

APPENDIX

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Appendix A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1268 September Term, 2023

DOD-03/30/22 Order

Filed On: March 25, 2024

Martin Akerman,

Petitioner

v.

National Guard Bureau,

Respondent

BEFORE: Henderson, Millett, and Walker, Circuit
Judges

O R D E R

Upon consideration of the motion to appoint counsel; the motion to update caption and for other relief, styled as a motion for declaratory relief; the motion to consolidate cases and to defer appendix; the motion to dismiss case and the opposition thereto; the response to the court's January 8, 2024 order, which includes a motion to proceed in forma pauperis

("IFP") and a motion to expedite; and the motion for status conference, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

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

FURTHER ORDERED that the petition for review be dismissed. See D.C. Cir. Rule 38. By order issued January 8, 2024, petitioner was ordered to pay the \$500 docketing fee to the Clerk, U.S. Court of Appeals for the District of Columbia Circuit, or file with this court a motion for leave to proceed on appeal IFP that includes a completed affidavit in support, and he was

advised that failure to comply with the order may result in dismissal of the case. To date, the required fee or completed affidavit has not been received from [the] petitioner. It is

FURTHER ORDERED that the remaining motions be dismissed as moot. Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk

Appendix B

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1268 September Term, 2023

DOD-03/30/22 Order

Filed On: May 17, 2024

Martin Akerman,

Petitioner

v.

National Guard Bureau,

Respondent

BEFORE: Henderson, Millett, and Walker, Circuit
Judges

O R D E R

Upon consideration of the petition for rehearing, it
is

ORDERED that the petition be denied.

Per Curiam
FOR THE COURT: Mark J. Langer, Clerk

Appendix C

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1268 September Term, 2023

DOD-03/30/22 Order

Filed On: May 17, 2024

Martin Akerman,

Petitioner

v.

National Guard Bureau,

Respondent

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

O R D E R

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is ORDERED that the petition be denied.

Per Curiam
FOR THE COURT: Mark J. Langer, Clerk

Appendix D

**UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

Washington, D.C.

In re Martin Akerman,

Petitioner

USCA Dkt. No. 24-0060/AF

DOCKET NOTICE and ORDER

Notice is hereby given that a request for formal acknowledgment from this Court regarding the exhaustion of all available military remedies was filed on December 11, 2023, and placed on the docket this 18th day of December 2023. The Petitioner has not presented any basis to believe that he was ever charged with any offense under the Uniform Code of Military Justice. On consideration thereof, it is, by the Court, this 18th day of December, 2023,

ORDERED:

1. That said request is hereby dismissed for lack of jurisdiction; and
2. That no further filings will be accepted or docketed by this Court in this matter.

For the Court,

/s/ Malcolm H. Squires, Jr.

Clerk of the Court

cc: The Judge Advocate General of the Air Force

Petitioner (Pro Se)

Appendix E

**U.S. AIR FORCE COURT
OF CRIMINAL APPEALS**

1500 WEST PERIMETER ROAD, SUITE 1900

JOINT BASE ANDREWS MD 20762-6604

27 June 2023

MEMORANDUM FOR MARTIN AKERMAN

FROM: UNITED STATES AIR FORCE COURT OF
CRIMINAL APPEALS

SUBJECT: Petition for Extraordinary Relief and
Request for Appellate Counsel

You electronically submitted a pro se filing on 22 June 2023. Your filing is titled "In Re: Akerman: Petition for Extraordinary Relief Pursuant to Rule 19 and Request for Appellate Counsel Under Article 70."

Rule 19 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals addresses what, at a minimum, must be contained in a petition of extraordinary relief. Notably, the Uniform Code of Military Justice (UCMJ) applies only to members of the armed forces and certain others in limited circumstances as outlined in Article 2, UCMJ, 10 U.S.C. § 802. The Air Force Court of Criminal Appeals (AFCCA) has appellate jurisdiction over court-martial cases under the UCMJ. Article 66, UCMJ, 10 U.S.C. § 866. Your petition is insufficient because it does not identify a specific court-martial proceeding for this court to review. See JT. CT. CRIM. APP. R. 19(b)(2)(A). Further, your petition does not indicate your military status that makes you subject to the UCMJ. See JT. CT. CRIM. APP. R. 19(b)(2)(H).

