC generally defers such allegations to agency procedures established under regulations issued by the Equal Employment Opportunity Commission (EEOC), 5 C.F.R. § 1810.1. If you wish to report allegations of discrimination based on these bases, you should contact your agency's EEO office immediately. There are specific time limits for filing such complaints. Filing a complaint with OSC will not relieve you of the obligation to file a complaint with the agency's EEO office within the time prescribed by EEOC regulations (at 29 C.F.R. Part 1614).
- **Marital Status and Political Affiliation:** OSC is authorized to investigate discrimination based on marital status or political affiliation. 5 U.S.C. § 2302(b)(1).
- **Sexual Orientation and Gender Identity:** OSC is authorized to investigate discrimination based on sexual orientation and gender identity. 5 U.S.C. §§ 2302(b)(1) and (b)(10). EEOC also may have jurisdiction over complaints of discrimination on these bases.

Complaints Involving Veterans Rights. By law, all complaints alleging denial of veterans' preference requirements or USERRA must be filed with the Veterans Employment and Training Service (VETS) at the Department of Labor (DOL). 38 U.S.C. § 4301, et seq. and 5 U.S.C. § 3330a(a).



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PART 2: SELECT YOUR PPPs

Please check **ALL** that apply (you **MUST** check one option). A customized series of questions will appear following the "Biographical Information" section, below, based on your selections. You can return to this part at any time prior to submitting your complaint if you would like to add or remove allegations. All fields allow ample space to respond, but each question has a character limit; if you can no longer type you have hit the limit.

RETALIATION CLAIMS

Retaliation for Whistleblowing

Retaliation for reporting a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research.

Retaliation for Protected Activity

Retaliation for filing a complaint or grievance; assisting another with a complaint or grievance; cooperating with an OSC, OIG, or internal investigation; or refusing to obey an illegal order.

ILLEGAL SELECTION PRACTICE CLAIMS

Obstruct Competition

Intentionally deceive or obstruct anyone from competing for federal employment.

Give Unauthorized Preference

Give an unauthorized preference or advantage, including defining the manner or scope of competition, to improve or injure the employment prospects of any person.

Encourage Withdrawal from Competition

Influence or encourage anyone to withdraw from competition to improve or injure the employment prospects of any person.

Nepotism

Involvement in the appointment, promotion, or advancement of a relative, or advocacy on behalf of a relative.

Improper Political Recommendation

Request or consider a recommendation based on political connections or influence rather than one based on personal knowledge of a person's ability to perform a job.

Violate Veterans' Preference

Take or fail to take, recommend, or approve a personnel action if doing so would violate a veterans' preference requirement. This type of complaint must be filed with the Department of Labor. Please click [here](#) to go to that site.



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DISCRIMINATION CLAIMS

Discrimination for Non-Job-Related Conduct

Discrimination for conduct that does not adversely affect job performance, including claims of sexual orientation or gender identity discrimination.

Other Bases of Discrimination

OSC examines claims of discrimination based on **marital status** and **political affiliation**. OSC does NOT ordinarily investigate claims of discrimination based on race, color, religion, sex, national origin, age, and handicapping condition. These claims are typically better filed with an agency's EEO office.

OTHER CLAIMS

Improper Personnel Actions

Take or fail to take a personnel action if doing so would violate any law, rule, or regulation implementing or directly concerning a merit system principle.

Non-Disclosure Agreement

Implement or enforce a non-disclosure agreement or policy that lacks notification of whistleblower rights.

Improper Accessing of Medical Records

Accessing the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, the commission of a prohibited personnel practice.

Coerce Political Activity

Coerce a person to engage in political activity, to include providing a political contribution or service, or take action against a person for doing so.

Other

Please use this area to describe employment problems that do not fall into one of the categories listed above.



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PART 3: BIOGRAPHICAL INFORMATION

* Denotes Required Fields

1. Complainant Information:

Title [REDACTED]
 First Name* Martin Middle Initial [REDACTED]
 Last Name* Akerman [REDACTED]

2. Contact Information:

Address Location* Domestic International
 Address Line 1* 2001 North Adams Street
 Address Line 2 Unit 440
 City* Arlington State* VA
 Zip Code* 22201

*At least **ONE** phone number **OR** email address is required.

Cell Phone Number (202) 656-5601
 Office Phone Number [REDACTED] Ext. [REDACTED]
 Home Phone Number [REDACTED]
 Email Address makerman@gmail.com

Preferred means of contact:

- email home phone cell phone office phone
- Please do not contact me on my office phone

3. Do you have representation?* Yes No

4. Complainant's employment status:*

- Current Federal Employee
- Former Federal Employee
- Applicant For Federal Employment
- Non-Federal Employee (please specify below)

5. If current or former federal employee, please list most recent position title, series, grade:

Title (for instance, Investigator) Division Chief of Strategy and Director of Staff
 Series (for instance, GS-1810) GS-2210
 Grade (for instance, GS-9) GS-15



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6. Please provide your dates of employment in this position. 11/25/2019

7. Department name: DEFENSE/AIR FORCE

8. Agency name: AIR FORCE DISTRICT OF WASHINGTON

9. Agency subcomponent: SAF/COS

10. Street Address: 1670 Air Force Pentagon

11. City: Washington

12. State: DC Check here if agency address is international.

13. Zip Code: 20330-1670

14. Are you covered by a collective bargaining agreement? (Check one.)
 Yes No I don't know

15. Which of the following apply to your employment status? (Check all applicable items.)

a. Competitive Service
 Temporary appointment Career or career-conditional appointment
 Term appointment Probationary employee

b. Excepted Service
 Schedule A Schedule B Schedule C
 National Guard Technician Postal Service
 Tennessee Valley Authority Non-appropriated fund
 Other (specify): _____

c. Senior Executive Service (SES) or Executive Level
 Career SES Executive Level V or above
 Non-career SES Presidential appointee (Senate-confirmed)

d. Other
 Civil service annuitant Military officer or enlisted person
 Former civil service employee Contract employee
 Unknown Other (specify): _____



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16. What other action(s), if any, have you taken to appeal, grieve, or report this matter under any other procedure? *(Check all that apply.)*

- None, or not applicable-
- Appeal with Merit Systems Protection Board (MSPB) Date: _____
- Grievance under collective bargaining agreement procedure Date: _____
- Grievance filed under agency grievance procedure Date: 06/08/2021
- Discrimination complaint filed with agency Date: _____
- USERRA claim with VETS (Department of Labor) Date: _____
- Appeal filed with Office of Personnel Management Date: _____
- Lawsuit filed in Federal Court Date: _____
Court name: _____
- Reported matter to agency Inspector General Date: _____
- Reported matter to member of Congress Date: _____
Name of Senator or Representative: _____
- Other (specify): Request for Dispute Resolution Date: 05/24/2021

17. What action would you like for OSC to take if we find that a prohibited personnel practice has occurred?

Protection from further retaliation, repair record and position, any other reasonable and foreseeable consequential damages, compensatory damages, and legal fees.



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PART 4: DETAILS OF YOUR COMPLAINT

Retaliation for Whistleblowing

An agency official is prohibited from taking, failing to take, or threatening to take or fail to take, a personnel action against an employee or applicant because the individual made a disclosure of information that s/he reasonably believed evidenced wrongdoing (i.e., a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; substantial and specific danger to public health or safety; or censorship related to scientific research.) 5 U.S.C. § 2302(b)(8). This is commonly referred to as a retaliation for whistleblowing claim.

IMPORTANT INFORMATION ABOUT RETALIATION ALLEGATIONS

YOU SHOULD LIST ALL DISCLOSURES AND PERSONNEL ACTIONS INVOLVED IN YOUR COMPLAINT.

This is because: (1) failure to list any disclosure or personnel action may delay the processing of your complaint by OSC; and (2) a comprehensive listing will help avoid disputes in any later Individual Right of Action (IRA) appeal that you may file with the Merit Systems Protection Board (MSPB).

You may add additional allegations of retaliation for whistleblowing to this complaint while it is pending at OSC. Submission of any additional allegations to OSC in writing will help you if you later decide to file an IRA appeal with the MSPB.

To establish its jurisdiction over an IRA appeal, the MSPB will require you to show that your IRA appeal relates to the same disclosure(s) and personnel action(s) raised in your complaint to OSC. The following documents will help meet this requirement: a copy of the retaliation allegations in your complaint, any additional allegation(s) of retaliation that you submitted to OSC in writing while the complaint was pending, and any official correspondence you receive from OSC about your complaint. IT IS IMPORTANT, THEREFORE, THAT YOU SAVE COPIES OF ALL THESE DOCUMENTS FOR YOUR RECORDS.

If OSC fails to complete its review of your whistleblower retaliation allegation within 120 days after it receives your complaint, or if it closes your complaint at any time without seeking corrective action on your behalf, you have the right to file an IRA appeal with the MSPB. 5 U.S.C. § 1214(a)(3).

Please briefly answer the following questions about your retaliation claim. **If there is more than one instance, you may repeat the process until you have answered the questions for each instance. To do so, click the "Add Another Retaliation for Whistleblowing Claim" button at the end of this section. You will have an opportunity to attach supporting documentation before you submit your form.**

1. What did you disclose? If you made your disclosure in writing, please attach a copy to your complaint before you submit it.**

On 14 May 2021, I requested all formalized Personnel materials and observed/exposed/disclosed a continued violation of laws, rules, and regulations, gross mismanagement, and a gross waste of funds dating back to well before June of 2020.



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2. When did you disclose it?

3 May 2021, 14 May 2021, 19 May 2021, 20 May 2021, 21 May 2021, 24 May 2021, 25 May 2021.

3. To whom did you make your disclosure?

CHAIN OF COMMAND:

1. Ms. Eileen Vidrine SES (SAF/CO)
2. Colonel Michael T McDaniel (SAF/CO)

PERSON DESIGNATED PURSUANT TO REGULATIONS/INSTRUCTION FOR PERSONNEL COMMUNICATIONS:

3. Major Ryan Sullivan (SAF/CO - SAF/COS)
4. Ms. Carla Baucom (SAF/AARC)

NOT CHAIN OF COMMAND AS AT DISCLOSURE:

5. Colonel Earnest Vasquez (SAF/COP - SAF/CO)
6. Lt Colonel Ronnie Synakowski (SAF/COD - SAF/COS)
7. Colonel David Sanchez (SAF/COA - SAF/CO)
8. Erycka Reid (SAF/COS - SAF/COP)

4. How did you learn of the information you disclosed?

On 30 April 2021, SAF/CO leadership was informed by Ms. Vidrine that SAF/CO would be moving to SAF/CN.

On 3 May 2021, I conducted a review with my team (SAF/COS) of what needs to come together for a successful transition.

5. When and how did agency officials learn about your disclosure?

3 May 2021 I wrote an email highlighting personnel aligned to offices not authorized by existing law and proposed actions to bring offices into compliance.

On 14 May, when the Acting Secretary ordered the merger of SAF/CO and SAF/CN, it became clear there would be no action to sanction offices. A larger cover-up and mismanagement including Position Descriptions and Classification was present across SAF/CO.

This is no trivial matter. Managing appropriated civilian resources demands a proactive plan, discipline, and integrity, both in programming and executing civilian resources. Accurate requirement projections and development of employment plans are critical to support the workload demand within budget, while executing work-years, end strength and civilian pay resources. (AFI 36-129) Supervisors are required to participate in the classification process by providing the personnel specialist (SAF/AA) the necessary information to determine the classification of all new and changed positions. (AFI 36-1401) The Air Force manages UMDs in accordance with congressionally authorized end strength, to include the centrally managed accounts and will simultaneously comply with guidance contained in the Defense Officer Personnel Management Act (DOPMA) and the Reserve Officer



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Personnel Management Act (ROPMA), Titles 10 and 32, United States Code and congressionally mandated officer and/or enlisted manpower levels (also referred to as 'ceilings'). (AFPD 38-2)

5 USC § 5502 - Unauthorized office; prohibition on use of funds

(a) Payment for services may not be made from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law. - Offices to where many SAF/COS and SAF/COP employees and salaries were diverted continue to work in other unauthorized offices. SAF/COA, SAF/COD, SAF/COL do not exist as of this writing and staff still are told they work for these offices and not the ones for which they have been appropriated.

5 USC § 5509 - Appropriations

There are authorized to be appropriated sums necessary to carry out the provisions of this title. (5 U.S. Code Title 5—GOVERNMENT ORGANIZATION AND EMPLOYEES)

5 CFR § 511.701 Effective dates generally. (a) Agency classification actions.

(1)(i) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action. The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

6. What action did the agency take in response to your disclosure? (For example, did the agency investigate or otherwise look into what you disclosed or was disciplinary action taken against responsible parties?)

On 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. Colonel McDaniel rescheduled the meeting to 25 May 2021.

On 21 May 2021, I requested a meeting with Ms. Vidrine and Colonel McDaniel to discuss Position Descriptions, Unit Manning Document and Organizational Alignment for all COS staff.

On 25 May 2021, I was handed a Written Admonishment intended to modify my behavior in the future (cause me to not question the mismanagement of SAF/CO (SAF/CND) and prevent me from reporting the violations), it was a corrective action and therefore is a covered personnel action for purposes of the Whistleblower Protection Act. (abuse of authority and fraud)



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7. What personnel action(s) do you believe was taken, not taken, or threatened because of your disclosure?

Check all applicable:

- | | |
|--|---|
| <input type="checkbox"/> Removal | <input type="checkbox"/> Reinstatement |
| <input type="checkbox"/> Suspension | <input type="checkbox"/> Reassignment |
| <input checked="" type="checkbox"/> Other Discipline | <input type="checkbox"/> Harassment/Hostile Work Environment |
| <input type="checkbox"/> VA Expedited Process | <input type="checkbox"/> Psychiatric Examination |
| <input type="checkbox"/> Gag Order | <input type="checkbox"/> Performance Evaluation |
| <input type="checkbox"/> Detail | <input type="checkbox"/> Changes to Duties/Working Conditions |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Pay, Benefits, Training |
| <input type="checkbox"/> Appointment | <input type="checkbox"/> Other |

Describe:

Letter of Admonishment - corrective action intended to deter me from raising concerns over a continued violation of laws, rules, and regulations, gross mismanagement, gross waste of funds and abuse of authority that could damage the reputation of the SAF/CO organization and its leadership.

8. When was the personnel action(s) taken? By whom?

On 25 May 2021, I was handed a Written Admonishment by Colonel Michael T McDaniel and Ms. Carla Baucom

9. What was the agency's stated reason for taking the personnel action(s)?

Unprofessional Conduct

10. What facts demonstrate that the personnel action(s) is retaliatory? (For example, were comments made that suggest that agency officials were angry because of your disclosure or did your relationships cool following your disclosure?)

On 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. Colonel McDaniel rescheduled the meeting to 25 May 2021.

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11. Why do you believe agency officials would retaliate against you? (For example, did agency officials suffer some adverse impact or embarrassment because of your disclosure?)

Concerns over damage to the reputation of the SAF/CO organization and its leadership.

12. Please provide the name, title, and position in your chain of command of the agency official(s) involved in taking the personnel action(s) that you believe was retaliatory.

First Name	Last Name	Title (e.g., Deputy Director)	Chain of Command (e.g., 1 st -level supervisor)	Del
Eileen	Vidrine	Chief, SAF/CO	Supervisor	Del
Michael	McDaniel	Colonel, Deputy Chief, SAF/CO	Supervisor	Del
Ryan	Sullivan	Major, Dir of Staff	SAF/CO Personnel	Del
Carla	Baucom	Human Resources	SAF/AARC Personnel	Del

Add Row

13. Were the agency officials involved in taking the personnel actions against you accused of wrongdoing in your disclosures? If yes, which ones?

Yes, all were involved. At the Admonishment meeting on 25 May 2021, Colonel McDaniel mentioned that he and Ms. Vidrine had a call with HR on 24 May 2021 and she requested that Col. McDaniel create a Written Admonishment. Major Sullivan is the POC for HR. Ms. Carla Baucom is our HR lead and responsible for coordinating disciplinary actions with the Air Force Legal Operations Agency, Labor Law Field Support Center and Air Force General Council prior to disciplinary and adverse actions of SAF/CO civilian employees. (AFI 36-704)

Add Another Retaliation for Whistleblowing Claim

Improper Personnel Actions

An agency official is prohibited from taking or failing to take a personnel action if doing so results in the violation of a law, rule, or regulation that implements, or directly concerns, a merit system principle listed in 5 U.S.C. § 2301.

5 U.S.C. § 2302(b)(12). Retaliation for petitioning a member of Congress or exercising your First Amendment rights falls under this section.

Please briefly answer the following questions about your claim under this section. If there is more than one instance, you may repeat the process until you have answered the questions for each instance. To do so, click the "Add Another Improper Personnel Actions Claim" button at the end of this section. You will have an opportunity to attach supporting documentation before you submit your form.

1. What was the personnel action(s) taken or not taken?
Check all applicable:



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

For instructions or questions, call the Case Review Division at (202) 804-7000.

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- Removal
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- Performance Evaluation
- Detail
- Changes to Duties/Working Conditions
- Promotion
- Pay, Benefits, Training
- Appointment
- Other

Describe:

Threat

2. When was the personnel action(s) taken or not taken?
 10 June 2021, Colonel McDaniel responded to my Informal Review (dated 8 June 2021) and started to threaten me with another reprimand.
3. State the name, title, and position in your chain of command of the agency official(s) involved in the personnel action(s).

First Name	Last Name	Title (e.g., Deputy Director)	Chain of Command (e.g., 1 st level supervisor)	
Michael	McDaniel	Colonel, Deputy Chief, SAF/CO	Supervisor	Del
Carla	Baucorn	Human Resources	SAF/AARC Personnel	Del

Add Row

4. Describe the role played by each agency official listed above in the personnel action(s) that is the subject of your complaint. (e.g., recommending official, proposing official, deciding official, approving official, etc.)
- 10 June 2021, Colonel McDaniel responded to my Informal Review (dated 8 June 2021) and started to threaten me with another reprimand. Ms Carla Baucorn is our HR lead and responsible for coordinating disciplinary actions with the Air Force Legal Operations Agency, Labor Law Field Support Center and Air Force General Council prior to disciplinary and adverse actions of SAF/CO civilian employees. (AFI 36-704)

5. What law, rule, or regulation was violated by the agency's taking or failing to take the personnel action(s)?
- I had an Outstanding Performance Review for 2020 (Signed May 2021)
- When implementing Discipline and Adverse Actions of Civilian employees, supervisors are required to gather, analyze, and carefully consider available facts and circumstances before taking or recommending disciplinary action, and then communicating to civilian employees the overall expectations governing conduct and responsibilities in accordance with the provisions of AFI 36-704. The Threat was a deliberate reprisal and corrective action for the lawful disclosure of



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

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information in a protected situation, where I reasonably believed there was and continues to be a violation of law, rule, and regulation. (10 USC 1034; 5 USC 2302). The manner in which members of the SAFICO and SAF/AA staff responded to requests for information (several times with disinformation) suggests that Colonel McDaniel and Ms. Vidrine involved additional staff in a conspiracy to alter and conceal records.

5 USC 2302 - Prohibited personnel practices
 10 USC § 129 - Civilian personnel management
 10 USC § 129a - General policy for total force management
 10 USC 1034 - Protected communications; prohibition of retaliatory personnel actions
 5 USC § 7513 - Cause and procedure



10 USC 880 - Attempts
 (a) An act, done with specific intent to commit an offense under this chapter (10 U.S. Code Chapter 47 - UNIFORM CODE OF MILITARY JUSTICE), amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.
 10 USC 881 - Conspiracy
 10 USC 892 - Failure to obey order or regulation

Add Another Improper Personnel Actions Claim

Attachments

I would like to attach documents to my complaint. **ATTACH**

Please note that the space available for attachments is limited. Therefore, **DO NOT** attach every document and email that may be relevant to your claim. You will have an opportunity to make additional submissions at a later date. We recommend limiting attachments to official forms and correspondence that document the action(s) at issue in your complaint (e.g., proposed AND final disciplinary action, along with any written reply you submitted; letter of reprimand; performance appraisal; PIP; vacancy announcement) **if these documents are relevant to your allegations.**

To see the attachments that have been successfully added to your form, click on the paperclip icon  in the dark gray panel on the far left side of your screen. Please note that, if you print a copy of your form, the attachments will not print with it. However, any documents that appear in the paperclip panel  will be transmitted to OSC.



COMPLAINT OF PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY

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PART 5: CONSENT TO CERTAIN DISCLOSURES OF INFORMATION

* Denotes Required Fields

OSC asks everyone who files a complaint alleging a possible prohibited personnel practice or other prohibited activity to select one of three Consent Statements shown below. Please: (a) select and check one of the Consent Statements below; and (b) keep a copy for your own records.

If you initially select a Consent Statement that restricts OSC's use of information, you may later select a less restrictive Consent Statement. If your selection of Consent Statement 2 or 3 prevents OSC from being able to conduct an investigation, an OSC representative will contact you, explain the circumstances, and provide you with an opportunity to select a less restrictive Consent Statement.

