

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-0752-23-0457-I-1

Final Motion for Fair Access to Court

Summary Page

Case Title : MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

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Pleading Title : Final Motion for Fair Access to Court

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

Details about the supporting documentation

#	Title/ Description	Mode of Delivery
1	Request Sent to Lt Col Naylor	Uploaded
2	Fourth Circuit for Reference	Uploaded

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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 SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

MARTIN AKERMAN,
Appellant,
V.
NATIONAL GUARD BUREAU,
Agency.

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

DATE: May 18, 2023

**FINAL MOTION FOR EXTENSION OF TIME AND REQUEST FOR STATUS
CONFERENCE AND ASSISTANCE IN OBTAINING REPRESENTATION**

TO THE HONORABLE ADMINISTRATIVE JUDGE:

I, Martin Akerman, Pro Se Appellant in the case at bar, humbly come before this Honorable Court, under the guiding principles of MSPB Rules of Practice and Procedure 5 C.F.R. § 1201.12, to request an extension of 40 days to respond to the many orders to show cause and to conduct discovery proceedings.

In recognition of the legal principle established in *Austin v. Winter*, 286 F. App'x 31, 37 (4th Cir. 2008), I understand that a failure to cooperate can constitute a failure to exhaust administrative remedies. With due respect, I make this earnest request acknowledging the standard used to evaluate the sufficiency of a pleading – one that is flexible, and treats a pro se complaint with leniency, but without forgoing the requirement for more than mere labels and conclusions, as per *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Martin Akerman, Pro Se

JUSTIFICATION FOR REQUESTED EXTENSION

In presenting my plea for an extension, I wish to emphasize that the complexity of the case at hand, my prevailing disability, and the absence of professional legal representation necessitate the request. Although I possess access to legal resources such as Lexis and artificial intelligence, these alone cannot compensate for the absence of formal legal training, and thus contribute to the challenges in keeping pace with proceedings.

Further, I have instigated a complaint with the Department of Labor's Veterans' Employment and Training Service (DOL VETS), alleging a violation of General Garduno's rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). I have yet to receive confirmation that DOL VETS has initiated a case, and in view of the possible impact of their investigation on this case, additional time is required.

PROPOSED UTILIZATION OF EXTENDED TIME

The time sought will be employed in the following manner:

1. 10 days to request discovery from Lt. Col Naylor
2. 10 days to scrutinize Lt. Col Naylor's response and compile a formal discovery request
3. 20 days to await a response to my discovery request, with the contingency to file a motion to compel, if required
4. The remaining time to await the conclusion of the DOL VETS investigation.

In light of the aforementioned circumstances and legal standards, I humbly implore this Honorable Court to grant an extension of time by an additional 40 days.

May it please the Court to favorably consider my appeal, demonstrating its commitment to the fundamental principles of justice and fair play.

Martin Akerman, Pro Se

GOOD FAITH EFFORT AND NOTICE OF INTENT TO APPEAL

Demonstrating good faith, I am actively seeking to comply fully with the administrative procedures of MSPB. If my present requests meet with further denial, I give notice of my intent to appeal promptly. I will simultaneously petition for a writ of habeas corpus and replevin in the Federal Circuit, strongly holding that both my rights and those of General Garduno are not being duly upheld within the current procedural framework of this case. In assuring the court of my commitment to upholding the regulations as outlined in § 1201.73(d), I aim to communicate and discuss anticipated motions with the opposing party, in an effort to resolve disputes in an amicable manner, as mandated in § 1201.73(c)(1).

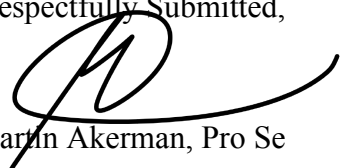
DISCOVERY REQUEST

There exists a substantial belief that a harmful procedural error in the agency action implicating General Garduno of the Nevada Air National Guard has occurred. I suspect that the agency misrepresented information, overlooked my entitlement to sick leave during a protected period, opposed my OWCP claim without proper justification, and neglected to comply with OPM's request for my records concerning my disability retirement.

