

**MARTIN AKERMAN v. DEPARTMENT OF THE ARMY**

**Docket # DC-1221-22-0257-S-1**

**Supplement to PFR**

**Summary Page**

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

**Docket Number :** DC-1221-22-0257-S-1

**Pleading Title :** Supplement to PFR

**Filer's Name :** Martin Akerman

**Filer's Pleading Role :** Appellant

**Details about the supporting documentation**

#	Title/ Description	Mode of Delivery
1	Related DC-3443-22-0296-I-1	Uploaded
2	Individual Right of Action Files from 2022-02-28	Uploaded
3	Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809	Uploaded

## Table of Contents

Pleading Interview .....	3
Related DC-3443-22-0296-I-1 .....	4
Page 1 .....	4
Page 2 .....	5
Individual Right of Action Files from 2022-02-28 .....	6
Akerman MA-21-1602 IRA.pdf .....	6
Akerman IRA (1).pdf .....	8
M. Akerman 5.3.23.pdf .....	9
Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809 .....	10
Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809 .....	11
Subsequent History .....	11
Core Terms .....	11
Counsel .....	11
Administrative Law Judge .....	12
Administrative Law Judge-Decision .....	12
Certificate of Service .....	15

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-1221-22-0257-S-1

Supplement to PFR

Online Interview

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

Enter Online

---

2. Please enter text of your pleading.

I wish to bring new evidence to MSPB to invoke 5 C.F.R. Â§ 1201.118: On May 3, 2023, I received a letter from OSC stating as follows: 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. There was a miscommunication between MSPB and OSC that was outside of my control.

---

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

---

**MOTION TO ACCEPT FILING AS TIMELY AND/OR TO ASK THE BOARD  
TO WAIVE OR SET ASIDE THE TIME LIMIT**

CASE NAME: Martin Akerman v. Office of Special Counsel  
DOCKET NUMBER: DC-3443-22-0296-I-1

**Please choose and complete the following, as appropriate (use attachments as necessary):**

1. I ask that the Board allow me to submit my proof that my petition was filed on time for the reason shown below. The following includes an exact and detailed description of when I received the initial decision.

I opened the appeal on March 13, 2022, on time.  
In light of new and critical information, I filed this new evidence with the MSPB in a timely manner in a petition titled "Reopening on new evidence", on May 23, 2023.

2. I ask that the Board set aside (i.e., waive) the deadline for filing my petition for the good cause (i.e., reason) shown below<sup>1</sup>. The following is an exact and detailed description of the circumstances which caused my petition to be filed late.

On May 20, 2022, I received an Individual Right of Action letter that provided an appeal 65 days to file in action. Nearly a year later, I received a correction letter from OSC highlighting a harmful procedural error.

3. I have included documents and/or other evidence that supports this request, namely:

- a. The correction letter - PFR 1 at 4
- b. The email - PFR 3 at 4

---

<sup>1</sup> If you are alleging that your health has affected your ability to meet filing deadlines, the Board will find good cause for waiver of its filing time limits if you demonstrate that you suffered from an illness that affected your ability to file on time. To establish that an untimely filing was the result of an illness, you must: (1) Identify the time period during which you suffered from the illness; (2) Submit medical or other evidence showing that you suffered from the alleged illness during that time period; and, (3) Explain how the illness prevented you from timely filing your appeal or your petition for review.

c. Medical Evidence attached (latest)

4. The reason(s) that I did not ask the Board for an extension of time to file the document before the deadline is :

I submitted the new evidence as soon as I could given Significant and unusual circumstances, Namely, the incorrect file number from OSC, and PTSD Disability.

PLEASE USE ONE OF THE FOLLOWING TWO SIGNATURE OPTIONS:

**OPTION 1. SIGNED STATEMENT**

I, Martin Akerman Appellant, swear under the penalty of perjury under the laws of the United States of America that the statements above are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**OPTION 2. AFFIDAVIT**

I, Martin Akerman Appellant, swear (or affirm) that the statements above are true and correct.

\_\_\_\_\_  
Signature

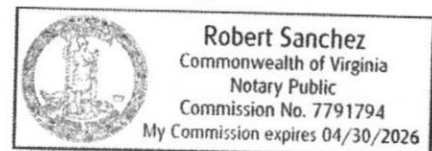
City/County of Arlington

State/Commonwealth of Virginia

Acknowledged and Sworn to me before this 8 day of June 2023

\_\_\_\_\_  
Signature of Notary

30 April 2026  
Expiration Date





**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.<sup>1</sup> 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,

---

<sup>1</sup> 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).

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](mailto: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,

*Maureen Taylor*

Maureen Taylor  
Attorney

Investigation and Prosecution Division





**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,

*Maureen Taylor*

Maureen Taylor  
Attorney  
Investigation and Prosecution Division



**User Name:** Martin Akerman

**Date and Time:** Sunday, June 18, 2023 12:41:00PM EDT

**Job Number:** 199507735

## Document (1)

1. [\*Akerman v. Dep't of the Army, 2022 MSPB LEXIS 809\*](#)

**Client/Matter:** -None-

***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.

**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. §](#)

\*

---

\* 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.

[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\(a\)\(3\), 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

Administrative Judge

---

End of Document

## **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: Office of the Clerk of the Board	Supplement to PFR	e-Appeal / e-Mail
Bernard E. Doyle Agency Representative	Supplement to PFR	e-Appeal / e-Mail