You should be aware that the Privacy Act and other applicable federal laws allow information in OSC case files to be used or disclosed for certain purposes, regardless of which Consent Statement you sign. Information about certain circumstances under which OSC can use or disclose information under the Privacy Act appears in the Form Submission part of this form.

***(Please check ONLY one)**

Consent Statement 1

I consent to OSC's communication with the agency involved in my complaint. I agree to allow OSC to disclose my identity and information about my complaint if OSC decides that such disclosure is needed to investigate my complaint (for example, to request information from the agency, or seek a possible resolution).

Consent Statement 2

I consent to OSC's communication with the agency involved in my complaint, but I *do not agree* to allow OSC to disclose my identity to that agency. I agree to allow OSC to disclose only information about my complaint, without disclosing my name or other identifying information, if OSC decides that such disclosure is needed to investigate my complaint (for example, to request information from the agency, or seek a possible resolution). I understand that in some circumstances, OSC could not maintain my anonymity while communicating with the agency involved about a specific personnel action. In such cases, I understand that my request for confidentiality may prevent OSC from taking further action on the complaint.

Consent Statement 3

I do not consent to OSC's communication with the agency involved in my complaint. I understand that if OSC decides that it cannot investigate my complaint without communicating with that agency, my lack of consent will probably prevent OSC from taking further action on the complaint.

Next



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

Do not use this form to submit classified information.
For instructions or questions, call the Disclosure Unit at (202) 804-7000.

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PART 1: IMPORTANT INFORMATION ABOUT FILING A DISCLOSURE

OSC WHISTLEBLOWER DISCLOSURE CHANNEL

Under 5 U.S.C. § 1213 and related provisions, the Office of Special Counsel (OSC) serves as a secure channel for federal employees, former federal employees, and applicants for federal employment with reliable knowledge of the wrongdoing to disclose:

- a violation of law, rule or regulation;
- gross mismanagement;
- gross waste of funds;
- an abuse of authority;
- a substantial and specific danger to public health or safety; and/or
- censorship related to scientific research.

OSC JURISDICTION

OSC has no jurisdiction over disclosures filed by:

- employees of the U.S. Postal Service and the Postal Regulatory Commission;
- members of the armed forces of the United States (*i.e.*, non-civilian military employees);
- ~~state~~ employees operating under federal grants;
- employees of federal contractors;
- other employees or federal agencies that are exempt under federal law; and
- Congressional or judicial branch employees.

ANONYMOUS SOURCES

While OSC will protect the identity of persons who make disclosures, it will not consider anonymous disclosures. If a disclosure is filed by an anonymous source, the disclosure will be referred to the Office of Inspector General in the appropriate agency. OSC will take no further action.

RETALIATION

Do you believe you suffered retaliation by your agency for disclosing wrongdoing? If yes, you may file a complaint for retaliation by selecting Add/Delete a Complaint from the top left corner. Select Option 1 to complete and submit a Complaint of Prohibited Personnel Practice or other Prohibited Activity (PPPs). *If you have already completed the Complaint of Prohibited Personnel Practice or other Prohibited Activity above, please continue with this Disclosure.* PPPs are employment-related activities that are banned in the federal workforce. PPPs generally involve some type of personnel decision or action and may result in personal relief for people who have been subject to a PPP. For example, if we find that you were removed from federal service in retaliation for whistleblowing, OSC may act to get your job back. PPPs can also include allegations of harassment, failure to issue appraisals, and improper hiring. Do not file a disclosure to report retaliation or other PPPs.



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PART 2: BIOGRAPHICAL INFORMATION

* Denotes Required Fields

1. Complainant Information:

Title [REDACTED]
 First Name* Martin Middle Initial [REDACTED]
 Last Name* Akerman

2. Contact Information:

Address Location* Domestic International
 Address Line 1* 2001 North Adams Street
 Address Line 2 Unit 440
 City* Arlington State* VA
 Zip Code* 22201

*At least ONE phone number OR email address is required

Cell Phone Number (202) 656-5601
 Office Phone Number [REDACTED] Ext. [REDACTED]
 Home Phone Number [REDACTED]
 Email Address makerman@gmail.com

Preferred means of contact:

- email home phone cell phone office phone
 Please do not contact me on my office phone

3. Do you have representation?* Yes No

4. Complainant's employment status:*

- Current Federal Employee
 Former Federal Employee
 Applicant For Federal Employment
 Non-Federal Employee (please specify below)

5. If current or former federal employee, please list most recent position title, series, grade:

Title (for instance, Investigator) Division Chief of Strategy and Director of Staff
 Series (for instance, GS-1810) GS-2210
 Grade (for instance, GS-9) GS-15



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

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6. Please provide your dates of employment in this position. 11/25/2019

7. Department name:* DEFENSE/AIR FORCE

8. Agency name:* AIR FORCE DISTRICT OF WASHINGTON

9. Agency subcomponent: SAF/COS

10. Street Address: 1670 Air Force Pentagon

11. City:* Washington

12. State:* DC Check here if agency address is international*

13. Zip Code: 20330-1670

14. Are you covered by a collective bargaining agreement? (Check one.)
 Yes No I don't know

15. Which of the following apply to your employment status? (Check all applicable items.)

a. Competitive Service
 Temporary appointment Career or career-conditional appointment
 Term appointment Probationary employee

b. Excepted Service
 Schedule A Schedule B Schedule C
 National Guard/Reserve Tech Postal Service
 Tennessee Valley Authority Non-appropriated fund
 Other (specify): _____

c. Senior Executive Service (SES) or Executive Level
 Career SES Executive Level V or above
 Non-career SES Presidential appointee (Senate-confirmed)

d. Other
 Civil service annuitant Military officer or enlisted person
 Former civil service employee Contract employee
 Unknown Other (specify): _____



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PART 3: SELECT YOUR DISCLOSURES

Please identify the type of wrongdoing that you are alleging (check ALL that apply - you MUST check one option). If you check "violation of law, rule, or regulation," specify, if you can, the particular law, rule or regulation violated (by name, subject, and/or legal citation).

Violation of law, rule, or regulation (*please specify*):

Will include list in narrative

Gross mismanagement

Gross waste of funds

Abuse of authority

Substantial and specific danger to public health

Substantial and specific danger to public safety

Censorship related to scientific research

For each allegation, please answer the following questions (be as specific as possible). Please keep in mind that you will have an opportunity to provide more information and someone from OSC will contact you.

If OSC determines there is a substantial likelihood of wrongdoing, OSC will refer your disclosures to the involved agency for an investigation and report. To meet the substantial likelihood standard, there must be a significant probability that the information reveals wrongdoing that falls within one or more of the categories above. In its evaluation, OSC considers the strength, reliability, and credibility of the disclosures. If the substantial likelihood determination cannot be made, OSC will determine whether there is sufficient information to exercise its discretion to refer the allegations.

If there is more than one instance, you may repeat the process until you have answered the questions for each instance. To do so, click the "Add Another Instance" button at the end of each section. All fields allow ample space to respond, but each question has a character limit; if you can no longer type you have hit the limit. You will have an opportunity to attach supporting documentation before you submit your form.



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Do not use this form to submit classified information.
For instructions or questions, call the Disclosure Unit at (202) 804-7000.

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Violation of law, rule, or regulation

a. Who took the action?

First Name	Last Name	Title	Del
Eileen	Vidrine	Chief, SAF/CO	Del
Hanson	Sherri	Former Director, SAF/COP	Del
Sloane	Bailey	Former Director, SAF/COS	Del
Marylrene	Subala	Chief Master Sargent, SAF/CO	Del
Carmen	Shelly	Former CAG, SAF/CO	Del
Ryan	Sullivan	Major, CAG, SAF/CO	Del
Charles	Destefani	Colonel, Former Deputy Chief, SAF/CO	Del

Add Row

b. What action did they take?

SAF/CO staff in position to make personnel decisions made mistakes over the years. In June of 2020 I was assured that all moves were going to be corrected except for the Mission Directive. In May of 2021, as a result of a request for reorganization, I found that staff receive awards and salaries in offices which are not authorized by existing law, contrary to what is appropriated and reported to Congress. Staff in SAF/CO believe they work for offices other than what is listed in their personnel records with no effort from leaders to correct the mismanagement.

5 USC § 5502 - Unauthorized office; prohibition on use of funds
(a) Payment for services may not be made from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law. - Offices to where many SAF/COS and SAF/COP employees and salaries were diverted continue to work in other unauthorized offices. SAF/COA, SAF/COD, SAF/COL do not exist as of this writing and staff still are told they work for these offices and not the ones for which they have been appropriated.

5 USC § 5509 - Appropriations
There are authorized to be appropriated sums necessary to carry out the provisions of this title. (5 U.S. Code Title 5—GOVERNMENT ORGANIZATION AND EMPLOYEES)

5 CFR § 511.701 Effective dates generally. (a) Agency classification actions.



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

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(1)(i) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action. The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

5 USC § 5107 - Classification of positions

Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office.

5 CFR § 2635.101 -

(b)(8) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(b)(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(b)(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

c. When did this action occur? 14 May 2021

d. How did you discover this action?

In May of 2021, as a result of a request for reorganization, I found that staff receive awards and salaries in offices which are not authorized by existing law, contrary to what is appropriated and reported to Congress.

e. What additional facts support your allegation of a violation of law, rule, or regulation?

The Unit Manning Document from 6 April 2021 (Received by me in May)

Add Another Violation of Law, Rule, or Regulation Claim



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

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For instructions or questions, call the Disclosure Unit at (202) 804-7000.

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Gross mismanagement

a. Who took the action?

First Name	Last Name	Title	Del
Eileen	Vidrine	Chief, SAF/COS	Del
Ryan	Sullivan	Major, Director of Staff, SAF/CO	Del
Michael	McDaniel	Deputy Chief, SAF/COS	Del
Carla	Baucorn	Personnel Representative for SAF/CO	Del

Add Row

b. What action did they take?

Failed to address mismanagement

c. When did this action occur? 3 June 2021

d. How did you discover this action?

On 14 June 2021, I discovered that Erycka Reid (assigned to my office since she was hired) was appropriated to SAF/COP per box 40 in her 3 June SF-50 highlighting bonus award. Ken Yale continues to be appropriated to COS and works for COA, an office which is not authorized by existing law.

e. What additional facts support your allegation of gross mismanagement?

The Unit Manning Document from 6 April 2021 (Received by me in May 2021) - Email that issue will be corrected.

Add Another Gross Mismanagement Claim

Gross waste of funds

a. Who took the action?

First Name	Last Name	Title	Del
Eileen	Vidrine	Chief, SAF/COS	Del

Add Row

b. What action did they take?

misappropriated and failed to address misappropriation of civilian resources

c. When did this action occur? 21 May 2021



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

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d. How did you discover this action?

On 14 June 2021, I discovered that Erycka Reid (assigned to my office since she was hired) was appropriated to SAF/COP per box 40 in her 3 June SF-50 highlighting bonus award. Ken Yale continues to be appropriated to COS and works for COA, an office which is not authorized by existing law.

e. What additional facts support your allegation of gross waste of funds?

The Unit Manning Document from 6 April 2021 (Received by me in May 2021) - Email that issue will be corrected.

Add Another Gross Waste of Funds Claim

Abuse of authority

a. Who took the action?

First Name	Last Name	Title	
Eileen	Vidrine	Chief, SAF/COS	Del
Michael	McDaniel	Deputy Chief, SAF/COS	Del
Ryan	Sullivan	Major, Director of Staff SAF/COS	Del
Carla	Baucom	Personnel Representative, SAF/CO	Del

Add Row

b. What action did they take?

conspiracy to commit fraud and falsification of records for which only they had access

c. When did this action occur? 25 May 2021

d. How did you discover this action?

On 21 May 2021, I requested a meeting with Ms. Vidrine and Colonel McDaniel to discuss Position Descriptions, Unit Manning Document and Organizational Alignment for all COS staff.

On 25 May 2021, I was handed a Written Admonishment intended to modify my behavior in the future (cause me to not question the mismanagement of SAF/CO (SAF/CND) and prevent me from reporting the violations), it was a corrective action and therefore is a covered personnel action for purposes of the Whistleblower Protection Act (abuse of authority and fraud)

On the days after the Written Admonishment, the manner in which members of the SAF/CO and SAF/AA staff responded (several times with disinformation) or did not respond to my requests for information, the response to my requests for time to prepare, and refusing my requests for an extension of time to



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

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prepare suggests that Colonel McDaniel and Ms. Vidine involved additional staff in a conspiracy to commit this fraud (altering and concealing public records).

e. What additional facts support your allegation of abuse of authority?

Emails including falsified Position Description for my position.

Add Another Abuse of Authority Claim

1. What action would you like OSC to take?

Restore my spotless record, other remedies and legal fees as appropriate.

PART 4: WHERE ELSE DID YOU REPORT THIS MATTER?

2. I have also disclosed this information to (complete all that apply):

None or not applicable

Inspector General of department / agency involved Date: _____

a. Who did you contact?

First Name: _____ Last Name: _____

Title: _____

Address: _____

Email Address: _____

Telephone Number: _____

Case ID #: _____

b. What is the status of the matter?

Other office of department / agency involved (please specify): _____ Date: _____

Department of Justice Date: _____

Other Executive Branch / department / agency (please specify): _____ Date: _____

General Accounting Office (GAO) Date: _____

Congress or congressional committee (please specify member or committee): _____



REPORT GOVERNMENT WRONGDOING (DISCLOSURE)

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Date: _____

Press / media (newspaper, television, other) (please specify): _____

Date: _____

Other (please specify): _____

NOTE: MATTERS INVESTIGATED BY AN OFFICE OF INSPECTOR GENERAL
It is the general policy of OSC not to transmit allegations of wrongdoing to the head of the agency involved if the agency's Office of Inspector General has fully investigated, or is currently investigating, the same allegations.



ATTACHMENTS

The attachments I added in the Prohibited Personnel Practices (PPP) section also apply to my disclosure.

I would like to add attachments specific to my disclosure.

ATTACH

Please note that the space available for attachments is limited. Therefore, DO NOT attach every document and email that may be relevant to your claim. You will have an opportunity to make additional submissions at a later date. We recommend limiting attachments to official forms and correspondence that document the action(s) at issue in your disclosure if these documents are relevant to your allegations.

To see the attachments that have been successfully added to your form, click on the paperclip icon  in the dark gray panel on the far left side of your screen. Please note that, if you print a copy of your form, the attachments will not print with it. However, any documents that appear in the paperclip panel  will be transmitted to OSC.

CONSENT

* Denotes Required Fields

Do you consent to the disclosure of your identify to others outside OSC if it becomes necessary in taking further action on this matter?*

I consent to disclosure of my identity.

I do not consent to disclosure of my identity. (Even if you do not consent, OSC may disclose your identity if necessary due to an imminent danger to public health or safety or imminent violation of any criminal law. See 5 U.S.C. § 1213(h).)

Next



U.S. Office of Special Counsel

Navigation Bar
◀ Add / Delete a Complaint
Prohibited Personnel Practices (PPP)
Report Government Wrongdoing (Disclosure)
Certification
Submission

CERTIFICATION

* Denotes Required Fields

I certify that all of the statements made in this complaint are true, complete, and correct to the best of my knowledge and belief. I understand that a false statement or concealment of a material fact is a criminal offense punishable by a fine, imprisonment, or both 18 U.S.C. § 1001.

BURDEN: The burden for this collection of information (including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the form) is estimated to be an average of one hour to submit a disclosure of information alleging agency wrongdoing, one hour and fifteen minutes to submit a complaint alleging a prohibited personnel practice or other prohibited activity, or 30 minutes to submit a complaint alleging prohibited political activity. Please send any comments about this burden estimate, and suggestions for reducing the burden, to the U.S. Office of Special Counsel, General Counsel's Office, 1730 M Street, NW, Suite 218, Washington, DC 20036-4505.

OTHER INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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REPRODUCTION CHARGES UNDER THE FREEDOM OF INFORMATION ACT MAY APPLY TO ANY REQUEST YOU MAKE FOR COPIES OF MATERIALS THAT YOU PROVIDED TO OSC.

If you would like to print and mail your complaint, please address it to:

U. S. Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, DC 20036

Next



U.S Office of Special Counsel Form Submission

Navigation Bar	
◀ Add / Delete a Complaint Prohibited Personnel Practices (PPP) Report Government Wrongdoing (Disclosure) Certification Submission	Before you submit your complaint to OSC, please take a moment to review the following Pre-Submission Summary <h3 style="text-align: center;">PRE-SUBMISSION SUMMARY</h3> <p>COMPLAINT OF PROHIBITED PERSONNEL PRACTICE Based on the information you entered in the preceding form, the following Prohibited Personnel Practice(s) will be submitted to the Office of Special Counsel:</p> <ul style="list-style-type: none"> Retaliation for Whistleblowing Improper Personnel Actions <p>If you would like to include more allegations, please click here to return to the "Select Your PPPs" section of the form. A list of documents attached appears at the bottom of this page. If you have not attached documents and would like to do so, or if you would like to attach more documents, please click here to return to that section of the form.</p> <p>FILING A DISCLOSURE WITH OSC Based on the information you entered in the preceding form, the following Disclosure(s) will be submitted to the Office of Special Counsel:</p> <ul style="list-style-type: none"> Violation of law, rule, or regulation Gross mismanagement Gross waste of funds Abuse of authority <p>If you would like to include more disclosures, please click here to return to the "Select Your Disclosures" section of the form. A list of documents attached appears at the bottom of this page. If you have not attached documents and would like to do so, or if you would like to attach more documents, please click here to return to that section of the form.</p> <p>We find that you have successfully attached the following documents: ~Appraisal2 copy.PDF</p>

OSC Form-14

OMB No. 3255-0005
Expires 02/29/2020



U.S Office of Special Counsel Form Submission

Navigation Bar	
◀ Add / Delete a Complaint	<p>This form requests information that is relevant and necessary to review your allegations of agency wrongdoing, prohibited personnel practices, or other prohibited activity within OSC's jurisdiction. OSC encourages, but does not require, you to use this form to allege a Hatch Act violation or disclose agency wrongdoing. The U.S. Office of Special Counsel collects this information in order to process complaints alleging wrongdoing under its statutory and regulatory authority. Because your complaint or disclosure is a voluntary action, you are not required to provide any personal information to OSC in connection with your complaint or disclosure. However, OSC cannot process incomplete forms lacking necessary information.</p> <p>ROUTINE USES: OSC uses the information it collects for official purposes. OSC needs some disclosure of information from its files to fulfill OSC's disclosure review, investigative, prosecutorial, and related responsibilities. OSC published descriptions of its routine uses for information in its files in the Federal Register (F.R.). OSC uses some information about your complaint or disclosure in depersonalized form for statistical purposes. Finally, OSC may disclose information from your file as required by law under the provisions of the Freedom of Information Act and the Privacy Act. See 5 U.S.C. §§ 552, 552a.</p> <p>Once you click "Submit", any changes you make to this form will not be transmitted to OSC. However, you can amend or add information by contacting the attorney/investigator/examiner assigned to your complaint. You can contact that person by calling (202) 804-7000.</p> <p>Please save a copy of your completed form before submitting.</p> <div style="text-align: center; margin: 10px 0;"> Save </div> <p>Once you have saved a copy, click the "Submit" button to submit your OSC Form 14. Multiple submissions will delay our review.</p> <p>Please only click "Submit" <u>once</u>.</p> <div style="text-align: center; margin: 10px 0;"> Submit </div>
Prohibited Personnel Practices (PPP)	
Report Government Wrongdoing (Disclosure)	
Certification	
Submission	

OSC Form-14

OMB No. 3255-0005
Expires 02/29/2020



U.S. MERIT SYSTEMS PROTECTION BOARD

Washington Regional Office
1901 South Bell Street, Suite 950
Arlington, VA 22202

Phone: (703) 756-6250; Fax: (703) 756-7112

May 3, 2022

Martin Akerman
2001 North Adams Street
440
Arlington, VA 22202

Dear Mr. Akerman:

We have received your individual right of action appeal under the Whistleblower Protection Act on May 3, 2022. We are returning it to you for the following reasons(s):

- Based on our records, it appears this action is currently pending before the Board under docket no. DC-1221-22-0257-W-1.

You may submit a motion or pleading to the Board under docket no. DC-1221-22-0257-W-1 regarding your appeal. Additionally, if the rejected document was served on the Board electronically, it has been deleted from the MSPB Repository and will not be made a part of the appeal record in this matter.