STATUS CONFERENCE AND ASSISTANCE IN OBTAINING REPRESENTATION

In line with the precedent set in *French v. Office of Personnel Management*, 37 M.S.P.R. 496 (1988), I solicit a status conference at the earliest convenience, and assistance in procuring legal representation. This is particularly essential given the prevailing circumstances of my health conditions.

Respectfully Submitted,


Martin Akerman, Pro Se



1 message

To: "NAYLOR, JENNY L Lt Col USAF ANG 167 HQ/JA" <jenny.naylor@us.af.mil>

Thank you for considering my request. I await your favorable response.

May 8, 2023

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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

MARTIN AKERMAN, PRO SE Plaintiff - Appellant

V.

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

PRO SE MOTION FOR RULE 60(b)(3) AND 60(b)(6) RELIEF

Background

1. Administrative agencies operate under the authority of statutes and regulations, which provide the legal framework for their actions.
2. Pursuant to Rule 60(b)(3) and Rule 60(b)(6) of the Federal Rules of Appellate Procedure, the Pro Se Plaintiff/Appellant, Martin Akerman, is entitled to relief from the judgment entered against them on November 3, 2022, due to fraud, misrepresentation, and/or misconduct by one or more of the Defendants/Appellees, and for any other reason justifying relief.

6 Pages - 1035 Words in Body

3. The Appellant has suffered significant injustices due to the illegal actions of a Federal Employee, Bill Poppler, and the denial of their right to due process, which led to their false arrest, constructive discharge, and false imprisonment. These injustices were further compounded by the harmful procedural error admitted by the Office of Special Counsel, which prevented the Appellant from receiving proper redress at the administrative level.

4. The Appellant respectfully requests that this Court grant relief from the judgment entered on November 3, 2022, by setting aside or modifying the judgment in light of the fraud, misrepresentation, and misconduct committed by one or more of the Defendants/Appellees and the extraordinary circumstances surrounding the case. Additionally, the Appellant seeks the Court's approval for a 120-day investigation period to allow the Office of Special Counsel and other relevant agencies to properly investigate and remedy the violations of constitutional and procedural safeguards, as specified in 5 U.S.C. 7513 and 5 U.S.C. 6329b.

5. The Appellant requests the Court to take into consideration the hardship they have faced due to being without income, disabled, and denied workman's compensation while seeking a just resolution of their case. It is in the interest of justice and fairness that the Court grants the requested relief and ensures that the Appellant's rights are protected, and appropriate remedies are provided for the injustices suffered due to the violations of constitutional and procedural safeguards.

Facts

6. On February 14, 2022, the Appellant was placed illegally out of the office on Notice Leave. On April 24, 2023, the Appellant initiated a timely petition for writ of habeas corpus and replevin in the state of Nevada, seeking a declaratory remedy, as reported to this court. On April 25, 2023, the Department of the Army, one of the Appellees, submitted a legal and enforceable attestation to the Department of Labor, Office of Workman's Compensation Programs (OWCP). The attestation revealed that on April 11, 2022, one Bill Poppler, a Federal Employee, (1) framed the Officer of the State of Nevada, (2) committed deliberate fraud, and (3) deprived the Appellant of a chance at due process at the earliest practicable moment.

7. In light of these findings, the Office of Special Counsel (OSC), the agency charged with protecting whistleblowers, acknowledged a harmful procedural error that prevented them from properly addressing the Appellant's case at the administrative level. A letter confirming this administrative error, dated May 3, 2023, is attached hereto.

Fraud, Misrepresentation, or Misconduct (Rule 60(b)(3))

8. The misconduct committed by the Respondent Bill Poppler, a Federal Employee, as detailed in the legal and enforceable attestation submitted by the Department of the Army to the Department of Labor, Office of Workman's Compensation Programs (OWCP), includes: (1) framing the Officer of the State of Nevada, (2) committing deliberate fraud, and (3) depriving the Appellant a chance at due process at the earliest practicable moment. This misconduct came to

light when the Department of the Army submitted the attestation to the OWCP on April 25, 2023. Additionally, the Office of Special Counsel (OSC) has admitted to a harmful procedural error that prevented them from properly addressing the Appellant's case at the administrative level, as evidenced by their letter dated May 3, 2023 (attached herewith).

