

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

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

TIMELY PRO SE APPELLANT RESPONSE

Summary Page

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

**Docket Number :** DC-0752-23-0457-I-1

**Pleading Title :** TIMELY PRO SE APPELLANT RESPONSE

**Filer's Name :** Martin Akerman

**Filer's Pleading Role :** Appellant

**Details about the supporting documentation**

N/A

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TIMELY PRO SE APPELLANT RESPONSE

Online Interview

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

See attached pleading text document

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2. Does your pleading assert facts that you know from your personal knowledge?

Yes

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3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

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**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 15, 2023

**TIMELY PRO SE APPELLANT RESPONSE TO AJ NOTICE TO THE APPELLANT  
AND THE AGENCY, AND CLOSE OF RECORD ORDER**

**Jurisdictional Statement**

1. The jurisdiction of the Merit Systems Protection Board (MSPB) is invoked pursuant to 5 CFR §1201, under which the MSPB has jurisdiction over (1) Adverse Actions, including involuntary retirements considered equivalent to removals (5 U.S.C. §§ 7511-7514; 5 CFR part 752, subparts C and D), (2) Retirement Appeals, involving determinations affecting the rights or interests of an individual under the Federal retirement laws (5 U.S.C. §§ 8347(d)(1)-(2), 8461(e)(1); 5 U.S.C. 8331 note; 5 CFR parts 831, 839, 842, 844, and 846), and (3) USERRA Appeals, encompassing allegations of violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 (Public Law 103-353), as per 38 U.S.C. §4324.
2. Involuntary retirement falls within the jurisdiction of the MSPB if it is the result of the agency's coercion or duress, or if the agency made misleading statements upon which the employee relied to their detriment, as established in *Rysavy v. Department of Housing & Urban Development*, 28 M.S.P.R. 263, 265 (1985); *Covington v. Department of Health & Human Services*, 750 F.2d 937, 942 (Fed. Cir. 1984); *Scharf v. Department of the Air Force*, 710 F.2d 1572, 1574-75 (Fed. Cir. 1983).

### **Issue**

3. The central issues are whether the Appellant's retirement can be considered involuntary due to agency coercion or misleading information, whether there were violations of procedural safeguards leading to an unfavorable outcome for the Appellant, and the role of the Appellant's disability status (Post-Traumatic Stress Disorder or PTSD) in exacerbating the adverse impact of the agency's actions. An additional issue is whether the agency adhered to the procedures outlined in § 831.1205 for agency-filed disability retirement applications, when they refused to respond to OPM.

### **Rule**

4. Under 5 U.S.C. § 7513(b)(1), agencies are required to provide at least 30 days' advance written notice before taking an adverse action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.
5. As per 5 CFR § 752.404(f), the notice of proposed action must afford the employee a reasonable time to answer personally and in writing, and to furnish affidavits and other documentary evidence in support of the answer.
6. The procedural safeguards provided by 5 U.S.C. 7513 include the requirement that a federal agency provide an employee with an opportunity to respond to the allegations, the right to representation by an attorney or other representative, and a written decision from the agency.

7. Pursuant to § 831.1205, an agency must file an application for disability retirement on behalf of an employee under certain conditions, and follow specific procedures when filing the application.

### **Application**

8. The Appellant contends that his retirement was involuntary due to misleading information and coercion by the agency, including an alleged civil forfeiture which the Appellant views as grossly disproportionate to the gravity of the undisclosed and untried offense. These claims, if validated, would make the retirement equivalent to a removal, as per Rysavy, Covington, and Scharf.
9. Despite the rules set by 5 U.S.C. § 7513(b)(1) and 5 CFR § 752.404(f), the Appellant alleges that the agency failed to provide a proper 30 days' advance written notice for the suspension that commenced on April 24, 2022. The Appellant asserts that the agency introduced a new charge on April 11, 2022, which would require a suspension to begin no sooner than 30 days from that date.
10. Furthermore, the Appellant alleges that he was not given a reasonable time to respond to the charges and to furnish supporting evidence, in violation of 5 CFR § 752.404(f). The Appellant also claims that he was not provided with a proper decision-maker to communicate his response to, which violates his right to respond under the procedural safeguards provided by 5 U.S.C. 7513.

11. The Appellant also alleges that the agency did not adhere to the procedures stipulated in § 831.1205 when responding to a disability retirement application on his behalf. According to the Appellant, the agency did not meet the conditions required to respond to OPM.

### **Conclusion**

12. The Appellant requests that the MSPB consider these alleged violations of procedural safeguards, as well as the inappropriate blocking of a disability retirement application, in determining the validity of the involuntary retirement action. Additionally, the Appellant seeks the Board's acknowledgment of the role of his PTSD disability, triggered by agency actions, in exacerbating the adverse effects of these actions on his career and for a status conference and discovery after the agency is given a chance to respond.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'M. Akerman', with a long, sweeping horizontal stroke extending to the right.

Martin Akerman, Pro Se

## **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	TIMELY PRO SE APPELLANT RESPONSE	e-Appeal / e-Mail
Jenny Lin Naylor Agency Representative	TIMELY PRO SE APPELLANT RESPONSE	e-Appeal / e-Mail