Sincerely,

_____/S/_____
Tempress Coppet
Paralegal Specialist

Enclosure

Certificate Of Service

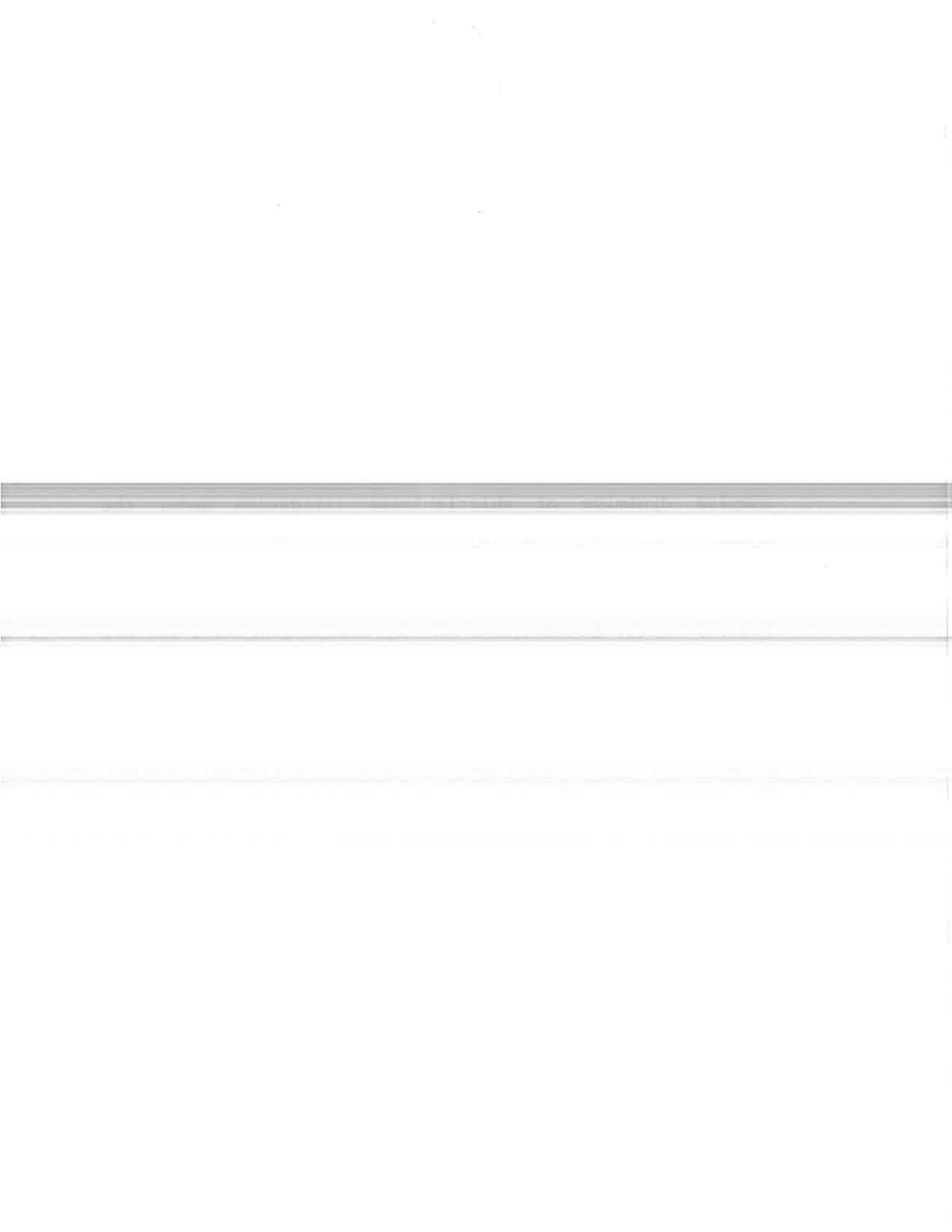
e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

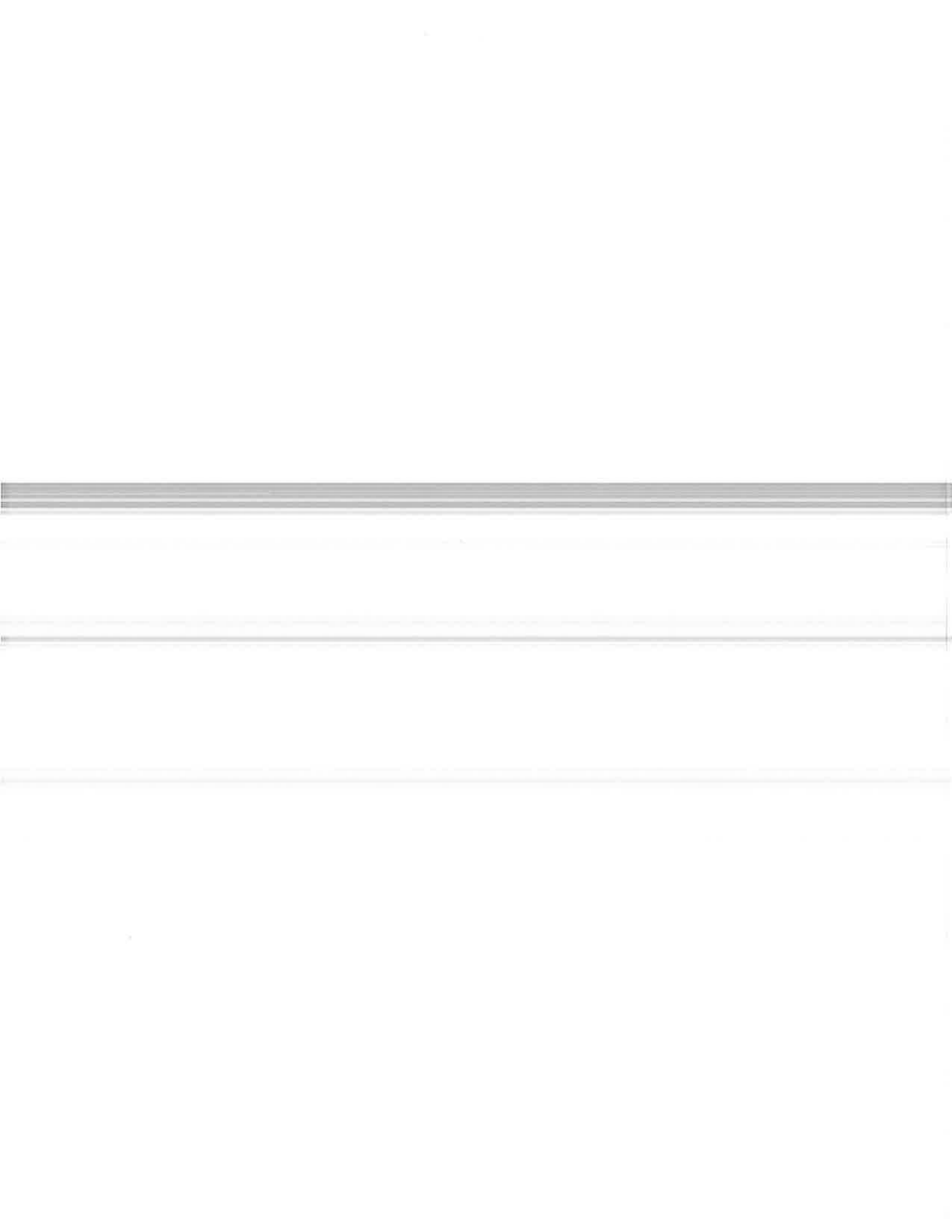
Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	22 of 50	e-Appeal / e-Mail
Jenny Lin Naylor Agency Representative	22 of 50	e-Appeal / e-Mail
Chief Labor Law Agency Representative	22 of 50	e-Appeal / e-Mail
Bernard E. Doyle Agency Representative	22 of 50	e-Appeal / e-Mail

> **Appendix L:** Appendix K contains documents related to the initial filing of whistleblower claims with the Merit Systems Protection Board (MSPB) by Martin Akerman on March 14, 2022 (docket number DC-1221-22-0257-W-1). These documents highlight the beginning of a formal legal process addressing Akerman's workplace grievances and are crucial for understanding the procedural and constitutional questions raised.

Appendices L1 and L2 are pivotal in understanding the complex dynamics of whistleblower litigation under the Twombly and Iqbal (Twiqbal) standards. These standards, which set the plausibility threshold for stating a claim in federal court, become particularly challenging when factual records are compromised. In cases like Martin Akerman's, where lower court records are essential yet inaccessible due to spoliation, meeting the Twiqbal standard becomes a formidable task. These appendices showcase how the absence of crucial records can significantly hinder a party's ability to enhance facts and allegations to meet this heightened pleading requirement. The detailed documentation within these appendices sheds light on the procedural intricacies and challenges faced in whistleblower claims, illustrating the practical implications of Twiqbal in the context of limited access to essential records.



Appendix L1: October 21, 2022 - Case View of Whistleblower Appeal: Document L1, filed on October 21, 2022, presents a case view in the appeal of Martin Akerman v. Department of the Army (Docket No. DC-1221-22-0257-W-1) with the U.S. Merit Systems Protection Board (MSPB). The document indicates the status of the case as 'Regional Pending' and lists 84 documents returned, providing a snapshot of the procedural stage and the extensive documentation involved in the whistleblower appeal process.





U.S. MSPB Merit Systems Protection Board
e-Appeal Online

▶ **SCANNED** ◀

OCT 21 2022 RECEIVED MAILROOM October 21, 2022

My Account File a Pleading Reload Case Print Access Another Case Tech support Save & Exit

ATTENTION: Please do NOT resubmit if you received a confirmation of submission. Processing time can be minutes or hours depending on system workload.

Help Links

Case View

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY
 DC-1221-22-0257-W-1

Case Status:Regional Pending

84 documents returned

- Repository Navigation
- How to access audio hearing files on a case?
- How to view an e-Appeal generated Pleading?

Tab	Download/View	Doc Info.	Submitted by	Date Issued/Received
Initial Appeal				
84	Download/View	Notice of Hearing in District Court	Appellant	10/4/2022
83	Download/View	Objection to Any Motion that Does Not Recognize 69 Exhausted Claims	Appellant	9/26/2022
82	Download/View	Agency's Motion to Compel Discovery-Exhibit B Supp	Agency	9/26/2022
81	Download/View	Agency's Motion to Compel Discovery	Agency	9/26/2022
80	Download/View	Motion to recognize Contingent Claim 40 Tab 40 - 2022-03-25	Appellant	9/26/2022
79	Download/View	Agency's Response to Appellant's Motion to Compel Discovery	Agency	9/26/2022
78	Download/View	Motion to Compel Discovery of Item 11	Appellant	9/21/2022
77	Download/View	Objection to Motion to Dismiss 69 Claims	Appellant	9/19/2022
76	Download/View	Agency's Renewed Motion to Dismiss	Agency	9/19/2022
75	Download/View	Motion for Clarification Before Motion to Compel Discovery	Appellant	9/2/2022
74	Download/View	Response Shifting 20 Day Clock to the Agency Per Order	Appellant	8/31/2022
73	Download/View	Extension of time Order and Suspension Order	MSPB	8/31/2022
72	Download/View	Motion for Leave to File Recapitulation of Claims Totaling Up to 215 Pages	Appellant	8/30/2022
71	Download/View	Response and Objections to Order and Summary of Status Conference	Appellant	8/28/2022
70	Download/View	Order and Summary of Status Conference	MSPB	8/24/2022
69	Download/View	Order Suspending Case Processing	MSPB	7/13/2022
68	Download/View	Order Rescheduling Status Conference and Suspending Case Processing	MSPB	7/13/2022
67	Download/View	Notice of Civil Action in District Court	Appellant	7/10/2022
66	Download/View	Agency's Motion for Postponement of a Status Conference	Agency	7/7/2022
65	Download/View	Jurisdiction Order	MSPB	7/1/2022
64	Download/View	Courtesy Notification	Appellant	6/8/2022
63	Download/View	Agency Response to Appellant's Motion for Interim Relief dated June 2, 2022	Agency	6/8/2022
62	Download/View	Motion asking the AJ to withdraw on the basis of personal bias	Appellant	6/6/2022
61	Download/View	Motion for Interim Relief	Appellant	6/2/2022
60	Download/View	Motion to combine dockets	Appellant	6/1/2022
59	Download/View	Motion to Joinder the National Guard Bureau	Appellant	6/1/2022
58	Download/View	Response to Agency Motion to Dismiss	Appellant	5/20/2022
57	Download/View	Response to Jurisdictional Order and Appellant's Pleadings, Motion to Dismiss	Agency	5/16/2022
56	Download/View	Order Granting the Agency's Extension of Time and Denying the Appellant's Reques	MSPB	4/26/2022
55	Download/View	Motion to Deny Agency Request for	Appellant	4/26/2022

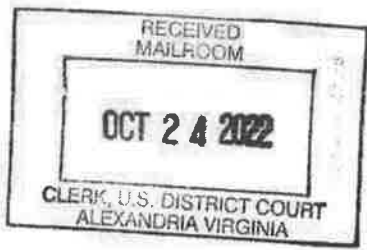
10/21/22, 9:07 AM

e-Appeal Repository

		Extension and Dismiss without Prejudice		
54	Download/View	Agency's Motion for Extension of Time	Agency	4/26/2022
53	Download/View	Motion to Dismiss without Prejudice	Appellant	4/13/2022
52	Download/View	Agency Representative Addition	Agency	4/12/2022
51	Download/View	Order Denying the Appellant's Motion to Disqualify Agency Counsel	MSPB	4/12/2022
50	Download/View	Opposition to Appellant's Motion to Deny Agency Representative	Agency	4/11/2022
49	Download/View	Request for Extension to respond pending FOIA request	Appellant	4/6/2022
48	Download/View	Motion to Deny Agency Representative Designation on New Information received 25	Appellant	4/6/2022
47	Download/View	36 of 50	Appellant	4/5/2022
46	Download/View	Supplement to 2 of 50	Appellant	4/1/2022
45	Download/View	2 of 50	Appellant	4/1/2022
44	Download/View	24 of 50	Appellant	4/1/2022
43	Download/View	45_49_50 of 50	Appellant	3/31/2022
42	Download/View	Omnibus to Simplify Pleadings and Hearings	Appellant	3/30/2022
41	Download/View	Update to 48 of 50	Appellant	3/28/2022
40	Download/View	35 of 50	Appellant	3/25/2022
39	Download/View	33 of 50	Appellant	3/25/2022
38	Download/View	31 of 50	Appellant	3/25/2022
37	Download/View	16 of 50	Appellant	3/25/2022
36	Download/View	15 of 50	Appellant	3/25/2022
35	Download/View	Order Granting Extension of Time	MSPB	3/25/2022
34	Download/View	13 of 50	Appellant	3/25/2022
33	Download/View	48 of 50	Appellant	3/24/2022
32	Download/View	Request for Extension with Agency Concurrence	Appellant	3/23/2022
31	Download/View	Order Denying the Appellant's Motion for an Extension of Time	MSPB	3/23/2022
30	Download/View	11 of 50	Appellant	3/23/2022
29	Download/View	1 of 50	Appellant	3/23/2022
28	Download/View	23 of 50	Appellant	3/23/2022
27	Download/View	10 of 50	Appellant	3/22/2022
26	Download/View	9 of 50	Appellant	3/22/2022
25	Download/View	21 of 50	Appellant	3/22/2022
24	Download/View	17 of 50	Appellant	3/22/2022
23	Download/View	Action 38 of 50	Appellant	3/21/2022
22	Download/View	Submission of Action 42 and Request for 65 days from 28 Feb 2022 (5 CFR 1209)	Appellant	3/21/2022
21	Download/View	Supplemental Documentation	Appellant	3/18/2022
20	Download/View	Supplemental Documentation	Appellant	3/18/2022
19	Download/View	Supplemental Documentation	Appellant	3/17/2022
18	Download/View	IRA Appeals Confirmation	Appellant	3/17/2022
17	Download/View	Order and Summary of Status Conference	MSPB	3/17/2022
16	Download/View	Document to Help with Status Conference	Appellant	3/15/2022
15	Download/View	Order	MSPB	3/14/2022
14	Download/View	Supplemental Documentation	Appellant	3/12/2022
13	Download/View	Supplemental Documentation	Appellant	3/12/2022
12	Download/View	Responses to ORDER 2, ORDER 1, AND DECISION (ARMY AS SOLE RESPONDENT PARTY)	Appellant	3/14/2022
11	Download/View	Order to Show Cause - Jurisdiction	MSPB	3/10/2022
10	Download/View	Request for Clarification and Time	Appellant	3/10/2022
9	Download/View	Request for Clarification	Appellant	3/6/2022
8	Download/View	Agency Response to Appellant Request for Joinder	Agency	3/4/2022
7	Download/View	Pleading for Multiple Respondents and 2302(b)(8)	Appellant	3/4/2022
6		Request for Stay	Appellant	3/3/2022
5	Download/View	Designation of Representative	Agency	3/3/2022

4	Download/View	Pleading and Status Conference Request	Appellant	3/3/2022
3	Download/View	Jurisdiction Order	MSPB	3/2/2022
2	Download/View	Acknowledgment Order	MSPB	3/2/2022
1	Download/View	Initial Appeal	Appellant	2/28/2022

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USPS CERTIFIED MAIL



9214 8901 4298 0474 8743 06

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OCT 21 2022



CERTIFIED MAIL

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

See Important Information Enclosed



000791377300001
United States Attorney for the Eastern
District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314

FE-0373 1 2

ROSEBORO AMENDED COMPLAINT CHANGES

▶ SCANNED ◀

OCT 21 2022

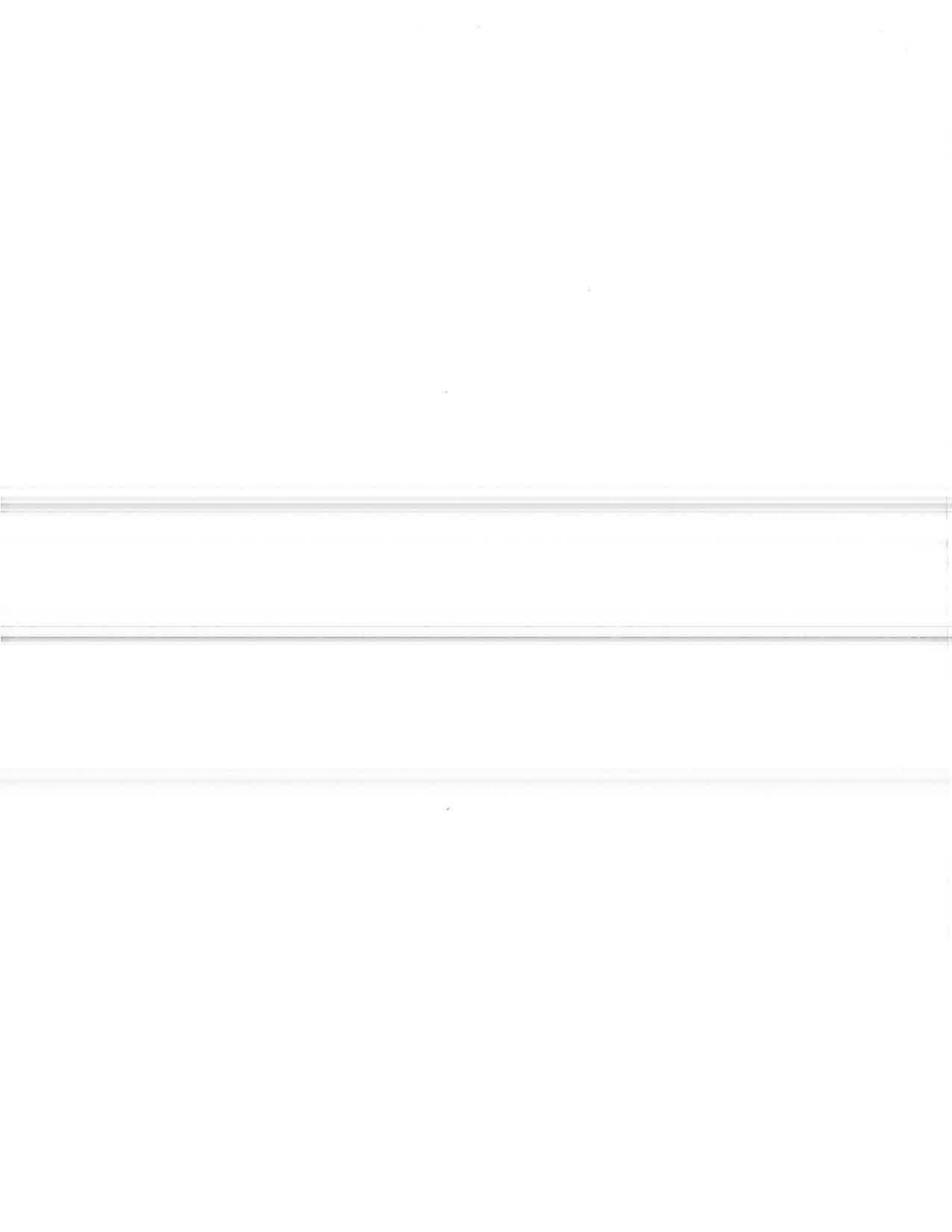
Ghostwriting Certificate - LOCAL RULE 83.1(M) CERTIFICATION (2022-10-20)

I, Martin Akerman, the Plaintiff, declare under penalty of perjury that no attorney has prepared, or assisted in the preparation of this COMPLAINT.

