UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

MARTIN AKERMAN,
Appellant,

v.

DEPARTMENT OF THE ARMY,
Agency.

DOCKET NUMBER
DC-0752-23-0457-I-1

DATE: May 4, 2023

ORDER DENYING MOTION FOR CERTIFICATION OF INTERLOCUTORY APPEAL

On May 4, 2023, the appellant filed a motion in which he sought certification of an interlocutory appeal from the May 3, 2023 order denying his request that I appoint him an attorney to represent him in this appeal.[1] *See* Appeal File (AF), Tab 7. Additionally, his motion appears to seek certification of an interlocutory appeal for the notice that I provided the parties in regard to the submission of documents. *Id*.

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

[1] The appellant also requested a stay, which the Board docketed as DC-0752-23-0457-S-1. *See* AF, Tab 7; *see also Akerman v. Department of the Army*, DC-0752-23-0457-S-1. The appellant was unclear as to whether he was requesting a stay of the alleged personnel action or the processing of this appeal. Thus, I will issue a separate decision on the appellant's stay request that was docketed as DC-0752-23-0457-S-1. To the extent the he also requested a stay of the processing of this appeal, it is **DENIED**.

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 spilled much ink on the right to counsel for criminal defendants and why he believes the extraneous documents he submitted as part of his Motion for an Extension and Attorney Representation are relevant to his appeal.[2] AF, Tab 7. Moreover, he disjointedly explained *Chevron* deference and the role it should play in an agency's, including the Board's, decision making process. *Id.*; *see Chevron U.S.A., Inc. v. Natural Resources Defense Council*, Inc., 467 U.S. 837 (1984). The appellant's motion, however, 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 7.

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. Specifically, the Board has long held – for over 40 years – that it is not required by law, rule, or regulation to appoint counsel for an appellant, and it is an appellant's obligation to secure representation. *See Thomspon v. United States Coast Guard*, 11 M.S.P.R. 461, 462 (1982); *Robinson v. Veterans Administration*, 33 M.S.P.R. 483, 486 (1987); *see cf. Lee v. Environmental Protection Agency*, 115 M.S.P.R. 533, ¶ 23

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[2] The Board's appeals are not criminal proceedings and to the extent the appellant has been charged for criminal conduct in another forum, the Board lacks any authority to appoint counsel in that forum.

(2010) (the denial of the appellant's recusal motion does not involve an important question of law or policy, as the Board has already decided the standard it will apply in determining whether an administrative judge should be disqualified on grounds other than bias). As to the notice I provided to the parties in regard to the submission of documents, 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 notice was an advisement to the parties and I have yet to strike any of the appellant's pleadings or submissions as I had not informed the parties of the document submission requirements. *See* AF, Tab 6; *see also* 5 C.F.R. § 1201.14(a), (b), and (g).

Based on the foregoing, I find that there is no evidence to support a conclusion that my ruling denying the appellant's request for an attorney or my notice to the parties 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 — Eugene R. Ingrao, Sr.
Department of the Army
Attorney- Advisor
Office of the Chief Counsel, NGB
111 S. George Mason Drive
AHS-2/Room 3TI-308
Arlington, VA 22204

May 4, 2023
(Date)

/s/
Tonya Holman
Paralegal Specialist