Additionally, your submission does not indicate that you have served your petition on all respondents, including any military judges whose decision, judgment, or order is the subject of the petition. See JT. CT. CRIM. APP. R. 19(c); see also A.F. CT. CRIM. APP. R. 13.3 (effective 23 December 2020) (where "[p]leadings filed with the Court shall be served on all counsel of record . . . and will be evidenced in the document by use of the certificate format [provided in this rule] . . .").

Your request for the appointment of appellate counsel is similarly deficient. This court does not have the authority to appoint such counsel under Article 70, UCMJ, 10 U.S.C. § 870. Such authority is delegated to the Judge Advocate General.

Pursuant to A.F. CT. CRIM. APP. R. 13.4, Non-Compliance with Rules, your petition for extraordinary relief and request for appellate counsel is returned with no action.

CAROL K. JOYCE

Clerk of the Court

U.S. Air Force Court of Criminal Appeals

Appendix F

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

No. 86458 June 02, 2023

MARTIN AKERMAN,

Petitioner,

vs.

NEVADA NATIONAL GUARD,

Respondent.

ORDER DENYING PETITION

This pro se original petition for a writ asserts purported claims for false imprisonment, among other things, and seeks declaratory and other relief. After reviewing the petition, we find that our extraordinary and discretionary intervention is not warranted. Referencing NRS 34.170, NRS 34.330, and *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004), it is clear that writ relief is appropriate only when there is no plain, speedy, and adequate remedy at law and the petitioner has the

burden to demonstrate that extraordinary relief is necessary.

Furthermore, even if the relief sought could be appropriately granted through a writ petition, such an application should first be directed to and resolved by the district court. This procedural step allows the factual and legal issues to be fully developed, ensuring an adequate record for review.¹ See *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (recognizing that an appellate court is not the appropriate forum to resolve questions of fact and noting that when there are factual issues presented, appellate courts will not exercise their discretion to entertain a petition for extraordinary relief even if "important public interests are involved"); *State v. Cty. of Douglas*, 90 Nev. 272, 276-77, 524 P.2d 1271, 1274 (1974) (noting that "this court prefers that such an application [for writ relief] be addressed to the discretion of the appropriate district court" in the first instance), abrogated on other grounds by *Att'y Gen. v. Gypsum Res.*, 129 Nev. 23, 33-34, 294 P.3d 404, 410-11 (2013); see also *Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 684, 476 P.3d 1194, 1199 (2020) (noting that this court typically will not entertain petitions for extraordinary relief that implicate factual disputes).

¹ FOOTNOTE IN DOC: This includes a postconviction petition for a writ of habeas corpus, to the extent the petitioner has styled his petition as such. According to NRAP 22, "An application for an original writ of habeas corpus should be made to the appropriate district court."

Accordingly, we ORDER the petition DENIED.²

SIGNED BY:

**Chief Justice Stiglich, Justice Cadish, and Justice
Herndon**

cc: Martin Akerman
Nevada National Guard

² FOOTNOTE IN DOC Petitioner's "motion for an emergency writ of replevin" and "motion to certify the order for interlocutory appeal and rebuttal to allegations of frivolous and me[ritless filings]" are denied as moot.

Appendix G

Employee's Name: Akerman, Martin

Action Proposed: Indefinite Suspension

Decision: After giving full and impartial consideration to the circumstance surrounding the proposed action, the employee's reply, and the factors checked above, I have decided to Sustain the action as proposed.

SIGNATURE: GARDUNO.CAESAR.RODRIGUEZ

Date: 2022.04.06 at 10:52:34³

NOTE TO DECIDING OFFICIAL - PLEASE
COMPLETE THIS CHECKLIST, SIGN AND DATE,
AND RETURN IT WITH YOUR DRAFT DECISION.

The document proposing a disciplinary action should have proven management's charge against the employee and shown how that offense affects the efficiency of the service. A third element of an adverse action that may or may not have been directly addressed in the proposing document is that of the reasonableness of the penalty.

In most disciplinary actions, an employee has the right to appeal or grieve the action to the Merit Systems Protection Board (MSPB).

³ COMMENT FROM AKERMAN: The document falsely alleges to have provided Akerman with due process, including "The employee replied in writing (original is attached)" and "The employee replied verbally (original of the MFR is attached)."

Should the employee avail himself or herself of this right, you will need to prove that ***management has used responsible judgement so an employee will not be penalized out of proportion to the character of the offense.***

In the case Douglas versus the Veterans Administration, MSPB enumerated factors that may be relevant to a determination of whether or not management used reasonable judgment in the decision of a penalty. These "Douglas Factors" are listed below.