Change 1. Pierced Veil of Whistleblower Claims 1-39

Change 2. EEOC Closed Mixed Appeal Case (Supplement to Roseboro Brief 1)

Change 3. STILL NO ADDRESS CORRECTIONS RECEIVED.



Appendix L2: November 1, 2022 - Response Shifting 20 Day Clock to the Agency: Document L2, dated November 1, 2022, includes the filing of a response by Martin Akerman in the case against the Department of the Army (Docket No. DC-1221-22-0257-W-1). This document, titled "Response Shifting 20 Day Clock to the Agency Per Order," provides a summary page indicating a strategic procedural response in the ongoing legal process, highlighting the dynamic nature of legal timelines and responses in whistleblower cases.

ROSEBORO
SUPPLEMENT TO BRIEF 8 [DKt No. 73]

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY
Docket # DC-1221-22-0257-W-1
Response Shifting 20 Day Clock to the Agency Per Order
Summary Page

Case Title : MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket Number : DC-1221-22-0257-W-1

Pleading Title : Response Shifting 20 Day Clock to the Agency Per Order

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant



Details about the supporting documentation

#	Title/ Description	Mode of Delivery
1	Response Shifting 20 Day Clock to the Agency	Uploaded
2	District Court Motion for Leave to File Amended C [DKt. No. 15]	Uploaded

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OCT 29 2022

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Response Shifting 20 Day Clock to the Agency	4
District Court Motion for Leave to File Amended C	21 [Dkt No 15]
Certificate of Service	41

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OCT 29 2022

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY
Docket # DC-1221-22-0257-W-1
Response Shifting 20 Day Clock to the Agency Per Order
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.

Kindly find Response Shifting 20 Day Clock to the Agency and Motion with District Court related to this case.

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

Yes

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

Yes

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

MARTIN AKERMAN,
Appellant,

DOCKET NUMBER
DC-1221-22-0257-W-1

V.

DEPARTMENT OF DEFENSE,
Agency.

DATE: 31 August, 2022

RESPONSE SHIFTING 20 DAY CLOCK TO THE RESPONDENT

1. The appellant filed an IRA appeal on 28 February 2022 with the Department of Defense as Respondent (“agency that took the action”)(TAB 1 item 5)(the Agency). The ORDER AND SUMMARY OF STATUS CONFERENCE (the ORDER)(Tab 70) continues to incorrectly show this appeal to be against the Department of the Army on the grounds that it is the appellant’s civilian employing agency.
2. Appellant hereby recapitulates the 69 claims within 20 days as provided in the Order. However, appellant objects to allowing the Army or Air Force additional time to submit responses past the dates already provided, as established on 17 March 2022. (Tabs 17 &18), unless additional facts are introduced herein.
3. Although the appellant was a fantastic employee, the Department of Defense agencies perceived the appellant to be a whistleblower.^{1 2}

¹ *Corthell v. Department of Homeland Security*: The Corthell case differs from the typical IRA appeal in that the appellant alleges that the agency took personnel actions against him in part because of his protected disclosures under 5 U.S.C. § 2302(b)(8), but also in part because of its mistaken belief that he engaged in activity protected under 5 U.S.C. § 2302(b)(9)(C) by reporting matters to his agency’s OIG. Under the latter provision, it is a prohibited personnel practice for an agency to: take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of . . . cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law[.]

² *Salerno v. Department of the Interior*: The appellant’s disclosure to OSC “in accordance with applicable provisions of law” met the nonfrivolous allegations standard for protection as well as a contributing factor, entitling him to a hearing.

- a. The Board may consider a request for corrective action under 5 U.S.C. § 1221 based on a claim that an agency took or failed to take a personnel action based on its perception that the appellant engaged in protected activity under 5 U.S.C. § 2302(b)(9)(C).
- b. The Whistleblower Protection Act of 1989 (WPA), Pub. L. No. 101-12, 103 Stat. 16, as amended by the Whistleblower Protection Enhancement Act of 2012 (WPEA), Pub. L. No. 112-199, 126 Stat. 1465, authorizes the Board to provide corrective action for certain prohibited personnel practices. Specifically, 5 U.S.C. § 1221(a) provides an avenue for an employee, former employee, or applicant for employment to seek corrective action before the Board “with respect to any personnel action taken, or proposed to be taken against [him] as a result of a prohibited personnel practice described in [5 U.S.C. §] 2302(b)(8) or [§] 2302(b)(9)(A)(i), (B), (C), or (D)[.]” In the absence of a matter otherwise within the Board’s jurisdiction, an employee seeking relief under 5 U.S.C. § 1221(a) first must seek corrective action with OSC before seeking corrective action before the Board.³ 5 U.S.C. §§ 1214(a)(3), 1221(a). In such a case, the Board proceeding is known as an IRA appeal.

JURISDICTION

4. To establish jurisdiction in a typical IRA appeal, an appellant must show by preponderant evidence that he exhausted his remedies before OSC, and make nonfrivolous allegations that: (1) he made a disclosure described under 5 U.S.C. § 2302(b)(8) or engaged in a protected activity described under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D); and (2) the disclosure or the protected activity was a contributing factor in the agency’s decision to take or fail to take a personnel action as defined by 5 U.S.C. § 2302(a). *Linder v. Department of Justice*, 122 M.S.P.R. 14, ¶ 6 (2014); 5 C.F.R. § 1201.57(a)(1), (c)(1); see *Yunus v. Department of Veterans Affairs*, 242 F.3d 1367, 1371 (Fed. Cir. 2001).
5. Once jurisdiction is established, the appellant may be entitled to corrective action if he shows by preponderant evidence that he made a protected disclosure under 5 U.S.C. § 2302(b)(8) or engaged in protected activity under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D), and that the protected disclosure or activity was a contributing factor in the personnel action. 5 U.S.C. § 1221(e)(1); 5 C.F.R. § 1201.57(c)(4).

³ If the appellant seeks corrective action regarding a personnel action that is otherwise appealable to the Board, he may bring the matter before the Board without first seeking corrective action before OSC. 5 U.S.C. § 1221(b).

ALL MUST FOLLOW THE RULES

6. The Follow the Rules Act was introduced to clarify and extend the original Whistleblower Protection Act. For a Federal employee who becomes a verified whistleblower, it no longer makes a difference if the dispute with an agency involves a law or a rule or regulation issued by the federal government.⁴

AGENCY SILENCE SUGGESTS KNOWLEDGE

7. The agencies did not properly respond to all 69 claims within the time allowed. The appellant's allegations are "understood in context, especially by the responding agency".⁵ Agency silence here suggests knowledge and that the appellant was not on notice of the need for more specificity.

AUTOMATIC REILING OF REJECTED CLAIMS

8. When a dismissal without prejudice is issued over the objection of the appellant, the appeal will be automatically refiled as of a date certain. The judge will determine whether claims that are part of the 69 IRA claims and are also subject to original jurisdiction with MSPB must be refiled by the appellant or whether it will be automatically refiled by the judge as of a date certain. If a dismissed appeal must be refiled by the appellant, request for waiver of a late filing based upon good cause will be liberally construed.⁶
9. These recapitulations will not introduce new evidence, with the exception of Claim 44 (Tab 23), where new evidence recently surfaced to suggest that the prohibited personnel action on 26 January 2022 was additionally an act by both the Department of the Air Force and the Department of the Army to activate an obscure clause that, had OSC not intervened, would have arguably invalidated the appellant's claim to tenure.⁷
10. The AJ must implement the changes introduced by the Follow the Rules Act, the Whistleblower Protection Enhancement Act, and case law that establishes a far lower bar than the one which has been established for the Jurisdictional narrative.

SCANNED

OCT 29 2022

[DKT. NOS 73+ 75-2]

⁴ The "Follow the Rules Act" was signed into law on 14 June 2017.

⁵ Cahill v. MSPB: Silence is Golden, Duct Tape is Silver

⁶ 29 CFR 1201.29

⁷ McCormick v. Department of Air Force, 307 F.3d 1339 (Fed. Cir. 2002)

THE “RECORD AS A WHOLE” IS “LIKELY MORE TRUE THAN NOT”⁸

11. According to Tab 73, the most helpful submission would be a concise statement of how the jurisdictional ruling was wrong with citations to relevant law and supporting facts. “The appellant need not submit another document merely restating his previously made arguments.” (Tab 73 at 1)
 - a. The jurisdictional ruling was late - a jurisdictional ruling by an Administrative Judge on day 123 constitutes a departure from the required 120 mark for a judicially reviewable action.
 - b. The jurisdictional ruling did not take all 69 claims into account and did not automatically include those points to which the respondents did not respond.
 - c. It is impossible to be concise and itemize how each jurisdictional ruling on a claim was wrong when the jurisdictional ruling only stipulated which claims, allegations, and contributing factors were being included. All must be considered as they were included in the initial complaint to OSC, represented in other written correspondence to and from OSC, or explicitly cited in the OSC closure letter. The Board should have tested every claim for every allegation and contributing factor.
 - d. The appellant has put the list below together to help the Board find the submitted tabs and have expanded on the first claim to show that all of the information is readily available. The first claim establishes the appellant as a suspected or known whistleblower. That status carries through the entirety of all other claims as they were included in the initial complaint to OSC, represented in other written correspondence to and from OSC, or explicitly cited in the OSC closure letter.

CLOSING

12. The appellant kindly requests that the Administrative Judge and Respondent consider this and the **RESPONSE AND OBJECTIONS TO SUMMARY OF STATUS CONFERENCE** (Tab 71) sent on 28 August 2022, together with the 69 claims listed below and their related Tabs, as supported by the Omnibus document (Tab 42) and Tabs 1-19, appellant’s response to the Jurisdictional Order on 31 August 2022. Response clock is now shifted to the Respondent, still listed as the Department of the Army despite my many objections throughout the course of the proceedings.
13. Tab 71 page 6 includes a Request for Initial Decision on the Written Record after the authoritative agencies provide the required documents in items 10-12 of that document. The appellant requests that the AJ Order the Respondent to provide those documents prior to analyzing facts and rendering Initial Decision but no all no later than 30 September 2022.
14. This **RESPONSE SHIFTING 20 DAY CLOCK TO THE RESPONDENT** now shifts the clock to the Agency/ies.
15. A Settlement has been offered as discussed. (Tab 71 page 6)

⁸ 5 C.F.R. § 1201.4(p) & 5 C.F.R. § 1201.4(q)

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 31 August 2022

A handwritten signature in black ink, appearing to be 'M. Akerman', written in a cursive style.

Martin Akerman

▶ SCANNED ◀

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CLAIM 1 (TAB 29): THE AGENCY DISCONTINUED STUDENT

LOAN PAYMENTS. [DKT NOS. 73 + 65]

1. ACTION: On 18 May 2021, Student Loan Payments Stopped from the Air Force
 - 1.1. AGENCY/IES: Department of the Air Force (Tab 29 at 4)
 - 1.2. CLAIM DESCRIPTION: On 18 May 2021, Student Loan Payments Stopped from the Air Force. Resolution was later reached with the support of the Office of Special Counsel. Here, the agency stopped my student loan repayment as a corrective action and reprisal for making a nonfrivolous allegation on 3 May 2021 and concerns that I would contact the OIG or OSC.^{9 10} (Tab 29 at 6)
 - 1.3. QUALIFIES FOR ORIGINAL JURISDICTION: Case was originally filed on 17 March 2022 as a Petition for Enforcement. (Appeal 202201085)(Tab 19)(Tab 22 at 3)
 - 1.4. EXHAUSTED THROUGH OSC:
 - 1.4.1. On 16 June, the Office of Special Counsel confirmed receipt of disclosure (DI-21-0627) and prohibited personnel practice complaint (MA-21-1602). (Tab 29 at 5-6)
 - 1.4.2. OSC informed me that they were terminating my Complaint on 28 February 2022.
 - 1.4.3. I responded that I did not request the closure.
 - 1.4.4. OSC kept the Complaint open for me and continued investigating until 11 March 2022.
 - 1.4.5. OSC closed the Complaint on 11 March 2022 and requested that I use the 28 February 2022 Individual Right of Action letter.
 - 1.5. OSC ACTION/S:

⁹ 5 U.S.C. § 2302(b)(8)

¹⁰ 5 U.S.C. § 2302(b)(9)(C)

- 1.5.1. On 30 July 2021, OSC rendered Final Decision on Investigation DI-21-0627.¹¹ (Tab 29 at 54)
- 1.5.2. On 11 August 2021, after accepting the offer for employment with the National Guard Bureau, I contacted OSC to request the following in ADR:
1. The 2 records on my permanent employee file: These need to be removed completely as if they never happened. Deletion of any additional records that may be entered. 2. Legal Fees to date - \$1097 3. Student Loan Repayment: I want to be sure I am paid for the \$40,000 of loan repayment. I have completed a little under 2 years of the 3 years of service. a. Ideally, the full \$40,000 is paid without need for a final year of service (willing to give up Legal Fees if this route is taken) b. At a minimum I would want the amount proportional to the months of service as per my agreement (roughly \$25,000). \$10,000 was paid to date. 4. No further input from Ms Vidrine or her staff into my employee file. (Tab 29 at 6)
- 1.5.3. 21 August 2021, I received the SF-52 highlighting the following: *Total amount of \$172,500 + 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.* (Tab 29 at 5)
- 1.6. AGENCY PARTY/IES THAT TOOK THE ACTION: Ms. Vidrine is the only party with the authority to take the action and the person that took the action. (Tab 29 at 5)
- 1.7. NONFRIVOLOUS ALLEGATION/S:
- 1.7.1. 5 U.S.C. § 2302(b)(8): On 3 May 2021, I wrote an email to management highlighting personnel aligned to offices not authorized by existing law and proposed actions to bring offices into compliance. 5 U.S.C § 5502 prohibits payment for services...from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or

¹¹ “even if we assume that the new SAF/CO components are considered offices not authorized by existing law, they are now in the process of being officially recognized, as Ms. Vidrine has submitted the request to make the changes official to the appropriate offices and you have not alleged that any of the representations made in the request, which discloses that the reorganization took place in 2020, are untrue.”

uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law. (Tab 29 at 5)

1.7.2. 5 U.S.C. § 2302(b)(9): On 30 April 2021, Ms. Vidrine sent all SAF/CO leadership an email asking for help. As the Director of Strategy and Staff (COS), I wrote an email offering help and highlighting where we need to make corrections. On 3 May 2021, I wrote an email to management highlighting personnel aligned to offices not authorized by existing law and proposed actions to bring offices into compliance. 5 U.S.C § 5502 prohibits payment for services...from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law. (TAB 29 at 5)

1.7.2.1. On 14 May 2021, the Acting Secretary of the Air Force ordered the merger of SAF/CO and SAF/CN, demoting Ms. Vidrine to perform her functions under another office. (Tab 45 at 4)

1.7.3. 5 U.S.C. § 2302(b)(9): On 16 June, the Office of Special Counsel confirmed receipt of disclosure (DI-21-0627) and prohibited personnel practice complaint (MA-21-1602). (Tab 29 at 5&6)

1.8. CONTRIBUTING FACTOR CLAIM:

1.8.1. The appellant's disclosure to OSC "in accordance with applicable provisions of law" meets the nonfrivolous allegations standard for protection as well as a contributing factor, entitling him to a hearing.¹²

1.8.2. The Office of Special Counsel recorded several related Prohibited Personnel Actions around the same time on the part of the Agency.

1.8.3. The disclosure, embarrassment from management, and the decision to stop payments happened at around the same time.

1.8.4. Agency silence suggests knowledge.¹³

1.9. AGENCY RESPONSE TO IRA CLAIM: No timely response to the timely IRA Claim from the Agency. (Tab 71 para 3)

¹² Salerno v. Department of the Interior

¹³ Cahill v. MSPB

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CLAIM 2 (TAB 29): THE AGENCY REFUSED TO RESTART PAYMENTS IN ACCORDANCE WITH AGREEMENT. [Dkt Nos 73+65]

CLAIM 3 (TAB 29): THE AGENCY REFUSED TO PAY AFTER AGREEMENT WAS REACHED WITH OSC. [Dkt Nos 73+65]

CLAIM 4 (TAB 45,46): EX PARTE COMMUNICATIONS [Dkt Nos. 73+66]

CLAIM 5 (TAB 45,46): CONSPIRACY TO COMMIT FRAUD [Dkt Nos. 73+66]

CLAIM 6 (TAB 45,46): RETALIATORY CORRECTIVE ACTION COVERED UNDER WPA [Dkt Nos. 73+66]

CLAIM 7 (TAB 26): THREATENED TO ISSUE A LETTER OF REPRIMAND [Dkt Nos. 73+67]

CLAIM 8 (TAB 27): HANDED ME A LETTER OF REPRIMAND. [Dkt Nos 73+68]

CLAIM 9 (TAB 27): COL MCDANIEL WAS BOTH PROPOSING OFFICIAL AND DECIDING OFFICIAL. [Dkt Nos. 73+68]

CLAIM 10 (TAB 27): I DO NOT REPORT TO COL MCDANIEL. I REPORT TO MS. VIDRINE. [Dkt Nos. 73+68]

CLAIM 11 (TAB 30): FORMALIZED RETALIATORY REPRIMAND IN OPF. [Dkt Nos. 73+78]

CLAIM 12 (TAB 30): THREATENED ME WITH ANOTHER REPRIMAND. [Dkt Nos 73+78]

CLAIM 13 (TAB 30): DID NOT ALLOW ME TO REPORT TO MY SUPERVISOR. [Dkt Nos. 73+78]

CLAIM 14 (TAB 34): THE DEPARTMENT OF DEFENSE FALSIFIED FEDERAL RECORDS [Dkt Nos. 73+79]

CLAIM 15 (TAB 34): THE DEPARTMENT OF THE AIR FORCE INTERFERED WITH MY EMPLOYMENT IN RETALIATION [Dkt Nos. 73+79]

CLAIM 16 (TAB 36): ON 5 JANUARY 2022, MR. MCNEILL CALLED ME TO HAVE A VERBAL COUNSELING SESSION. WE DISCUSSED THAT THE TEAM WILL CONTINUE TO SUPPORT THE CDO AND WE AGREED TO ONLY FOCUS ON DELIVERABLES GOING FORWARD WITH ALL WORK GOING THROUGH THEIR PROJECT MANAGER. THIS WAS A CORRECTIVE ACTION TO PREVENT ME FROM QUESTIONING THE IMPROPER CONTRACTING PRACTICES AND THEREFORE COVERED UNDER WPA. [Dkt Nos 73+80]

CLAIM 17 (TAB 37): ON 19 JANUARY 2022, I WAS SURPRISED BY AN UNEXPECTED CORRECTIVE COUNSELING MEMO RELATED TO ALLEGED MISCONDUCT. I REFUSED TO SIGN AND ASKED FOR COPIES OF ALL MATERIALS. THIS IS A CORRECTIVE ACTION COVERED UNDER THE WPA. [Dkt Nos. 73+81]

CLAIM 18 (TAB 37): THE AGENCY DID NOT FOLLOW THEIR OWN PROCEDURES ISSUING A WRITTEN COUNSELING AFTER A VERBAL COUNSELING WITHOUT ADDITIONAL ALLEGED INCIDENT. [Dkt Nos. 73+81]

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CLAIM 19 (TAB 37): I WAS NOT GIVEN A CHANCE TO RESPOND TO THE ALLEGATIONS OF HARASSMENT. [Dkt Nos. 73+81]

CLAIM 20 (TAB 37): I WAS NOT GIVEN COPIES OF ANY DOCUMENTS ON THE 19TH. [Dkt Nos. 73 + 81]

CLAIM 21 (TAB 24): DEMANDED THAT I SIGN A CORRECTIVE MEMORANDUM TO PREVENT ME FROM DISCLOSING WRONGDOING. [Dkt Nos. 73 + Brief 17]

CLAIM 22 (TAB 24): PROVIDED ME WITH A COPY OF THE CORRECTIVE MEMORANDUM BUT REFUSED TO PROVIDE ME WITH A COPY OF THE ALLEGATIONS OF HARASSMENT. [Dkt Nos. 73 + Brief 17]

CLAIM 23 (TAB 24): REFUSED TO LET ME CONTEST THE ALLEGATIONS OF HARASSMENT. [Dkt Nos. 73 + Brief 17]

CLAIM 24 (TAB 24): REFUSED TO CLOSE MY MID-YEAR PERFORMANCE REVIEW. [Dkt Nos. 73 + Brief 17]

CLAIM 25 (TAB 24): THREATENED TO TAKE FURTHER DISCIPLINARY ACTION. [Dkt Nos. 73 + Brief 17]

CLAIM 26 (TAB 25): HARMFUL PROCEDURAL ERROR. THE AGENCY DID NOT ALERT ME THAT THERE WAS A STATEMENT OF REASONS FROM THE CONSOLIDATED ADJUDICATIONS FACILITY DATING BACK TO 2 JUNE 2020.
[Dkt Nos. 73 + Brief 18]

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CLAIM 27 (TAB 25): THE AGENCY TOOK ACTION TO INTERFERE WITH MY RIGHT TO EMPLOYMENT. I BELIEVE THIS INTERFERENCE WAS FABRICATED AND AN ACT OF RETALIATION. [Dkt Nos. 73+Brief 18]

