

**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 22, 2023

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

On May 22, 2023, the appellant filed a motion in which he sought certification of an interlocutory appeal from the Order Denying Request for Special Panel. *See* Appeal File (AF), Tab 44.

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 and second 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 44. Thus, I find the appellant's request to be meritless and frivolous.

Nevertheless, 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 failed to address the fact that his request has no foundation in law. See AF, Tab 44

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 special panel 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**.

I must note again that despite my explicit warning concerning the appellant's repeated filings of frivolous and meritless motions, he filed this meritless and frivolous request for certification of an interlocutory appeal. The appellant is again warned that if he continues to violate Board regulations and my orders, he may be sanctioned. See AF, Tab 41.

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:

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Electronic Mail Martin Akerman
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May 22, 2023
(Date)

/s/

Tonya Holman
Paralegal Specialist