Consider each of the factors in the light of the case as presented in management's proposing letter and in consideration of the employee's reply. For each of the following, annotate whether you believe the factor aggravates, mitigates, or is neutral in your formulation of the final decision. Write a brief sentence **explaining each conclusion. Be especially careful to explain factors that "aggravate" your decision.**

- AGGRAVATING To make more severe, intense, serious, worse, or grave.
- NEUTRAL Neither a contributing or detracting factors; not applicable.
- MITIGATING To make less severe, intense.

FACTOR 1: The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

AGGRAVATING: Mr. Akerman cannot perform the essential functions of his position without access to classified information or systems. This action is being executed because Mr. Akerman does not have a TOP SECRET clearance required by his position description and his access to SECRET level information and systems has also been suspended.

FACTOR 2: The employee's job level and type of employment including supervisory or fiduciary role, nature of contact with the public, and prominence of the position.

AGGRAVATING: Mr. Akerman is a GS-15 with access to special sensitive and national security information. He is in a high level supervisory/management position of trust. Serves as the liaison between senior leaders across the National Guard Bureau Joint Staff, Army National Guard, Air National Guard, and Department of Defense (DoD).

FACTOR 3: The employee's past disciplinary record.

NEUTRAL: Not applicable/no comments

FACTOR 4: The employee's past work record including length of service, performance on the job, ability to get along with fellow workers, and dependability.

NEUTRAL: Mr. Akerman transferred to NGB from Department of the Air Force on 12 September 2021. His service computation date is 19 November 2016 so he has over five years of Federal service.

FACTOR 5: The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee's ability to perform assigned duties.

AGGRAVATING: Mr. Akerman cannot perform the essential functions of his position without access to classified information or systems.

FACTOR 6: Consistency of the penalty with those imposed on other employee's for the same or similar offenses.

NEUTRAL: I have not imposed this penalty on any other employee therefore I do not have other cases to compare with it.

FACTOR 7: Consistency of the penalty with the Department of the Army table of penalties.

AGGRAVATING: The closest similar description from the table of offenses and penalties in AR 690-700, Chapter 7 51 is item 14c(3). Failure to observe written regulations, orders, rules, or procedures, Violations of official security regulations. Action against National Security with a deliberate violation - first offense range of penalties is a 30-day suspension to removal. It is standard Agency procedure to initiate an indefinite suspension to employees involving their failure to obtain or maintain a security clearance while holding a position that requires one.

FACTOR 8: The notoriety of the offense or its impact on the reputation of the agency.

NEUTRAL: No comments

FACTOR 9: The clarity with which the employee was on notice regarding any rules that were violated in committing the offense, or whether or not the employee had been warned about the conduct in question[].

NEUTRAL: No comments

FACTOR 10: Potential for the employee's rehabilitation.

NEUTRAL: No comments

FACTOR 11: Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter.

NEUTRAL: No comments

FACTOR 12: The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by employee or others.

NEUTRAL: No alternative sanctions were considered appropriate or effective.

Appendix H

OPM Disability Retirement Form 3112B

1. Has employee stopped coming to work?

Yes, employee resigned **effective 6 Jun 2022**

2. Is employee's attendance unacceptable for continuing in current position?

Yes, Employee placed on **administrative leave on 14 Feb 2022**, and suspended on 24 Apr 2022

3. Explain the impact of employee's absence on your work operations.

Beginning with the time of his placement on administrative leave for **failure to attain or maintain** a TOP SECRET/Special Sensitive clearance and access to classified Information and systems, Mr. Akerman's most essential duties had to be assigned as an additional duty to another employee, the NGB Chief Technology Officer (CTO), in order to ensure that the NGB data program was implemented and managed at a minimal capability level. Although the designated employee performed admirably as acting Chief Data Officer (CDO), a single person could not fully fill both demanding roles, and therefore both roles were negatively impacted until we were able to hire a new CDO. In the five months he served as COO prior to

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being placed in administrative leave status, Mr. Akernum booked 12 hours of annual leave with no indication this was for medical reasons (time and attendance report attached).

Employee Conduct

Is employee's conduct unsatisfactory?

NO

Accommodations and Reassignment

What efforts have been made to accommodate the employee in current position?

No accommodations were made because no accommodations were ever requested by Mr. Akerman.

Signed

MCNEILL.KENNETH.CHRISTOPHER

Date: 2023.10.27