CLAIM 28 (TAB 25): PRIVACY VIOLATION. MY SECURITY MANAGER WAS DANA CEASAR AND I WAS FORCED TO GO THROUGH AN INTERMEDIARY (TSGT SANTA) UNDER THE CONTROL OF MS. VIDRINE. [Dkt Nos. 73+Brief 18]

CLAIM 29 (TAB 28): THE AGENCY TOOK ACTION TO INTERFERE WITH MY RIGHT TO EMPLOYMENT. I BELIEVE THIS INTERFERENCE WAS FABRICATED AND AN ACT OF RETALIATION. [Dkt Nos. 73 + 69]

CLAIM 30 (TAB 28): FALSIFYING FEDERAL RECORDS. [Dkt Nos 73+69]

CLAIM 31 (TAB 44): FALSIFICATION OF FEDERAL DOCUMENTS. [Dkt Nos. 73 + 70]

CLAIM 32 (TAB 44): SIGNIFICANT CHANGE IN DUTIES. [Dkt Nos. 73+70]

CLAIM 33 (TAB 44): A DECISION TO ORDER PSYCHIATRIC TESTING OR EXAMINATION. [Dkt Nos. 73+70]

CLAIM 34 (TAB 44): PRIVACY VIOLATION REGARDING SECURITY CLEARANCE. [Dkt Nos. 73+70]

CLAIM 35 (TAB 44): ILLEGALLY ACCESSING MEDICAL RECORDS. [Dkt No. 73+70]

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CLAIM 36 (TAB 38): MR. MCNEILL REFUSED TO APPROVE MY PERFORMANCE PLAN WITHOUT REMOVING LT GEN SASSEVILLE. [Dkt Nos. 73 + 71]

CLAIM 37 (TAB 38): MR. MCNEILL RETALIATED AGAINST ME BY WAY OF THE PERFORMANCE PLAN. [Dkt Nos. 73+71]

CLAIM 38 (TAB 39): THE AGENCY VIOLATED MY PRIVACY [Dkt Nos. 73+72]

CLAIM 39 (TAB 39): THE AGENCY ACCESSED MY MEDICAL RECORDS WITHOUT APPROVAL [Dkt Nos 73 + 72]

CLAIM 40 (TAB 40): I AM WAITING ON A FOIA REQUEST TO MAKE SURE NOTHING WAS ENTERED MALICIOUSLY. [Dkt Nos. 73+595]

CLAIM 41 (TAB 47): ORDER FOR ADDITIONAL PSYCHIATRIC TESTING OR EXAMINATION WITHOUT AUTHORITY [Dkt Nos. 73 + 75-1]

CLAIM 42 (TAB 47): ILLEGAL ACCESS AND SHARING OF MEDICAL RECORDS. [Dkt Nos. 73 + 75-1]

CLAIM 43 (TAB 23): ON MY FIRST DAY, 12 SEPTEMBER 2021, MY JOB APPEARS TO HAVE BEEN CODED INCORRECTLY TO THE ARMY NATIONAL GUARD. [Dkt Nos. 73 + 75-2]

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CLAIM 44 (TAB 23): ON 26 JANUARY 2022, I WAS INFORMED BY OPM EOPF THAT THE AIR FORCE DOCUMENTED A TERMINATION INSTEAD OF A TRANSFER. THE TERMINATION IS DATED 29 OCTOBER 2021 AND APPEARS TO OPEN A DIFFERENT TYPE OF APPOINTMENT TO THE ARMY WHICH HAS NOT BEEN ADDED TO OPM EOPF. I AM ALLEGING THAT THE DOCUMENT IS FALSIFIED. THIS WAS AN ACT OF RETALIATION. [DKtNos. 73+75-2]

CLAIM 45 (TAB 22): I WAS NOT GIVEN TIME TO RESPOND TO THE MERGED NOTICES, SPECIFICALLY THE "FORMAL SUSPENSION OF ACCESS FOR CAUSE" (TAB 4 AT 45) SINCE THE MERGED NOTICES WERE GIVEN TO ME ON THE SAME DAY AND IN THE SAME MEETING. (TAB 4 AT 7-51) THE AGENCY DID NOT FOLLOW AGENCY PROCESSES OR AFFORD ME DUE PROCESS IN THE ISSUANCE AND ENFORCEMENT OF THE MERGED NOTICES. [DKtNos. 73+75-3]

CLAIM 46 (TAB 22): THE AGENCY HASTILY MADE A DETERMINATION THAT MY CONTINUED PRESENCE IN THE WORKPLACE WHILE ON A NOTICE PERIOD POSED A THREAT TO THE ORGANIZATION, PLACING ME INVOLUNTARILY OUT OF THE OFFICE FOR MORE THAN 30 DAYS. [DKtNos. 73+75-3]

CLAIM 47 (TAB 22): THE AGENCY DID NOT FOLLOW THE LAW WHEN PLACING ME ON NOTICE LEAVE. [DKtNos. 73+75-3]

CLAIM 48 (TAB 43): DUE PROCESS VIOLATIONS [DKtNo. 73+75-4]

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**CLAIM 49 (TAB 43): OBSTRUCTION OF EMPLOYMENT
COMPETITION [Dkt Nos. 73 + 75-4]**

**CLAIM 50 (TAB 43): ILLEGAL ACCESS OF MEDICAL
RECORDS [Dkt Nos. 73 + 75-4]**

**CLAIM 51 (TAB 43): PRIVACY VIOLATION RELATED TO
UNAUTHORIZED PERSONNEL ACCESSING MY SECURITY
INFORMATION [Dkt Nos. 73 + 75-4]**

**CLAIM 52 (TAB 43): HARMFUL PROCEDURAL ERROR
[Dkt Nos. 73 + 75-4]**

**CLAIM 53 (TAB 43): FALSIFICATION OF FEDERAL
DOCUMENTS [Dkt Nos. 73 + 75-4]**

**CLAIM 54 (TAB 43): CONSPIRACY TO COMMIT FRAUD
[Dkt Nos. 73 + 75-4]**

**CLAIM 55 (TAB 33,41): ON 2 MARCH, THE SECURITY
MANAGER CONFIRMED THAT MY SOR RESPONSE
EXTENSION WAS GRANTED AND IS DUE TO HER ON 12
MAY. HARMFUL PROCEDURAL ERROR. DOD
REGULATIONS PROHIBIT TAKING ADMINISTRATIVE
ACTION AGAINST AN INDIVIDUAL WHO IS IN THE
PROCESS OF CHALLENGING A SECURITY CLEARANCE
REVOCATION. [Dkt Nos. 73 + 82 + 83]**

CLAIM 56 (TAB 43): DUE PROCESS VIOLATIONS [Dkt Nos. 73 + 75-4]

**CLAIM 57 (TAB 43): OBSTRUCTION OF EMPLOYMENT
COMPETITION [Dkt Nos. 73 + 75-4]**

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CLAIM 58 (TAB 43): ILLEGAL ACCESS OF MEDICAL RECORDS [Dkt Nos. 73 + 75-4]

CLAIM 59 (TAB 43): PRIVACY VIOLATION RELATED TO UNAUTHORIZED PERSONNEL ACCESSING MY SECURITY INFORMATION [Dkt Nos. 73 + 75-4]

CLAIM 60 (TAB 43): HARMFUL PROCEDURAL ERROR [Dkt Nos. 73 + 75-4]

CLAIM 61 (TAB 43): FALSIFICATION OF FEDERAL DOCUMENTS [Dkt Nos. 73 + 75-4]

CLAIM 62 (TAB 43): CONSPIRACY TO COMMIT FRAUD [Dkt Nos. 73 + 75-4]

CLAIM 63 (TAB 43): DUE PROCESS VIOLATIONS [Dkt Nos. 73 + 75-4]

CLAIM 64 (TAB 43): OBSTRUCTION OF EMPLOYMENT COMPETITION [Dkt Nos. 73 + 75-4]

CLAIM 65 (TAB 43): ILLEGAL ACCESS OF MEDICAL RECORDS [Dkt Nos. 73 + 75-4]

CLAIM 66 (TAB 43): PRIVACY VIOLATION RELATED TO UNAUTHORIZED PERSONNEL ACCESSING MY SECURITY INFORMATION [Dkt Nos. 73 + 75-4]

CLAIM 67 (TAB 43): HARMFUL PROCEDURAL ERROR [Dkt Nos. 73 + 75-4]

CLAIM 68 (TAB 43): FALSIFICATION OF FEDERAL DOCUMENTS [Dkt Nos. 73 + 75-4]

CLAIM 69 (TAB 43): CONSPIRACY TO COMMIT FRAUD

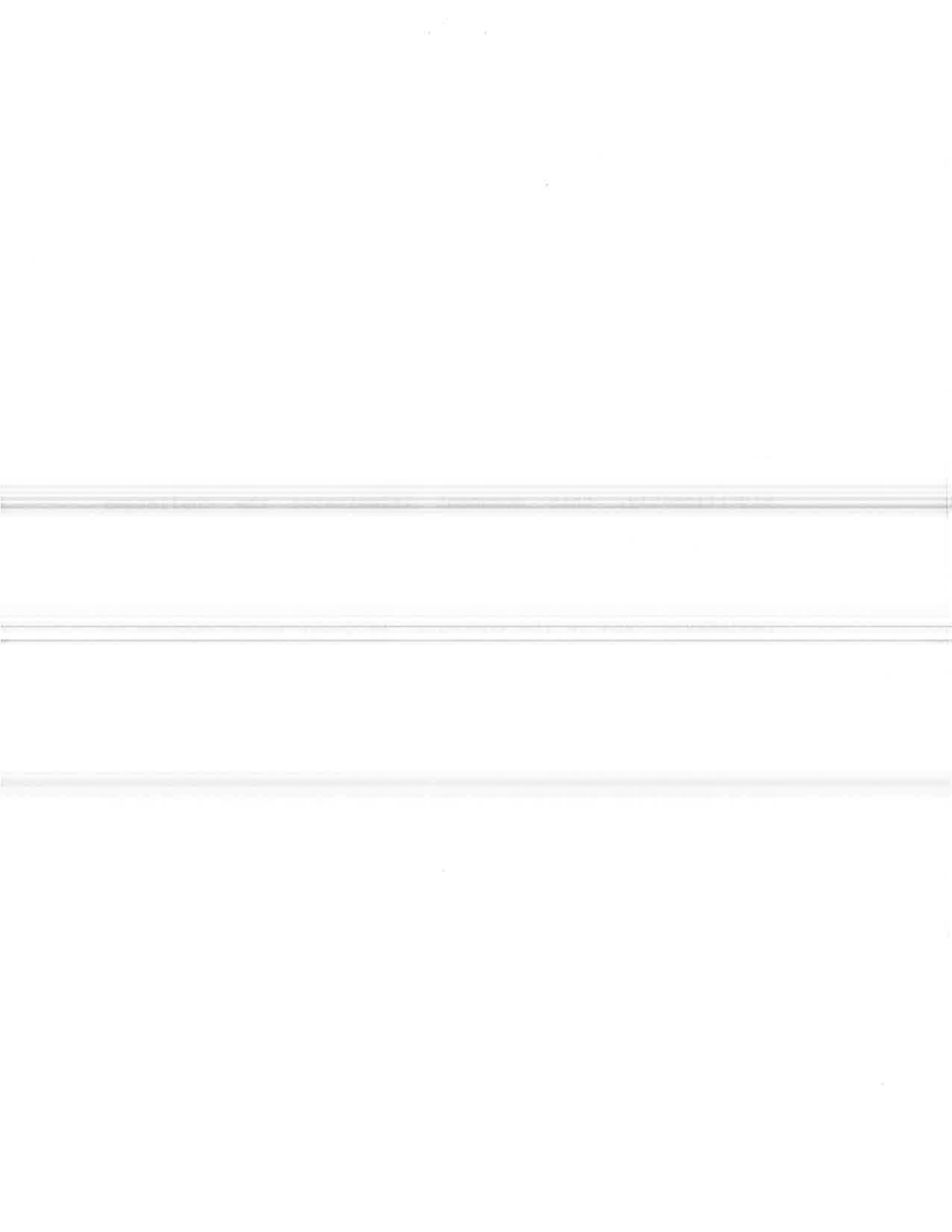
[DKT Nos. 73 + 75-4]

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> **Appendix M:** February 28, 2022 - Missing MSPB Stay Proceedings

Begin: The commencement of the MSPB stay proceedings (DC-1221-22-0257-S-1) marks the origin of Akerman's legal challenges in the administrative arena, laying the foundation for the subsequent appeals and legal proceedings.

Appendix M showcases the initiation of the MSPB stay proceedings (DC-1221-22-0257-S-1) in Martin Akerman's case. This document is now missing in MSPB records. Significantly, this document illuminates the challenges Akerman faced due to the publication of erroneous records. These inaccuracies in publicly accessible databases like LexisNexis, and in the portrayal of lower court records in MSPB and EEOC, cast a misleading light on the merits of the case. The misrepresentation of facts and proceedings not only complicates Akerman's efforts to secure representation by a qualified attorney or amicus but also poses a risk of irreparable harm. By distorting the case's appearance and substance, these inaccuracies hinder the proper understanding and evaluation of the case's validity, thereby impacting Akerman's ability to effectively navigate and address his legal challenges.



Appendix M1: LexisNexis Shepard's Citations - MSPB and EEOC Proceedings: Document M1, detailing Shepard's citations, presents a comprehensive overview of Martin Akerman's legal proceedings with the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). These records, spanning from March 7, 2022, to November 8, 2022, illustrate the series of related proceedings and appeals in Akerman's case against the Department of the Army. This document underscores the challenges posed by the publication of erroneous records, which complicates Akerman's efforts to obtain qualified legal representation or amicus support, as these inaccuracies potentially misrepresent the case's merit and the facts of lower court records.

**Shepard's®: Report Content****History:**Requested**Citing Decisions:**Not Requested**Other Citing Sources:**Not Requested

Shepard's®: **A** Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809: (M.S.P.B. March 7, 2022)

No negative subsequent appellate history

History (10)

1. **A** Citation you Shepardized™

Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809 **A**

Court: M.S.P.B. | **Date:** March 7, 2022

Subsequent

2. **B** Related proceeding at:

Akerman v. Dep't of the Army, 2022 MSPB LEXIS 1549 **A**

Court: M.S.P.B. | **Date:** April 29, 2022

3. **B** Decision reached on appeal by:

Akerman v. Dep't of the Army, 2022 MSPB LEXIS 2973 **A**

Court: M.S.P.B. | **Date:** August 10, 2022

4. **B** Petition dismissed by:

Chad T. v. Wormuth, 2022 EEO PUB LEXIS 2168, EEOC (IHS) 2022005058, EEOC (IHS) No. 20225058 **A**

Court: E.E.O.C. | **Date:** October 17, 2022

Shepard's®: Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809

- 5. **B** Related proceeding at:
Akerman v. Dep't of the Army, 2022 MSPB LEXIS 1568 **A**

Court: M.S.P.B. | Date: April 29, 2022

- 6. **B** Related proceeding at:
Akerman v. DOD, 2022 MSPB LEXIS 4202 **A**

Court: M.S.P.B. | Date: October 28, 2022

- 7. **B** Related proceeding at:
Akerman v. Dep't of the Army, 2022 MSPB LEXIS 4267 **A**

Court: M.S.P.B. | Date: November 1, 2022

- 8. **B** Related proceeding at:
Akerman v. Austin, 2022 U.S. Dist. LEXIS 200993, 2022 WL 16700382 **A**

Court: E.D. Va. | Date: November 3, 2022

- 9. **Y** Appeal filed(Nov. 08, 2022) (22-2147):












- 10. **B** Appeal dismissed by and
B Without prejudice by:
Akerman v. Dep't of the Army, 2022 MSPB LEXIS 4362 **A**

Court: M.S.P.B. | Date: November 8, 2022

Legend

● Warning - Negative Treatment is Indicated **R** Red - Warning Level Phrase

Shepard's®: Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809

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|---|--|---|----------------------------------|
|  | Questioned - Validity questioned by citing references |  | Orange - Questioned Level Phrase |
|  | Caution - Possible negative treatment |  | Yellow - Caution Level Phrase |
|  | Positive - Positive treatment is indicated |  | Green - Positive Level Phrase |
|  | Analysis - Citing Refs. With Analysis Available |  | Blue - Neutral Level Phrase |
|  | Cited - Citation information available |  | Light Blue - No Analysis Phrase |
|  | Warning - Negative case treatment is indicated for statute | | |

End of Document

Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809

Merit Systems Protection Board

March 7, 2022

DOCKET NUMBER DC-1221-22-0257-S-1

Reporter

2022 MSPB LEXIS 809 *

MARTIN AKERMAN, Appellant, v. DEPARTMENT OF THE ARMY, Agency.

Subsequent History:

Related proceeding at Akerman v. Dep't of the Army, 2022 MSPB LEXIS 1549 (M.S.P.B., Apr. 29, 2022)

Related proceeding at Akerman v. Dep't of the Army, 2022 MSPB LEXIS 1568 (M.S.P.B., Apr. 29, 2022)

Related proceeding at Akerman v. DOD, 2022 MSPB LEXIS 4202 (M.S.P.B., Oct. 28, 2022)

Related proceeding at Akerman v. Dep't of the Army, 2022 MSPB LEXIS 4267 (M.S.P.B., Nov. 1, 2022)

Related proceeding at Akerman v. Austin, 2022 U.S. Dist. LEXIS 200993 (E.D. Va., Nov. 3, 2022)

Appeal dismissed by, Without prejudice Akerman v. Dep't of the Army, 2022 MSPB LEXIS 4362 (M.S.P.B., Nov. 8, 2022)

Core Terms

exhaust, stay request, personnel action, administrative remedy, indefinite suspension, directly appealable, indefinitely, terminating, remedies, reasons, suspend, notice

Counsel

[*1] Martin Akerman, Arlington, Virginia, pro se.

Bernard E. Doyle, Arlington, Virginia, for the agency.

2022 MSPB LEXIS 809, *1

Administrative Law Judge: MEHRING

Administrative Law Judge-Decision

ORDER DISMISSING STAY REQUEST

The appellant filed a request asking the Merit Systems Protection Board (Board) to stay the agency's proposal to indefinitely suspend him from Federal Service. * Appeal File (AF), S-1, Tab 1. For the following reasons, the appellant's stay request is DISMISSED.

*

Background

The appellant filed a Board appeal seeking a stay of the agency's proposal to indefinitely suspend him. AF, Tab 1. In his stay request, the appellant indicated that he filed a complaint regarding his proposed suspension with the Office of Special Counsel (OSC), but has yet to exhaust his administrative remedies with OSC. *Id.* at 3-4.

Applicable Law and Analysis

OSC or an individual appellant may seek a stay of a personnel action with the Board. 5 U.S.C. §§ 1214(b)(1)(A)(i), 1221(c). The applicable statutes and regulations are dependent on which party seeks the stay. Stay requests, such as the one filed in this case by the appellant, are adjudicated pursuant to 5 U.S.C. § 1221, 5 C.F.R. §§ 1209.8 - .11.

An appellant may request [*2] a stay of a personnel action that he claimed was based on whistleblowing at any time **after** the appellant becomes eligible to file a Board appeal under 5 C.F.R. § 1209.5, 5 C.F.R. § 1209.8(a); *See 5 U.S.C. §§ 1221(a), (c)(1)*. If the appealed action is not otherwise appealable to the Board, an appellant must exhaust his remedies with OSC before coming to the Board. 5 U.S.C. §§ 1214(a)(3),

* The Board has separately docketed the appellant's individual right of action (IRA) appeal. *See* MSPB Docket No. DC-1221-22-0257-W-1 (W-1). The current stay appeal will be cited as S-1.

2022 MSPB LEXIS 809, *2

1221; 5 C.F.R. §§ 1209.1, .5. An appellant exhausts with OSC once OSC has notified an appellant that it is terminating its investigation into his complaint or 120 days have passed since the appellant filed his claim with OSC and he has not received a termination notice. 5 U.S.C. § 1214(a)(3).

In the instant case, the agency proposal notice was dated February 14, 2022. AF, Tab 1 at 8. The appellant stated that he filed his OSC complaint thereafter, but is still in the process of exhausting his remedies with that agency. AF, Tab 1 at 3. Therefore, I find the appellant's stay request is premature because he has not exhausted his administrative remedies with OSC. 5 U.S.C. §§ 1214(a)(3), 1221; 5 C.F.R. §§ 1209.1, .5, .8(a).

If the appellant's asserted personnel action was directly appealable to the Board (*see 5 U.S.C. §§ 7511-13, 5 C.F.R. § 1201.3*), he could choose either to seek corrective action with OSC before appealing to the Board or file his appeal directly with the Board. 5 C.F.R. § 1209.5(b). Here the appellant is seeking redress [*3] for a proposed indefinite suspension. AF, Tab 1 at 8. A proposed action, however, is not an action directly appealable to the Board. *See 5 U.S.C. §§ 7511-13, 5 C.F.R. § 1201.3*.

