

**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 GRANTING THE APPELLANT'S REQUEST FOR
RECONSIDERATION**

On May 16, 2023, I ordered the appellant to clarify his Uniformed Services Employment and Reemployment Rights Act (USERRA) claim, which he raised for the first time in his May 15, 2023 filing. *See* Appeal File (AF), Tabs 19 and 20. On the same date, the appellant filed his response wherein it appeared to me that he was raising a separate USERRA claim – separate and apart from his involuntary retirement claim. *See* AF, Tab 21 at 8. As a result, I decided to docket a new USERRA claim and informed the parties they would receive separate notice as to the new appeal. *See* AF, Tab 22. My decision did not inform the parties that the appellant's involuntary retirement claim had been fragmented, nor did it state that I was prohibiting the appellant from presenting a USERRA violation as part of his involuntary retirement claim. *Id.* Nevertheless, the appellant filed an objection and asked that I reconsider my decision to docket a new USERRA appeal. *See* AF, Tabs 23 and 24. Therein, he clarified that his USERRA and involuntary retirement claims are intertwined, and that he is not raising a separate USERRA claim. *Id.*

Based on the foregoing, I have reconsidered my decision to docket a new USERRA appeal and find the appellant did not raise a separate and distinct USERRA claim. Specifically, as noted by the appellant, his USERRA claim is related to his involuntary retirement claim. *See* AF, Tabs 23 and 24. Accordingly, the appellant's motion is **GRANTED**; thus, I will not docket a new USERRA appeal and the Board will delete the new docket it eAppeal and its case management system.

I will issue the parties a separate notice in regard to the appellant's USERRA and Voluntary Early Retirement Authority claims. *See Newton v. Department of Navy*, 2015WL 6922725 (MSPB Nov. 10, 2015) (nonprecedential) (In a Remand Order, the Board directed the administrative judge to provide specific notice to the appellant of his burdens of proof regarding each of his claims); *see also Burgess v. Merit Systems Protection Board*, 758 F.2d 641, 643-44 (Fed. Cir. 1985); *Rodriguez v. Department of Homeland Security*, 112 M.S.P.R. 446 ¶ 11 (2009).

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

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May 17, 2023
(Date)

/s/

Tonya Holman
Paralegal Specialist