9. The misconduct by Bill Poppler and the procedural error by the OSC had a direct and adverse impact on the outcome of the case, leading to a judgment against the Appellant on November 3, 2022. The deliberate fraud and deprivation of due process, as well as the OSC's harmful procedural error, significantly prejudiced the Appellant's ability to fairly present their case and seek appropriate remedies. As a result of the misconduct, the Appellant was denied their constitutional and procedural rights, and the judgment against them should be set aside or modified in the interest of justice.

Any Other Reason Justifying Relief (Rule 60(b)(6))

10. The extraordinary circumstances in this case include the harmful procedural error by the Office of Special Counsel (OSC), as admitted in their letter dated May 3, 2023. This error not only compromised the OSC's ability to protect the Appellant as a whistleblower but also prevented the Appellant from receiving proper redress at the administrative level.

11. These extraordinary circumstances, in addition to the misconduct by one of the Defendants, prevented a fair judgment and hindered the Appellant from presenting their case effectively, resulting in a wrongful judgment against them.

Conclusion

12. The Appellant is without income and disabled, and has been denied workman's compensation. The procedural safeguards provided by 5 U.S.C. 7513 include the requirement that a federal agency provide an employee with at least 30 days' advance written notice of a proposed adverse action, an opportunity to respond to the allegations, the right to representation by an attorney or other representative, and a written decision from the agency. Additionally, 5 U.S.C. 7513 ensures that adverse actions are taken only for such cause as will promote the efficiency of the service. In contrast, 5 U.S.C. 6329b (The Administrative Leave Act) governs administrative leave for employees under investigation and outlines the conditions under which administrative leave may be granted, as well as the rights and protections afforded to employees during such leave.

13. Given the severity of the violations of these procedural safeguards in this case, as well as the involvement of fraud, the Appellant requests the Court to provide 120 days for the Office of Special Counsel to conduct an exhaustive administrative investigation. This would enable the Merit Systems Protection Board, the Department of Labor, the Office of Personnel Management, and the Privacy and Civil Liberties Oversight Board to properly address and remedy the civil forfeiture and false arrest under 5 U.S.C. 7513's exception to due process.

Relief Requested

14. In light of the aforementioned fraudulent conduct by one of the Appellees and the extraordinary circumstances in this case, the Appellant respectfully requests that this Court grant relief from the judgment entered on November 3, 2022, pursuant to Rule 60(b)(3) and Rule 60(b)(6), by setting aside or modifying the judgment. The Appellant also requests the Court to provide 120 days for the Office of Special Counsel to conduct an exhaustive administrative investigation, allowing the Merit Systems Protection Board, the Department of Labor, the Office of Personnel Management, and the Privacy and Civil Liberties Oversight Board to properly remedy the civil forfeiture and false arrest under 5 U.S.C. 7513's exception to due process, and related constructive discharge and false imprisonment under constitutional and related procedural safeguard violations, as specified in 5 U.S.C. 7513 and 5 U.S.C 6329b. The Appellant requests the Court grant any further relief as this Court deems just and proper.

The Appellant has no other cases before the Fourth Circuit and certifies that on May 8, 2023, he filed this Memorandum and related attachments electronically, in the Honorable Fourth Circuit, providing electronic service to all parties.

Signature of Pro Se Appellant:

A handwritten signature in black ink, appearing to be 'M. Akerman', written over a horizontal line.

Martin Akerman, 2001 North Adams Street Unit 440

Arlington, VA 22201

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	Final Motion for Fair Access to Court	e-Appeal / e-Mail
Jenny Lin Naylor Agency Representative	Final Motion for Fair Access to Court	e-Appeal / e-Mail