Therefore, I find the Board lacks jurisdiction to consider this claim because the appellant has failed to establish Board jurisdiction under 5 U.S.C. chapter 75 or 5 U.S.C. § 1221, 5 U.S.C. §§ 7511-7513, 5 U.S.C. § 1221(a), (c)(1) and 5 C.F.R. § 1209.8(a). Specifically, the record does not support a finding that the Board has jurisdiction over the personnel action as an otherwise appealable action or in the context of an IRA appeal because the appellant has failed to demonstrate that he has exhausted his administrative remedies. Thus, the Board has no authority to grant the appellant's requested stay of his proposed indefinite suspension. *See Weber v. Department of the Army, 47 M.S.P.R. 130, 133 (1991)*.

Accordingly, for all of these reasons, the appellant's request that the Board stay the agency's proposed indefinite suspension must be DISMISSED.

FOR THE BOARD:

/S/

Melissa Mehring

Martin Akerman

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Administrative Judge

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Akerman v. Austin

United States District Court for the Eastern District of Virginia, Alexandria Division

November 3, 2022, Decided; November 3, 2022, Filed

1:22-cv-696 (LMB/WEF)

Reporter

2022 U.S. Dist. LEXIS 200993 *; 2022 WL 16700382

MARTIN AKERMAN, Plaintiff, v. LLOYD J. AUSTIN, III, SECRETARY OF DEPARTMENT OF DEFENSE, et al., Defendants.

For 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,

Subsequent History: Appeal filed, 11/08/2022**Prior History:** *Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809 (M.S.P.B., Mar. 7, 2022)*

Defendants: Dennis Carl Barghaan, Jr., LEAD ATTORNEY, United States Attorney's Office, Alexandria, VA.

Core Terms

amended complaint, security clearance, motion to dismiss, alleges, personnel action, defendants', civil action, disclosure, mixed, reasons, challenging, student loan, hostile work environment claim, memorandum, claim for relief, district court, retaliation, records, amend, subject matter jurisdiction, indefinite suspension, directly appealable, pro se, asserts, hostile, pleaded, employment action, leave to amend, whistleblower, suspension

Judges: Leonie M. Brinkema, United States District Judge.

Opinion by: Leonie M. Brinkema**Opinion****MEMORANDUM OPINION**

Counsel: [*1] Martin Akerman, Plaintiff, Pro se, Arlington, VA.

Before the Court are defendants' Motion to Dismiss [Dkt. No. 46] the operative Amended Complaint

filed on July 21, 2022 [Dkt. No. 6] and plaintiff's multiple motions for relief, which include numerous requests for leave to amend his complaint [Dkt. Nos. 25, 26, 27, 36, 55, 91].

Finding that oral argument will not aid in the decisional process, the Court will resolve the motions on the papers. For the reasons that follow, defendants' Motion to Dismiss will be granted, plaintiff's motions will be denied, and this civil action will be dismissed with prejudice.

I. BACKGROUND

Acting *pro se*, plaintiff Martin Akerman ("plaintiff" or "Akerman") [*2] initiated this civil action on June 21, 2022, by filing a complaint and a motion for leave to proceed *in forma pauperis*. [Dkt. Nos. 1, 2]. On June 23, 2022, the Court denied plaintiff's *in forma pauperis* application, finding "more than sufficient funds in his checking account to cover the required filing fee[.]" [Dkt. No. 5]. Pursuant to its obligation to screen a complaint when a plaintiff seeks to proceed without prepaying fees or costs under 28 U.S.C. § 1915(e)(2)(B), the Court also dismissed the complaint without prejudice to permit plaintiff to "refile a factually sufficient complaint once his claims have been administratively exhausted or otherwise become ripe." *Id.* at 3. On July 21, 2022, plaintiff filed the operative Amended

Complaint. Am. Compl. [Dkt. No. 6].

In his Amended Complaint, plaintiff asserts eighteen claims challenging various employment actions taken against him while he served as a civilian employee within the United States Department of the Air Force and the National Guard Bureau against eight defendants, the Department of Defense, the Department of the Air Force, the Department of the Army, the Defense Counterintelligence and Security Agency, Secretary of Defense Lloyd J. Austin III, [*3] Secretary of the Army Christine E. Wormuth, Secretary of the Air Force Frank Kendall, and Chief of the National Guard Bureau General Daniel R. Hokanson (collectively, "defendants"). *Id.* at 1-3.

The gravamen of the Amended Complaint is defendants' decision to revoke Akerman's eligibility for a security clearance, which led first to his indefinite suspension and then to his resignation. As outlined in the Amended Complaint and its attachments, Akerman signed a Questionnaire for National Security Positions, Standard Form 86 on November 8, 2019, in which he indicated that he had been hospitalized for a mental health condition and listed dates of treatment around February 2012. Am. Compl., Att. 1 [Dkt. No. 6-1] at 6. In a subsequent interview with an investigator, he

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confirmed his "involuntary hospitalization for an emotional/mental health condition" and his outpatient mental health treatment in 2012 and then from 2013 to 2018. Id. Because plaintiff's background investigation did not include a recent opinion by a qualified mental health professional acceptable to the United States government, on June 2, 2020, the Department of Defense Consolidated Adjudications Facility sent Akerman a Request [*4] for Medical Evaluation "to obtain a professional medical opinion regarding whether a condition exists that could affect [plaintiff's] judgment and/or reliability." Id. Akerman did not respond to that request, even after receiving an extension of the time period in which to respond on October 21, 2020. Id. As a result, in a memorandum dated August 12, 2021 and an accompanying Statement of Reasons, which were sent to Akerman, the Department of Defense Consolidated Adjudications Facility indicated that it had determined, "based on the available information," that Akerman "may have a condition that could affect [his] ability to properly safeguard classified or sensitive information" and his "psychological condition remains a security issue." Id. The memorandum informed Akerman of the agency's decision to revoke his eligibility for a security clearance and that he had sixty calendar

days from the date of receipt to respond to the decision, after which it would become final. Id. at 3-5. On August 17, 2021, Akerman was notified that his current access to classified information would continue in the interim. Am. Compl, Att. 2 [Dkt. No. 6-1] at 8.

While the determination about his eligibility [*5] for a security clearance was pending, Akerman moved to a new position within the Department of Defense as Chief Data Officer of the National Guard Bureau, a position "requiring the ability to obtain a [Top Secret] clearance." Am. Compl. [Dkt. No. 6] at 9. Akerman was selected for the position on July 29, 2021, and was formally appointed to the position on December 20, 2021; however, after the National Guard Bureau learned of the issue with his eligibility for a security clearance, his access to classified information was suspended. Id. at 8-9. On February 14, 2022, Akerman was suspended from the National Guard Bureau for sixty-nine days, and on April 11, 2022, he was placed on an indefinite suspension. Id.; Am. Compl., Att. 1 [Dkt. No. 6-1] at 2. On June 6, 2022, Akerman resigned from his position as Chief Data Officer of the National Guard Bureau. Am. Compl. [Dkt. No. 6] at 8; Am. Compl., Att. 3 [Dkt. No. 6-1] at 12.

At some point after he was indefinitely suspended,

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Akerman applied for unemployment benefits with the Virginia Employment Commission. As a result, the Department of Defense responded to a Virginia Employment Commission inquiry about Akerman's employment and the basis for [*6] his indefinite suspension. Am. Compl., Att. 1 [Dkt. No. 6-1] at 2. That response discussed plaintiff's inability to maintain a security clearance, which was a condition of employment, and included the Department of Defense Consolidated Adjudications Facility's August 12, 2021 memorandum and the Statement of Reasons. *Id.* at 2-6.

In addition to challenging plaintiff's suspension, the Amended Complaint also challenges other aspects of his employment. First, it alleges that from April 2021 to March 2022, first within the Department of the Air Force and later the National Guard Bureau, Akerman endured a "deliberately hostile work environment." Am. Compl. [Dkt. No. 6] at 9. Second, it asserts that the Department of the Air Force retaliated against him for engaging in unspecified whistleblowing activity and discriminated against him due to his age by refusing to comply with an agreement to repay his student loans. *Id.* at 5-6, 9. Based on these employment actions, the Amended Complaint alleges violations of *Title VII of the Civil Rights Act* ("*Title VII*"), the *Rehabilitation Act*, the *Age*

Discrimination in Employment Act ("*ADEA*"), the Civil Service Reform Act ("*CSRA*"), the *Whistleblower Protection Act* ("*WPA*"), and the *Privacy Act*.

As defendants discuss in their Motion to Dismiss, plaintiff [*7] has challenged many of the underlying employment actions in administrative proceedings before the Merit Systems Protection Board ("*MSPB*") and the Equal Employment Opportunity Commission ("*EEOC*"). [Dkt. No. 47] at 7-9; *see* Am. Compl. [Dkt. No. 6] at 5-6 (identifying claims which Akerman brought before the EEOC or MSPB). Several of these claims remain pending before the MSPB. *See* [Dkt. No. 47] at 7-9; *see, e.g., Akerman v. Dep't of the Air Force*, No. DC-1221-22-0445-W-1 (challenging six employment actions by the Department of the Air Force, including interference with his student loan repayment benefits and security clearance determination); *Akerman v. Dep't of the Army*, No. DC-1221-22-0257-W-1 (challenging interactions with National Guard Bureau colleagues, supervisors, and contractors).

Since filing the Amended Complaint, plaintiff has filed 5 motions for leave to amend his Amended Complaint, *see* [Dkt. Nos. 15, 25, 26, 27, 36], four of which remain pending before the Court, and he

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has attempted to file several amended complaints without leave of Court, see [Dkt. Nos. 45, 59, 63, 76]. Because the Court has not granted plaintiff leave to amend, the operative complaint is the July 21, [*8] 2022 Amended Complaint, which is the complaint defendants have moved to dismiss under *Fed. R. Civ. P. 12(b)(1)* for lack of subject matter jurisdiction and *Fed. R. Civ. P. 12(b)(6)* for failure to state a claim upon which relief can be granted. [Dkt. No. 46]. Plaintiff has responded to defendants' Motion to Dismiss in his "Roseboro Response to Defendant's Dispositive Motion(s)" filed on October 18, 2022 [Dkt. No. 50], and his "Roseboro Objection: Hearsay Objections and Issues of Material Fact" filed on November 1, 2022 [Dkt. No. 86]. Since defendants filed their Motion to Dismiss, plaintiff has also filed 33 other pleadings, totaling over 1,400 pages, most of which are attempts to amend the Amended Complaint by adding records from his ongoing MSPB proceedings. See [Dkt. Nos. 55-56, 58-85, 87-89].

II. PLAINTIFF'S "ROSEBORO MOTION TO QUASH"

The Court first turns to plaintiff's pending "Roseboro Motion to Quash 3 Dispositive Motions That Were Docketed When the Clerk's Office Was Closed" ("Motion to Quash") [Dkt. No. 55], which seeks to "[q]uash or otherwise label . . . as

untimely" defendants' pending Motion to Dismiss [Dkt. No. 46] as well as a Motion for an Enlargement of Time that defendants filed on September 29, 2022 [Dkt. No. 19]. [*9] There is no basis for granting the requested relief. Although this Motion to Quash is somewhat difficult to understand, plaintiff appears to be complaining that defendants' Motion to Dismiss is untimely because it was filed after the Clerk's office was closed on October 17, 2022 and should therefore be considered as filed late on October 18, 2022. This argument has no merit.

Fed. R. Civ. P. 6(a)(4) provides that the "last day" of a time period for electronic filing ends "at midnight in the court's time zone." Defendants' deadline to respond to plaintiff's Amended Complaint was October 17, 2022. [Dkt. No. 24]. Because defendants electronically filed the Motion to Dismiss on October 17, 2022, before midnight, it was timely filed. As for defendants' Motion for an Enlargement of Time, it was timely filed on September 29, 2022, which renders moot any objection by plaintiff.

For these reasons, plaintiff's Motion to Quash [Dkt. No. 55] will be denied.

III. DEFENDANTS' MOTION TO DISMISS

Next, the Court considers defendants' Motion to

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Dismiss. [Dkt. No. 46]. Although the Amended Complaint asserts eighteen claims, each labeled with number and letter identifiers, the claims contain limited factual allegations which are [*10] difficult to follow. To facilitate its interpretation of the Amended Complaint and resolution of the Motion to Dismiss, the Court has grouped related claims with the relevant facts alleged in the Amended Complaint.¹

Defendants move to dismiss the Amended Complaint under *Fed. R. Civ. P. 12(b)(1)* and *12(b)(6)*. *Rule 12(b)(1)* requires that a civil action be dismissed when the court lacks subject matter jurisdiction over the dispute. The plaintiff bears the burden of proving that subject matter jurisdiction exists. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). When a defendant challenges subject matter jurisdiction on the grounds that "the complaint fails to allege sufficient facts to support subject matter jurisdiction," a court "assume[s] the truthfulness of the facts alleged." *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009). When a defendant "challenges the veracity of the facts underpinning subject matter jurisdiction," as defendants do here, a court may consider evidence

outside the complaint to determine whether there are facts that support jurisdiction "without converting the motion to a summary judgment proceeding." *Id.* at 192.

Rule 12(b)(6) requires that a complaint be dismissed when it does not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). To survive a [*11] motion to dismiss, a complaint must allege enough facts "to raise a right to relief above the speculative level." *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016) (quoting *Twombly*, 550 U.S. at 555). "Bare legal conclusions 'are not entitled to the assumption of truth' and are insufficient to state a claim." *Id.* (quoting *Iqbal*, 556 U.S. at 679). A *pro se* complaint is "to be liberally construed," and . . . "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007)). Nevertheless, a *pro se* complaint "still must contain 'enough facts to state a claim for relief that is plausible on its face.'" *Thomas v. The Salvation Army S. Territory*, 841 F.3d 632, 637 (4th

¹The grouping of claims is based on the "Statement of Claim" section of the Amended Complaint, where plaintiff has categorized his claims into five groups and provides a "statement" for each group of enumerated claims. See [Dkt. No. 6] at 8-10.

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Cir. 2016) (quoting *Twombly*, 550 U.S. at 570).

Defendants have written a comprehensive, well-reasoned, and cogent memorandum in support of their Motion to Dismiss. Finding that defendants' memorandum provides an accurate statement of the law applicable to plaintiff's claims, for the following reasons, the Court adopts the reasoning in defendants' memorandum and will grant the Motion to Dismiss.

A. Unlawful Suspension and Constructive Discharge Claims

The Amended Complaint alleges that the Department of the Air Force and Defense Counterintelligence and Security Agency "conspire[d] to revoke [his] security clearance," leading to an unlawful suspension of his [*12] employment and ultimate constructive discharge. Am. Compl. [Dkt. No. 6] at 8. After plaintiff moved to the National Guard Bureau as Chief Data Officer, a position requiring a Top Secret security clearance, the National Guard Bureau indefinitely suspended him, and he ultimately resigned. *Id.* at 8-9. In connection with his "unlawful suspension and constructive discharge," the Amended Complaint lists a series of alleged violations of various federal laws, including: (1) discrimination in violation of

Title VII, the Rehabilitation Act, and the ADEA (identified as "Issue 1" in the Amended Complaint); (2) retaliation in violation of the WPA for "[w]illful obstruction of [p]laintiff's right to compete for employment" (identified as "Claim 2b" and "Claim 4b"); (3) unlawful suspension in violation of the WPA (identified as "Claim 2c" and "Claim 4c"); (4) unlawful suspension in violation of the CSRA and the ADEA (identified as "Claim 5a"); and (5) unlawful suspension in violation of the CSRA and the Rehabilitation Act (identified as "Claim 7a"). *Id.* at 5-6, 8.

In their Motion to Dismiss, defendants correctly point out that the Court lacks jurisdiction over all these claims, because, as pleaded, [*13] all of them are based on, or connected to, the revocation of his eligibility for a security clearance. *See id.* at 8. Under Supreme Court and Fourth Circuit precedent, this Court does not have jurisdiction over these claims. Specifically, in *Department of the Navy v. Egan*, the Supreme Court recognized that the "[p]redictive judgment" involved in a security clearance determination "must be made by those with the necessary expertise in protecting classified information," and therefore "the protection of classified information must be committed to the broad discretion of the agency responsible[.]" *484 U.S. 518, 529, 108 S. Ct. 818,*

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98 L. Ed. 2d 918 (1988). Accordingly, the Supreme Court reasoned that review by an "outside nonexpert body" of the "substance of such a judgment" is not appropriate, and held that the MSPB did not have the authority to review a security clearance determination, absent an indication to the contrary from Congress, which did not exist in the CSRA. *Id. at 529, 530-32*.

The Fourth Circuit has applied the reasoning of Egan to employment disputes such as those involved in this civil action, by holding that neither Title VII, the Rehabilitation Act, the ADEA, nor the WPA contain an "expression of purpose by Congress" to subject security clearance [*14] decisions to "judicial scrutiny." Becerra v. Dalton, *94 F.3d 145, 149 (4th Cir. 1996)* (Title VII); see Guillot v. Garrett, *970 F.2d 1320, 1326 (4th Cir. 1992)* (Rehabilitation Act); Campbell v. McCarthy, *952 F.3d 193, 203-05 (4th Cir. 2020)* (ADEA and WPA). Therefore, "a claim that an adverse employment decision violated a plaintiff's statutory rights is unreviewable when it 'necessarily depends upon review of an agency's security clearance decision.'" Campbell, *952 F.3d at 205-06* (quoting Guillot *970 F.2d at 1326*).

Here, adjudicating plaintiff's indefinite suspension and constructive discharge claims under Title VII,

the Rehabilitation Act, the ADEA, and the WPA would require the Court to review the substance of the Department of Defense's security clearance determination. For instance, determining whether the reasons for plaintiff's indefinite suspension or constructive discharge were a pretext for discrimination based on his membership in a protected class, disability, or age would necessitate review of the merits of the Department of Defense's security clearance decision. Likewise, evaluating plaintiff's WPA claim would entail reviewing whether plaintiff was retaliated against for engaging in a protected activity rather than his inability to obtain or maintain a security clearance.

For these reasons, the Court lacks subject matter jurisdiction over Issue 1 and Claims 2b, 2c, 4b, 4c, 5a, and 7a, and those claims [*15] will be dismissed.

B. Student Loan Repayment Claims

The Amended Complaint seeks to recover \$29,615.37 representing the remaining student loan payments which the Department of the Air Force allegedly failed to pay pursuant to a purported agreement to repay plaintiff's student loans. Am. Compl. [Dkt. No. 6] at 9, 11. Specifically, the Amended Complaint alleges that on June 28, 2021,

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plaintiff "agreed to Alternative Dispute Resolution through the Office of Special Counsel," *id.*, and that on August 11, 2021, the Department of the Air Force agreed to "[r]equest payments for [student loan repayments] be restarted back to the date they were dropped" and "[r]etroactive payments to the date the ser[v]ice agreement was signed and approved: 10 Dec 2019," Am. Compl., Att. 4 [Dkt. No. 6-1] at 18-19. According to plaintiff, he was authorized to receive a total repayment of \$40,000 for three years of service expiring on December 10, 2022. *Id.* The Amended Complaint alleges that, as of June 30, 2022, plaintiff has not received any of the outstanding remaining payments, and that this nonpayment constitutes retaliation in violation of the *Whistleblower Protection Act* (identified as "*Claim 2a*" and "*Claim 4a*"), and age discrimination in violation of the ADEA (identified as [*16] "*Claim 5b*"). Am. Compl. [Dkt. No. 6] at 5-6, 9.

Defendants argue that the Court lacks jurisdiction over these claims, because they remain pending before the MSPB as part of an Individual Right of Action appeal and are not the type of employment-related claims that fall within the jurisdiction of a district court under the CSRA and WPA. Defendants are correct.

The CSRA "establishes a framework for evaluating personnel actions taken against federal employees," *Kloeckner v. Solis*, 568 U.S. 41, 44, 133 S. Ct. 596, 184 L. Ed. 2d 433 (2012), and "provide[s] an integrated scheme of administrative and judicial review of employment decisions involving government employees," which depends on the severity of the challenged personnel action and the nature of the complaint. *Chin-Young v. United States*, 774 F. App'x 106, 111 (4th Cir. 2019) (internal quotations omitted). The CSRA also "created the [MSPB] to review certain serious personnel actions against federal employees." *Perry v. Merit Sys. Prot. Bd.*, 137 S. Ct. 1975, 1979, 198 L. Ed. 2d 527 (2017).

