

**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 18, 2023

**SECOND ORDER DENYING MOTION FOR CERTIFICATION OF
INTERLOCUTORY APPEAL**

On May 18, 2023, the appellant filed a motion in which he sought certification of an interlocutory appeal from the Order Denying the Appellant's Request for Status Conference and Burgess Order. *See* Appeal File (AF), Tab 33.

An administrative judge should certify a ruling for interlocutory review only if the record shows that the ruling involves an important question of law or policy about which there is substantial ground for difference of opinion, and an immediate ruling will materially advance the completion of the proceeding, or that the denial of an immediate ruling will cause undue harm to a party or the public. 5 C.F.R. § 1201.92; *MacLean v. Department of Homeland Security*, 112 M.S.P.R. 4, ¶ 7 (2009); *Fitzgerald v. Department of the Air Force*, 108 M.S.P.R. 620, ¶ 6 (2008).

In his motion, the appellant repeats the standard for an interlocutory appeal and makes conclusory assertions as to why I should grant his request. Similar to his first request for an interlocutory appeal, the appellant's current motion is devoid of any evidence or argument addressing the requirements for certification

of an interlocutory appeal which are set forth in 5 C.F.R. § 1201.92. *See* AF, Tab 33.

Under the Board's regulations, interlocutory appeals are intended for situations where the ruling “involves an important question of law or policy about which there is substantial ground for difference of opinion.” 5 C.F.R. § 1201.92(a). No such issue is present on this record. Moreover, the appellant also failed to establish under 5 C.F.R. § 1201.92(b) that an immediate ruling would materially advance the completion of the proceeding or that the denial of such a ruling will cause any undue harm. An administrative judge has wide discretion to control the proceedings before him. *Blake v. Department of Justice*, 81 M.S.P.R. 394, ¶ 14 (1999); *Desmond v. Department of Veterans Affairs*, 90 M.S.P.R. 301 (2001); *see Briscoe v. Department of Veterans Affairs*, 55 F.3d 1571, 1573 (Fed. Cir. 1995); *see also* 5 C.F.R. § 1201.43; 5 C.F.R. § 1201.14(a), (b), and (g). Notably, the appellant acknowledged that I have issued notices for each of his identified claims. *See* AF, Tab 33 at 4.

Based on the foregoing, I find that there is no evidence to support a conclusion that my ruling denying the appellant's request for a status conference or an additional “Burgess Notice” involved important questions of law or policy about which there is substantial ground for difference of opinion, and that an immediate ruling would materially advance the proceeding or that denial of an immediate ruling would cause undue harm to a party or the public.

Accordingly, the appellant's motion is **DENIED**.

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
2001 North Adams Street
Unit 440
Arlington, VA 22201

Agency Representative

Electronic Mail Jenny Lin Naylor
Department of the Army
111 S. George Mason Dr., Bldg 2
Arlington, VA 22204

May 18, 2023

(Date)

/s/

Joshua Henline
Administrative Judge