

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

MARTIN AKERMAN,  
Appellant,

DOCKET NUMBER  
DC-1221-22-0257-S-1

v.

DEPARTMENT OF THE ARMY,  
Agency.

DATE: March 7, 2022

Martin Akerman, Arlington, Virginia, pro se.

Bernard E. Doyle, Arlington, Virginia, for the agency.

**BEFORE**  
Melissa Mehring  
Administrative Judge

**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

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\* 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.

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 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. § 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, C.F.R. § 1201.3](#)), he could choose either to seek corrective action with OSC before appealing to the Board or file his appeal