Under the CSRA's framework, when a federal employee seeks to challenge a "major personnel action," such as termination or a reduction in grade or pay, that action is directly appealable to the MSPB. *Zachariasiewicz v. U.S. Dept of Just.*, 48 F.4th 237, 242 (4th Cir. 2022); see *Kloeckner*, 568 U.S. at 44; 5 U.S.C. § 7512 (defining major personnel actions which may be appealed directly to the MSPB). By contrast, when an employee challenges "less serious personnel actions that violate [*17] certain prohibited personnel practices" under the CSRA, those actions are not directly appealable to the MSPB; rather, the

employee must first file a complaint with the Office of Special Counsel. Zachariasiewicz, 48 F.4th at 242-43 (internal quotations omitted); 5 U.S.C. § 1214(a)(3). If that office pursues the complaint and upholds the challenged personnel action, the employee may appeal that decision to the MSPB. On the other hand, if the Office of Special Counsel decides not to pursue the complaint, "the CSRA does not provide for any further administrative or judicial review." Zachariasiewicz, 48 F.4th at 243 (internal quotations omitted). Similarly, "[a]llegations of conduct that is prohibited by the WPA" are not directly appealable to the MSPB, unless they involve major personnel action, and, instead, "must be pursued before the [Office of Special Counsel] prior to the MSPB." Id. But unlike CSRA claims, if the Office of Special Counsel does not act on a complaint alleging a WPA violation, the employee may seek MSPB review by filing an Individual Right of Action appeal. Id.

Once the MSPB has rendered a decision on an employee's case, whether it involved major or less serious personnel action, judicial review of MSPB decisions for claims under the CSRA is ordinarily [*18] available only in the Federal Circuit, while judicial review of decisions regarding WPA claims is available in the Federal

Circuit or "in any court of appeals of competent jurisdiction." 5 U.S.C. § 7703(b)(1); Zachariasiewicz, 48 F.4th at 242-43. Only when an employee has brought a special type of case-known as a "mixed case"-is judicial review available in a federal district court. Zachariasiewicz, 48 F.4th at 243; Perry, 137 S. Ct. at 1981; 5 U.S.C. § 7703(b)(2).

A mixed case challenges a "serious adverse employment action taken against [the employee]" under the CSRA where that action is attributed, "in whole or in part, to bias based on race, gender, age, or disability, in violation of federal antidiscrimination laws." Perry, 137 S. Ct. at 1979; Zachariasiewicz, 48 F.4th at 243. Importantly, a mixed case must involve a challenge to a "major personnel action" that is directly appealable to the MSPB, not merely a less serious personnel action that must be brought first to the Office of Special Counsel. 5 U.S.C. § 7702(a)(1). The Fourth Circuit has held that "only those personnel actions that an employee can challenge before the MSPB in the first instance can serve as the basis for a mixed case." Zachariasiewicz, 48 F.4th at 243-44. With mixed cases, the employee is not required to wait until the MSPB has rendered a final decision before seeking judicial review. Instead, if a mixed case remains pending before the MSPB for 120 [*19]

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days or more without "judicially reviewable action," the employee is permitted to remove the case from the MSPB and file a civil action in a federal district court. 5 U.S.C. § 7702(e)(1)(B).

It appears that plaintiff is attempting to invoke this Court's jurisdiction over his WPA and ADEA claims relating to his student loan repayment agreement by characterizing them as a mixed case pending for "[m]ore than 120 [d]ays from the timely Individual Right of Action appeal with MSPB without a judicially reviewable action." Am. Compl. [Dkt. No. 6] at 5. As defendants point out, plaintiff cannot seek district court review of these claims, which remain pending before the MSPB as part of an Individual Right of Action appeal, because the claims do not qualify as a mixed case. The Department of the Air Force's refusal to repay plaintiff's student loans is not the kind of major personnel action that is directly appealable to the MSPB and therefore cannot be the basis for a mixed case. See Zachariasiewicz, 48 F.4th at 244 ("[P]ersonnel action giving rise to an [Individual Right of Action] appeal cannot form the core of a mixed case because that personnel action is not directly appealable to the MSPB and instead must be challenged with the [Office of Special [*20] Counsel] prior to the MSPB."). Therefore, even though plaintiff's repayment claims involve an

allegation of age discrimination, they do not establish a mixed case that can be removed from the MSPB to a federal district court. Instead, plaintiff must exhaust review before the MSPB as to his WPA claims (Claims 2a and 4a). Once properly exhausted, the WPA claims are only appealable either to the Federal Circuit or to "any court of appeals of competent jurisdiction," 5 U.S.C. § 7703(b)(1), but not to a district court.

Even if the Court had jurisdiction over plaintiff's WPA claims (which it does not), the Amended Complaint fails to state a claim for retaliation under the WPA. To maintain a claim for WPA retaliation, the Amended Complaint must allege facts, not opinions, indicating "(1) that [the plaintiff] engaged in a whistleblowing activity by making a protected disclosure under 5 U.S.C. § 2302(b)(8); and (2) based on the protected disclosure, the [employer] took or failed to take a personnel action as defined by 5 U.S.C. § 2302(a)." Hooven-Lewis v. Caldera, 249 F.3d 259, 276 (4th Cir. 2001). The Amended Complaint does not allege any facts describing that plaintiff made a protected disclosure, which is defined as "any disclosure of information . . . which the employee . . . reasonably believes evidences [*21] any violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and

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specific danger to public health or safety," to a higher authority or the OSC, 5 U.S.C. § 2302(b)(8), or a causal connection between such a disclosure and any adverse personnel action. See Hooven-Lewis, 249 F.3d at 276. Because the Amended Complaint fails to allege any facts supporting these elements, it does not state a plausible WPA retaliation claim.

As defendants point out, even though the Court lacks jurisdiction over the WPA claims, the Court must independently consider the merits of plaintiff's ADEA claim (Claim 5b), which plaintiff alleges has been exhausted due to receipt of a right-to-sue notice from the EEOC. See Zachariasiewicz, 48 F.4th at 249 (remanding to the district court to determine "whether it may exercise subject matter jurisdiction over [a]ppellant's Title VII claims, independently of the WPA and CSRA claims"). This claim must be dismissed because, as defendants argue, it does not allege a plausible claim of age discrimination. To state a prima facie case under the ADEA, a complaint must allege facts, not opinions, indicating that the plaintiff "(1) was a member of a protected class, i.e., age 40 or older, [*22] (2) suffered an adverse employment action, (3) was meeting his employer's expectations at the time of the adverse action, and (4) was replaced by or treated less favorably than someone

outside the protected class or someone 'substantially younger.'" Sullivan v. Perdue Farms, Inc., 133 F. Supp. 3d 828, 837 (E.D. Va. 2015). The Amended Complaint contains only a conclusory allegation of "age discrimination" and is devoid of any factual allegations suggesting that plaintiff was treated less favorably than a younger employee for any reason. As such, the Amended Complaint has not pleaded a plausible ADEA claim.

For these reasons, the claims based on the Department of the Air Force's alleged failure to repay plaintiff's student loans under the WPA—Claims 2a and 4a—will be dismissed for lack of jurisdiction, and Claim 5b under the ADEA will be dismissed for failure to state a plausible claim for relief.

C. Hostile Work Environment Claims

The Amended Complaint alleges that plaintiff "endured a deliberately hostile environment" in the Department of the Air Force and the National Guard Bureau "for the 12 months between April 2021 and March 2022."² Am. Compl. [Dkt. No. 6] at 9. This hostile environment is described as the Department of the Air Force and the National

²This appears to be the same time period during which the issues concerning plaintiff's eligibility for a security clearance had arisen.

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Guard [*23] Bureau taking "[n]umerous documented actions, investigated by the Office of Special Counsel, . . . that created a hostile work environment" in violation of the Whistleblower Protection Act (identified as "Claim 3a" as to the Department of the Air Force and "Claim 3b" as to the National Guard Bureau). Id. at 5. The Amended Complaint also alleges that plaintiff experienced "[d]ifferential treatment . . . but-for age discrimination" in violation of the ADEA (identified as "Claim 6a"), id. at 6, and that plaintiff was "limit[ed], segregat[ed], or classif[ied] . . . in a way that adversely affects [his] opportunities or status" in violation of Title VII and the Rehabilitation Act (identified as "Claim 8a"), id. at 7. The Amended Complaint states that "[m]ore will be provided in court." Id. at 9.

In their Motion to Dismiss, defendants argue that the Court lacks jurisdiction over plaintiff's hostile work environment claims because they do not constitute a mixed case and are the subject of a pending Individual Right of Action appeal. The Court agrees with defendants. Because the Amended Complaint has not alleged that plaintiff's WPA and discrimination claims involve any major personnel action that is directly appealable to the MSPB, these claims do not qualify as a mixed case that can be removed from the MSPB to a district

court. [*24]

Even considering plaintiff's hostile work environment claims under the ADEA, Title VII, and the Rehabilitation Act independent of the WPA claim, the Amended Complaint does not state a plausible claim for relief. To state a hostile work environment claim, a complaint must allege facts, not opinions, indicating that the plaintiff "was subjected to (1) unwelcome conduct, (2) based on [a protected characteristic], that was (3) severe or pervasive enough to make [the] work environment hostile or abusive and (4) imputable to . . . [the] employer." Bazemore v. Best Buy, 957 F.3d 195, 200 (4th Cir. 2020). In evaluating whether a complaint alleges a "plausible hostile work environment claim," the Fourth Circuit has directed courts to consider "the totality of the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Mustafa v. Iancu, 313 F. Supp. 3d 684, 695 (E.D. Va. 2018) (quoting Okoli v. City of Balt., 648 F.3d 216, 222 (4th Cir. 2011)). "[R]ude treatment from coworkers, callous behavior by one's supervisors, or a routine difference of opinion and personality conflict with one's supervisors are not actionable,"

and "[i]ncidents that would objectively give rise to bruised [*25] or wounded feelings will not on that account satisfy the severe or pervasive standard" of a hostile work environment claim. Evans v. Int'l Paper Co., 936 F.3d 183, 192 (4th Cir. 2019) (quoting Equal Emp. Opportunity Comm'n v. Sunbelt Rentals, Inc., 521 F.3d 306, 315 (4th Cir. 2008)). Rather, a complaint must allege facts indicating that "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." McIver v. Bridgestone Americas, Inc., 42 F.4th 398, 407 (4th Cir. 2022) (quoting Boyer-Liberto v. Fontainebleau Corp., 786 F.3d 264, 277 (4th Cir. 2015)).

Here, the Amended Complaint fails to allege any facts about specific harassing conduct experienced by plaintiff based on his age, disability, or any other protected characteristics, let alone facts suggesting that the unwelcome conduct was severe or pervasive. Plaintiff alleges only that he "endured a deliberately hostile environment" and was "[l]imit[ed], segregat[e]d, or classif[ied] . . . in a way that adversely affects [his] opportunities or status[.]" Am. Compl. [Dkt. No. 6] at 7, 9. These conclusory allegations are insufficient to state a plausible hostile work environment claim.

Even if the Court had jurisdiction over plaintiff's WPA claim, it would have to be dismissed because, as discussed above, the Amended Complaint has not alleged that plaintiff made a protected [*26] disclosure about any wrongdoing that would qualify him as a whistleblower or that defendants created a hostile work environment based on his protected status as a whistleblower. See Clark v. Brown, 536 F. Supp. 3d 56, 67 (E.D. Va. 2021) (discussing requirements for pleading a hostile work environment claim under the WPA).

In sum, plaintiff's hostile work environment claims under the WPA—Claims 3a and 3b—will be dismissed for lack of jurisdiction, and the claims under the ADEA, Title VII, and the Rehabilitation Act—Claims 6a and 8a—will be dismissed for failure to state a plausible claim for relief.

D. Systemic Discrimination Claims

Next, the Amended Complaint alleges that the Department of Defense has engaged in "systemic discrimination" on the basis of age and has a "[p]ersistent culture of [a]ge [d]iscrimination" in violation of the ADEA (identified as "Claim 6b"). Am. Compl. [Dkt. No. 6] at 6, 10. Specifically, the Amended Complaint asserts that the "military is allowed, and in some cases compelled, by law to

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deny service opportunities to . . . those above a certain age," and that "[b]y statute, a commissioned officer may be appointed only if he or she is able to complete 20 years of active commissioned service before his sixty-second [*27] birthday[.]" *Id.* at 10. The Amended Complaint also alleges that defendants engage in "[s]ystemic discrimination" on the basis of disability in violation of the Rehabilitation Act (identified as "Claim 8b") by "continu[ing] to publish illegal codes for justifying separation of service in the military" and "[t]his taint and bias carries to the treatment of the civilian workforce," and that the military denies "service opportunities to those unable to meet certain physical standards[.]" *Id.* at 6, 10. Finally, the Amended Complaint alleges "[s]ystemic [w]histleblower [r]etaliatio[n]" and asserts that plaintiff has experienced "the same prohibited retaliatory behavior" across two Department of Defense agencies in violation of the WPA and Presidential Policy Directive 19. *Id.* at 10. The Amended Complaint asserts that the Department of Defense has "[f]ail[ed] to institute and enforce Presidential Policy Directive 19 ('Protecting Whistleblowers with Access to Classified Information')" by "allowing two separate agencies to perform illegal actions related to [p]laintiff's security clearance without intervention, in a

persistent sequence of events that reasonably suggests a deliberate and designed pattern of illegal behavior" (identified [*28] as "Claim 3c"). *Id.* at 5.

Plaintiff's systemic discrimination claims fail for several reasons. First, as defendants point out, the Fourth Circuit has expressly declined to recognize a "private, non-class cause of action" for individual plaintiffs for "pattern or practice" discrimination under Title VII. Lowery v. Circuit City Stores, Inc., 158 F.3d 742, 759-61 (4th Cir. 1998), vacated on other grounds, 527 U.S. 1031, 119 S. Ct. 2388, 144 L. Ed. 2d 790 (1999). Although a plaintiff 'may use evidence of a pattern or practice of discrimination to help prove claims of individual discrimination,' Gilyard v. Northlake Foods, Inc., 367 F. Supp. 2d 1008, 1016 (E.D. Va. 2005) (quoting Lowery, 158 F.3d at 758-59), there is no discernable connection between the alleged systemic or persistent discrimination in the Department of Defense and any unlawful discrimination experienced by plaintiff individually. Second, plaintiff's claims of systemic discrimination are conclusory and do not allege any facts supporting discriminatory animus based on his membership in a protected class.

As for the WPA claims for systemic whistleblower retaliation, because they concern alleged "illegal actions related to [p]laintiff's security clearance," as

previously discussed, the Court lacks jurisdiction over them. See Campbell, 952 F.3d at 205. In any case, as defendants point out, plaintiff's claims do not challenge a major personnel action and are not directly appealable [*29] to the MSPB; therefore, they do not qualify as a mixed case over which this Court has jurisdiction. Even if the Court did have jurisdiction over plaintiff's WPA claims, the Amended Complaint fails to state a claim of retaliation under the WPA, because it does not allege any whistleblowing activity or protected disclosure. See Hooven-Lewis, 249 F.3d at 276.

For those reasons, plaintiff's systemic discrimination claims under the ADEA and the Rehabilitation Act—Claims 6b and 8b—will be dismissed for failure to state a plausible claim for relief, and Claim 3c under the WPA will be dismissed for lack of jurisdiction.

E. Privacy Act Claims

The Amended Complaint's last set of claims allege violations of the Privacy Act based on the "improper disclosure and use of personnel and medical records" by the Department of Defense during plaintiff's effort to obtain unemployment benefits. Am. Compl. [Dkt. No. 6] at 7. Specifically, the Amended Complaint alleges that

defendants "unnecessarily and willfully leaked private, inaccurate, and sensitive medical information" about plaintiff to the Virginia Employment Commission. Id. at 8. Attached to the Amended Complaint is a copy of the Department of Defense's "Reply to ES-931 Request for Wage and Separation," [*30] which responded to the Virginia Employment Commission's request for information in connection with plaintiff's application for unemployment benefits. Am. Compl., Att. 1 [Dkt. No. 6-1] at 2. The response provides the reason for Akerman's indefinite suspension—"failure to attain and/or maintain a condition of employment — security clearance related"—and encloses the Department of Defense Consolidated Adjudications Facility's August 2021 memorandum and the Statement of Reasons. Id. at 2-6. The Amended Complaint asserts that the "willful disclosure of [p]laintiff's records is designed to damage [his] potential for pay or employment in the future" and has "immediately adversely affected [his] ability to receive unemployment benefits" and has caused "inaccurate medical information" to be part of Virginia's state records. Am. Compl. [Dkt. No. 6] at 8.

Based on these allegations, the Amended Complaint asserts a claim for "[f]ailure to [a]ssure [f]airness in [a]gency [d]etermination" in violation

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of 5 U.S.C. § 552a(g)(1)(C) (identified as "Claim 9a"), i.e., a failure to maintain accurate records, and a "[f]ailure to [c]omply with [o]ther Privacy Act [p]rovisions in violation of 5 U.S.C. § 552a(g)(1)(D) (identified as "Claim 9b"), which the Court construes [*31] as challenging the Department of Defense's disclosure to the Virginia Employment Commission as improper in violation of 5 U.S.C. § 552a(b). Id. at 7.

Defendants correctly point out multiple deficiencies in plaintiff's Privacy Act claims. First, the Amended Complaint has not pleaded a plausible claim of failure to maintain plaintiff's records with "accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications . . . or opportunities of, or benefits to the individual that may be made on the basis of such record" where "a determination is made which is adverse to the individual." 5 U.S.C. § 552a(g)(1)(C). Other than alleging in conclusory fashion that defendants transmitted "private, inaccurate, and sensitive medical information" to the Virginia Employment Commission, the Amended Complaint contains no facts that support the assertion that the records were "inaccurate." As such, plaintiff's first Privacy Act claim fails.

The second Privacy Act claim also does not state a plausible claim for relief. 5 U.S.C. § 552a(b) prohibits an agency from "disclos[ing] any record . . . to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom [*32] the record pertains[.]" As defendants point out, the Department of Defense's disclosure to the Virginia Employment Commission was part of the Virginia Employment Commission's processing of plaintiff's application for unemployment benefits, which falls under the "routine use" exception to the Privacy Act, 5 U.S.C. § 552a(b)(3), and therefore cannot support a Privacy Act claim. "For a disclosure to qualify as a 'routine use,' it must be compatible with the purpose for which the agency collected the personal information, see 5 U.S.C. § 552a(a)(7), and be in accordance with a routine use the agency has published in the Federal Register, see 5 U.S.C. § 552a(e)(4)(D)." Fattahi v. BATF, 328 F.3d 176, 178 (4th Cir. 2003). As defendants correctly argue, disclosing records in response to an unemployment compensation agency's request about the nature of plaintiff's employment is a routine use that satisfies the publication requirement and is compatible with the purpose for which the information was collected. See [Dkt. No. 47] at 26-28; see also Doe v. U.S. Dep't of Just., 660 F. Supp. 2d 31, 47-48

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(D.D.C. 2009) (holding that the disclosure of termination letters to a state unemployment commission qualifies as a routine use under the Privacy Act).

Finally, plaintiff seeks to recover damages under the Privacy Act. To recover monetary damages under the Privacy Act, a plaintiff "must show that the violation was 'intentional or willful.'" [*33] Hogan v. England, 159 F. App'x 534, 537 (4th Cir. 2005) (quoting 5 U.S.C. § 552a(g)(4)). Under the "intentional or willful" standard, "the violation must have been committed 'without grounds for believing it to be lawful, or by flagrantly disregarding others' rights under the Act.'" Id. (quoting Scrimgeour v. Internal Revenue, 149 F.3d 318, 326 (4th Cir. 1998)). The Amended Complaint lacks any facts supporting the conclusory allegation that the Department of Defense's disclosure was "willful." Am. Compl. [Dkt. No. 6] at 8.

In sum, because the Amended Complaint fails to state a plausible claim for relief under the Privacy Act, Claims 9a and 9b will be dismissed.

IV. PLAINTIFF'S REQUESTS FOR LEAVE TO AMEND

Given that all of the claims in the Amended Complaint will be dismissed, the Court must consider whether to grant plaintiff leave to file yet

another amended complaint. See [Dkt. Nos. 25, 26, 27, 36]. Although "leave to amend should generally be granted in light of 'this Circuit's policy to liberally allow amendment,'" a court "may deny leave to amend 'when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.'" Abdul-Mumit v. Alexandria Hyundai, LLC, 896 F.3d 278, 293 (4th Cir. 2018) (first quoting Galustian v. Peter, 591 F.3d 724, 729 (4th Cir. 2010), and then quoting Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986)). Plaintiff's excessive filings in this civil action, which include numerous repeated [*34] attempts to amend his complaint both before and after defendants filed their Motion to Dismiss, provide important context for determining whether dismissal should be granted with leave to amend.

After filing the operative Amended Complaint, on September 1, 2022, plaintiff sought leave to further amend the complaint based on anticipated future developments in his MSPB proceedings. [Dkt. No. 15]. Because the request was premature, the Court denied it without prejudice "to allow plaintiff to file a motion for leave to amend once he has received responses" from the MSPB and the Department of Defense. [Dkt. No. 17].

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Despite that decision, plaintiff proceeded to file several duplicative motions for relief, requesting, for example, a court-appointed attorney, waiver of future court costs, and appointment of a special plurality of chancellors to adjudicate his civil action. See [Dkt. Nos. 18, 20, 21, 37, 38, 41]. Plaintiff also objected multiple times to defendants' request for an extension of time to file a responsive pleading and the Court's decision granting that request. Because all of plaintiff's requests for relief were meritless and duplicative, each was denied, and plaintiff was warned [*35] against filing frivolous, repetitive motions for relief. See [Dkt. Nos. 28, 39, 40, 42]. Plaintiff has appealed several of these interlocutory orders to the Fourth Circuit.

