

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

MARTIN AKERMAN,  
Appellant,

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

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: May 17, 2023

**ORDER ON THE APPELLANT'S REQUEST FOR CLARIFICATION**

On May 17, 2023, the appellant filed a request for clarification and guidance on several legal principles. *See* Appeal File (AF), Tab 27. The appellant is advised that the Board does not provide legal advice to the parties, including pro se appellants. Moreover, to the extent the appellant is seeking an advisory opinion; he is advised the Board may not issue advisory opinions. *See* 5 U.S.C. § 1204(h); *Tunik v. Merit Systems Protection Board*, 407 F.3d 1326, 1332 (Fed. Cir. 2005); *Wheeler v. Department of Defense*, 2010 MSPB 47, Slip op. at 6 (M.S.P.B. Mar. 5, 2010) (publication pending).

I note, however, that in the appellant's request there are two issues where I believe it is proper for me to provide a response. First, the appellant noted that he has an ongoing "USERRA mixed case appeal." AF, Tab 27. The Federal Circuit has held that a USERRA case cannot form the basis of a mixed case appeal. *Jolley v. Dep't of Housing and Urban Dev.*, 299 Fed. App'x 969, 972 (Fed. Cir. 2008). Second, the appellant asked that the Board revisit an administrative judge's decision in his prior appeal which he identified as Docket No. DC-3443-22-0639-I-1. AF, Tab 27. That appeal is pending before the Board as the appellant filed a petition for review, and he has already requested that the

Board allow him to submit new evidence in that appeal. *See Akerman v. Department of Defense*, DC-3443-22-0639-I-1, Petition for Review File, Tabs 10 and 11. To the extent the appellant seeks to request further action as to his 22-0639-I-1 appeal, he should file a request under that docket number – if appropriate. I find the remainder of the appellant’s request seeks legal advice and/or an advisory opinion.

For the above reasons, the appellant’s request for clarification is **DENIED, in part.**

FOR THE BOARD:

\_\_\_\_\_/S/  
Joshua Henline  
Administrative Judge

## CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

### Appellant

Electronic Mail      Martin Akerman  
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### Agency Representative

Electronic Mail      Jenny Lin Naylor  
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Arlington, VA 22204

\_\_\_\_\_  
May 17, 2023  
(Date)

\_\_\_\_\_  
/s/  
Joshua Henline  
Administrative Judge