In the meantime, plaintiff also filed three successive motions for leave to file an amended complaint dated October 1, October 3, and October 8, 2022, all of which remain pending before the Court [Dkt. Nos. 25, 26, 36], and a Motion for Leave to Update Initial Cover Sheet, Update Case Name [Dkt. No. 27]. The proposed amended complaints do not allege any additional facts that support the eighteen claims presented in the operative Amended Complaint and are even more barren of factual allegations. In fact, it appears that plaintiff seeks to amend his complaint to add approximately 90 new claims to this civil action.

As defendants point out, none of these claims contain any factual allegations and are simply pleaded only as phrases or citations to statutes, such as "Administrative Procedures Act," "FOIA and HIPPA [sic]." [Dkt. No. 36-1] at 4. Around 80 of the claims are WPA claims stemming from an Individual Right of Action appeal challenging a litany of workplace interactions and decisions during plaintiff's employment [*36] within the Department of Defense, such as that he was "handed . . . a letter of reprimand," "called . . . to have a verbal counseling session," experienced a "significant change in duties," and witnessed "harmful procedural error" and "conspiracy to commit fraud." *Id.* at 5-13.

Plaintiff's long list of vague employment actions and amorphous violations of the law do not plead any rational, plausible claims for relief. See *Bing v. Brivo Sys., LLC*, 959 F.3d 605, 618 (4th Cir. 2020) (observing that "liberal construction" of a *pro se* pleading "does not mean overlooking the pleading requirements under the Federal Rules of Civil Procedure"). "District judges are not mind readers," and "[e]ven in the case of *pro se* litigants, they cannot be expected to construct full blown claims from sentence fragments[.]" *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985); cf. *Folkes v. Nelsen*, 34 F.4th 258, 272 (4th Cir. 2022)

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(holding that the district court committed reversible error in "look[ing] beyond the claim presented" in a pro se habeas petition).³ As further indication of the fanciful nature of plaintiff's proposed amendments, he has added extravagant and nonsensical remedies, including a "name clearing hearing," federal employee health benefits "for life for plaintiff and family," and punitive damages for "human rights before robots: the total estimated [*37] cost of 2 loyal wingmen (\$20 million each) and 2 autonomous tanks (\$6 million each) for a total of \$52 million." [Dkt. No. 36-1] at 15. For these reasons, plaintiff's pending motions for leave to amend [Dkt. Nos. 25, 26, 27, 36] will be denied.

On October 17, 2022, plaintiff demanded that the Clerk's office file an amended complaint, even though the Court had not granted him leave to amend. [Dkt. No. 45]. This proposed amended complaint suffers from the same deficiencies as his previous attempts to amend and fails to allege any facts in support of his claims. Moreover, in this version, plaintiff's claims challenging his indefinite suspension and violations of the Privacy Act have ballooned without any factual support, becoming claims for "false imprisonment," "cruel and unusual punishment," and "depriv[ation] . . . of his property

right to his tenured position without [d]ue [p]rocess." Id. at 4-5. The document then rambles on about the Second Amendment, "information as a weapon," and "the militia's first cousin, the jury." Id. at 10-16. No plausible claim for relief can be discerned in this filing. Further, even though plaintiff has already been warned twice that filing "unnecessary, frivolous, and repetitive [*38] motions" for relief may result in sanctions, including dismissal of his complaint, [Dkt. Nos. 40, 42], this proposed amended complaint includes duplicative requests for relief that have already been denied. See [Dkt. No. 45] at 18-19 (requesting relief denied in prior orders [Dkt. Nos. 28, 39, 40, 42]).

Since October 19, 2022, plaintiff has filed 31 additional pleadings, titled "Roseboro Amended Complaints" and "Roseboro Notices," with accompanying "Roseboro Briefs" that appear to be intended to serve as "clarifying briefs . . . as they relate to the scope of the Amended Complaint. [Dkt. No. 55]; see [Dkt. Nos. 58-85, 87-89]. Plaintiff's most recent attempt to amend his complaint has inundated the Court with an indecipherable stack of documents consisting of 1,472 pages, which appear to include the entirety of the dockets, correspondence, and other records

³ As defendants point out, even if the Court could discern the nature of plaintiff's new claims, they would likely be futile and would not survive a motion to dismiss. [Dkt. No. 57] at 10-14.

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from his MSPB proceedings.⁴

Even though plaintiff is proceeding pro se, it is not this Court's duty to sift through the mass of his "Roseboro" filings to determine whether he has alleged a cognizable claim for relief or whether he has cured the deficiencies that defendants' Motion to Dismiss identified in the Amended Complaint. See [*39] Carmel v. CSH & C, 32 F. Supp. 3d 434, 436 (W.D.N.Y. 2014) ("[A] pro se litigant cannot simply dump a stack of exhibits on the court and expect the court to sift through them to determine if some nugget is buried somewhere in that mountain of papers, waiting to be unearthed and refined into a cognizable claim."). Moreover, plaintiff's excessive filing in this civil action has abused the time and resources of this Court as well as the Clerk's office, which has had to expend several hours scanning and docketing plaintiff's filings.⁵

⁴For instance, plaintiff's "Roseboro Responsive Material Accompanying Roseboro Amended Complaint and Roseboro Briefs 1-7" includes 311 pages of documents from several of his pending administrative proceedings before the MSPB, among other materials. [Dkt. No. 59]. Plaintiff's "Omnibus to Simplify Pleadings and Hearings" contains 207 pages of documents from another MSPB proceeding, along with other emails and documentation. [Dkt. No. 73].

⁵While this Memorandum Opinion was being finalized, the Court received seven more pleadings from plaintiff as recently as November 2, 2022, which is further evidence of his excessive filing in this civil action. See [Dkt. Nos. 90-96]. These filings include additional attempts to amend his complaint by way of a "Roseboro Baseline Amended Complaint" [Dkt. No. 90] and "Roseboro Objection[s]" [Dkt. Nos. 92-96].

Plaintiff also filed another meritless motion, entitled "Closing Roseboro Motion: Motion to Reconcile Civil Docket and Grant

V. CONCLUSION

For the foregoing reasons, defendants' Motion to Dismiss [Dkt. No. 46] will be GRANTED under Fed. R. Civ. P. 12(b)(1) as to the claims for unlawful indefinite suspension and constructive discharge (Issue 1 and Claims 2b, 2c, 4b, 4c, 5a, and 7a) and the WPA claims for failure to repay his student loans (Claims 2a and 4a), hostile work environment (Claims 3a and 3b), and systemic discrimination (Claim 3c), and under Fed. R. Civ. P. 12(b)(6) as to the student loan repayment claim under the ADEA (Claim 5b), the hostile work environment claims under the ADEA, Title VII, and the Rehabilitation Act (Claims 6a and 8a), the systemic discrimination claims under the ADEA and the Rehabilitation Act (Claims 6b and 8b), and the Privacy Act claims (Claims 9a and 9b); plaintiff's [*40] motions [Dkt. Nos. 25, 26, 27, 36, 55, 91] will be DENIED; and this civil action will be dismissed with prejudice by an accompanying

Judgment by Default" ("Motion for Default Judgment"), in which he repeats his complaint that defendants did not timely respond to the Amended Complaint because they filed their Motion to Dismiss after the Clerk's office was closed, and seeks a default judgment based on defendants' alleged failure to timely respond. [Dkt. No. 91]. In addition, plaintiff requests "\$150,000 interim relief to allow [him] to retain counsel" and "the appointment of a [g]rand [j]ury" to investigate his case. Id. As explained above, defendants' Motion to Dismiss was timely filed and therefore they are not in default. As there is no basis for any of the frivolous relief requested in the Motion for Default Judgment [Dkt. No. 91], the motion will be denied.

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order.⁶

Entered this 3rd day of November, 2022.

Alexandria, Virginia

/s/ Leonie M. Brinkema

Leonie M. Brinkema

United States District Judge

ORDER

For the reasons stated in the accompanying Memorandum Opinion, defendants' Motion to Dismiss [Dkt. No. 46] is GRANTED, all of pro se plaintiff's pending motions [Dkt. Nos. 25, 26, 27, 36, 55, and 91] are DENIED, and it is hereby

ORDERED that this civil action be and is DISMISSED WITH PREJUDICE; and it is further

ORDERED that this Order is a final decision which closes this civil action. Therefore, other than a notice of appeal, plaintiff is directed not to file anything further in this civil action.

⁶Normally, a dismissal based on a finding under *Fed. R. Civ. P. 12(b)(1)* that the Court lacks subject matter jurisdiction would be without prejudice because the Court lacks the authority to adjudicate that over which it has no jurisdiction. In this case, plaintiff's track record of not respecting the Court's decisions and filing repetitive, abusive pleadings justifies a dismissal of this entire action with prejudice, to make clear that he cannot refile any of the claims discussed in this opinion.

To appeal this decision, plaintiff must file a written notice of appeal with the Clerk of the Court within sixty (60) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives [*41] plaintiff's right to appeal this decision.

The Clerk is directed to enter judgment in defendants' favor pursuant to *Fed. R. Civ. P. 58*, to close this civil action, to not accept any other filings in this civil action other than a notice of appeal, and to forward copies of this Order and the accompanying Memorandum Opinion to Martin Akerman, pro se, and counsel of record.

Entered this 3rd day of November, 2022.

Alexandria, Virginia

/s/ Leonie M. Brinkema

Leonie M. Brinkema

United States District Judge

End of Document

Martin Akerman

Appendix M2: OSC Termination of Inquiry and IRA Appeal Notifications and correction on May 20, 2023: Document M2, specifically the letter dated May 20, 2023, from the U.S. Office of Special Counsel (OSC), acknowledges an administrative error related to Martin Akerman's case with the Merit Systems Protection Board (MSPB), specifically case number DC-1221-22-0459-W-1. This correspondence serves as an official confirmation of the error, highlighting the procedural complexities and challenges faced by Akerman in his pursuit of justice. The recognition of such an error underscores the difficulties in navigating legal proceedings, particularly when administrative inaccuracies further complicate the resolution of already complex whistleblower and retaliation claims.

**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
(202) 804-7000

February 28, 2022

VIA ELECTRONIC MAIL

Martin Akerman
2001 North Adams St
Unit 440
Arlington, VA 22201
makerman@gmail.com

Re: OSC File No. MA-21-1602

Dear Mr. Akerman:

The U.S. Office of Special Counsel (OSC) terminated its inquiry into your allegations of violations of prohibited personnel practices under 5 U.S.C. § 2302(b)(8) and (b)(9) on February 28, 2022. The purpose of this letter is to notify you that you may file an “individual right of action” (IRA) appeal seeking corrective action from the Merit Systems Protection Board (Board).

You were a GS-15 Supervisory Information Technology Specialist in the Chief Data Office (SAF/CO) within the U.S. Department of Defense (DOD), Department of the Air Force (AF), Air Force Secretariat who served as the Director of Strategy and Staff for Strategy and Governance (COS), a component of SAF/CO.¹ You allege that the Chief Data Officer, Eileen Vidrine, and other agency officials retaliated against you when, in May of 2021, you began disclosing, both orally and in writing, that you believed the manner in which Ms. Vidrine went about reorganizing the SAF/CO was unlawful. In retaliation, you allege that the AF took the following actions against you: (1) Col Michael McDaniel, former Deputy Chief Data Officer, issued you an written admonishment on May 25, 2021 citing unprofessional conduct; (2) Col McDaniel issued you a letter of reprimand on June 15, 2021 for conduct unbecoming; (3) Col Ryan Kehoe, without seeking your input, issued you a 2022 performance plan that had different critical elements than those that were in your 2021 performance plan; (4) agency officials interfered with your student loan repayment benefits and service obligation date; 5) agency officials fraudulently changed your SF-50 to state that you were terminated from your position with the AF; and 6) agency officials interfered with your clearance, as you were directed to undergo a psychological evaluation in order to retain your clearance.

You further allege that the retaliation continued at your new position with the Army NGB after the Army learned of your OSC filing, and after you disclosed issues with a contractor providing services outside the scope of the contract. You allege the Army NGB took the following actions against you: (1) Kenneth McNeil, Chief Information Officer/Director of J6,

¹ In September of 2021, you started a new position as an Information Technology Specialist with the Office of the National Guard Bureau (NGB) within the U.S. Department of Defense, Department of the Army (Army).

<p>1. The first part of the document discusses the importance of maintaining accurate records of all transactions.</p>
<p>2. It is essential to ensure that all data is entered correctly and that the system is regularly updated.</p>
<p>3. The second part of the document outlines the various methods used to collect and analyze data.</p>
<p>4. These methods include surveys, interviews, and focus groups, each with its own strengths and weaknesses.</p>
<p>5. The final part of the document provides a summary of the findings and offers recommendations for future research.</p>

U.S. Office of Special Counsel
MA-21-1602
Page 2 of 2

issued you a written counseling on January 19, 2022 for unprofessional conduct; (2) Mr. McNeil issued you a Notice of Proposed Indefinite Suspension on February 14, 2022 for failing to maintain your security clearance; and (3) Susanne Kidd, Army Security Branch Chief, failed to provide you with the time necessary to provide a response to DOD's reasons for suspending your access to classified information.

In your IRA appeal, you may seek corrective action from the Board under 5 U.S.C. §§ 1214(a)(3) and 1221 for any personnel action taken or proposed to be taken against you because of a protected disclosure or activity that was the subject of your OSC complaint. You may file the IRA appeal with the Board within 65 days after the date of this letter. The regulations concerning rights to file an IRA appeal with the Board can be found at 5 C.F.R. Part 1209.

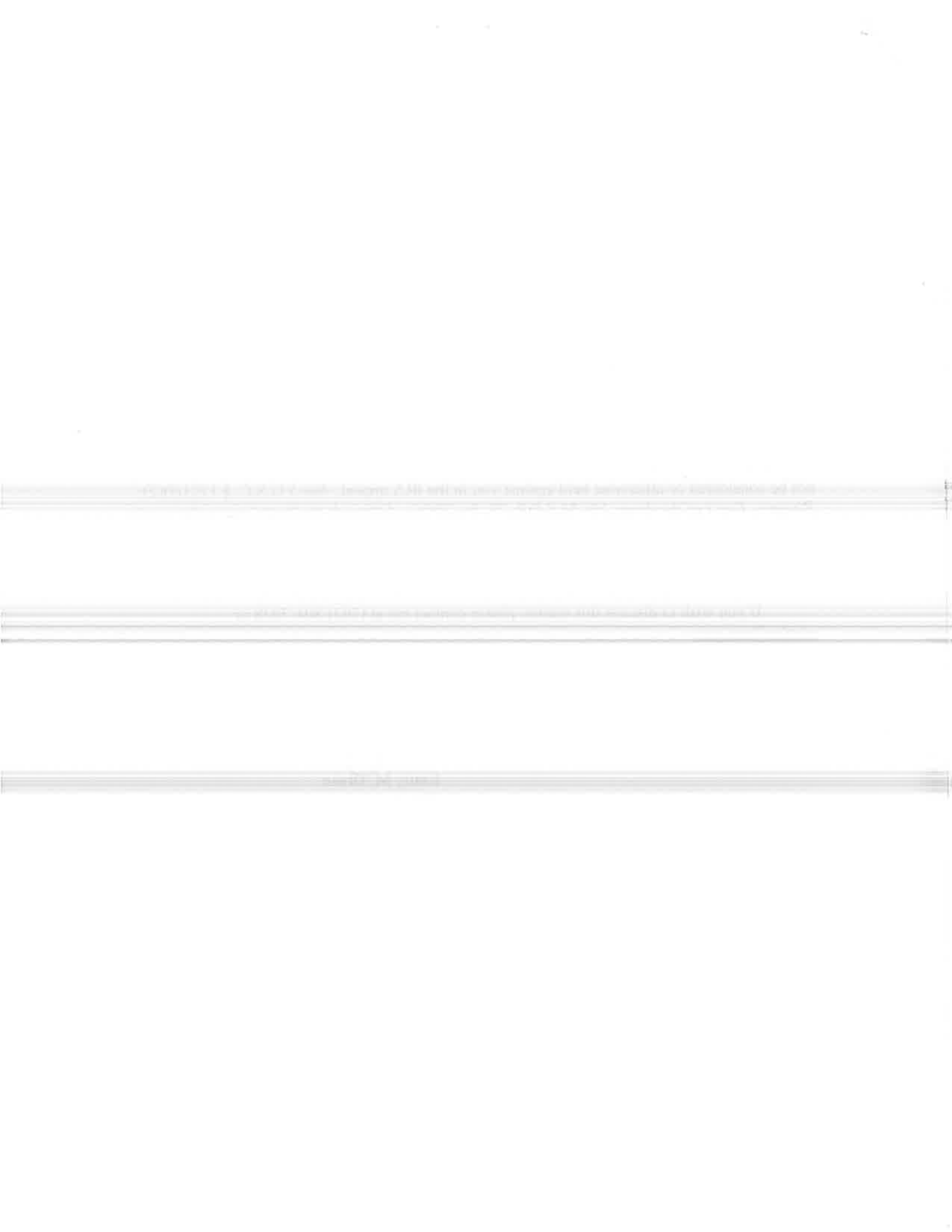
If you choose to file an IRA appeal with the Board, you should include this letter as part of your submission to help show that you have exhausted OSC's administrative procedures. Please note, importantly, that OSC's decision to end the inquiry into your case may not be considered or otherwise held against you in the IRA appeal. See 5 U.S.C. § 1221(f)(2); *Bloom v. Dep't of the Army*, 101 M.S.P.R. 79, 84 (2006). Although the Board may order you to submit a copy of OSC's letter closing your case, the order must contain an explanation of why the closure letter is necessary and give you the opportunity to consent. See 5 U.S.C. § 1214(a)(2)(B); *Bloom*, 101 M.S.P.R. at 84.

If you wish to discuss this matter, please contact me at (202) 804-7028 or edrake@osc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily M. Drake", with a long horizontal line extending to the right.

Emily M. Drake
Attorney
Retaliation & Disclosure Unit



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 20, 2022

Sent via electronic mail

Martin Akerman
2001 North Adams Street
#440
Arlington VA 22201
Makerman.ngb@gmail.com

Re: OSC File No. MA-22-000340

Dear Mr. Akerman:

The U.S. Office of Special Counsel (OSC) terminated its inquiry into your allegations of prohibited personnel practices under 5 U.S.C. § 2302(b)(8) or (b)(9) on this date. The purpose of this letter is to notify you that you may file an “individual right of action” (IRA) appeal seeking corrective action from the Merit Systems Protection Board (Board).

In your complaint against the Office of the Chief of the National Guard Bureau (NGB), you alleged that you filed complaints with the OSC Disclosure Unit and the NGB Office of the Inspector General (OIG) regarding what you believed to be retaliatory revocation of your security clearance and access determinations. You further alleged that because of these disclosures, the agency retaliated against you by changing the billing codes used to process your timesheets.

In your IRA appeal, you may seek corrective action from the Board under 5 U.S.C. §§ 1214(a)(3) and 1221 for any personnel action taken or proposed to be taken against you because of a protected disclosure or activity that was the subject of your OSC complaint. You may file the IRA appeal with the Board within 65 days after the date of this letter. The regulations concerning rights to file an IRA appeal with the Board can be found at 5 C.F.R. Part 1209.

If you choose to file an IRA appeal with the Board, you should include this letter as part of your submission to help show that you have exhausted OSC’s administrative procedures. Please note, importantly, that OSC’s decision to end the inquiry into your case may not be considered or otherwise held against you in the IRA appeal. See 5 U.S.C. § 1221(f)(2); *Bloom v. Dep’t of the Army*, 101 M.S.P.R. 79, 84 (2006). Although the Board may order you to submit a copy of OSC’s letter closing your case, the order must contain an explanation of why the closure letter is necessary and give you the opportunity to consent. See 5 U.S.C. § 1214(a)(2)(B); *Bloom*, 101 M.S.P.R. at 84.

Sincerely,

A handwritten signature in cursive script that reads "Maureen Taylor".

Maureen Taylor

Attorney

Investigation and Prosecution Division

1. The first part of the document is a title page.

2. The second part of the document is an abstract.

3. The third part of the document is an introduction.

**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-804-7000

May 3, 2023

Sent via electronic mail

Martin Akerman

2001 North Adams Street

#440

Arlington VA 22201

Makerman.dod@gmail.com

Re: OSC File No. MA-22-000917

Dear Mr. Akerman:

This letter is to inform you that an error was made in the OSC file number included in the Closure and IRA letters that you received on May 20, 2022. Please take note that the accurate number for your file is MA-22-000917.

Sincerely,

A handwritten signature in cursive script that reads "Maureen Taylor".

Maureen Taylor

Attorney

Investigation and Prosecution Division

