

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

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

Motion for Certification and Stay

Summary Page

Case Title : MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

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

Pleading Title : Motion for Certification and Stay

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

Details about the supporting documentation

N/A

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Motion for Certification and Stay

Online Interview

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

Enter Online

2. Please enter text of your pleading.

The Petitioner respectfully requests certification and stay in response to the denial of the request for an attorney and the submission of documents in the above-referenced case. The Petitioner would like to provide further clarification on the relevance of the documents that were initially deemed extraneous, emphasize the right to counsel in a criminal matter, and explain the significance of administrative decisions, citing Chevron deference if possible. Pages 6-10 of 13 in Docket 5 contain a petition for writ of habeas corpus and replevin in the State of Nevada (Case 86458), which highlights the importance of protecting tenured employees' property rights and procedural safeguards. Pages 11-12 of the same docket reveal that the Department of the Army believes that Ken McNeill and Bill Poppler, not General Garduno of the Nevada Air National Guard, perpetrated the false imprisonment and are obstructing the Petitioner's right to disability retirement, which is the case before the board. These documents are relevant to the Petitioner's case and demonstrate a clear connection between the false imprisonment and the denial of the disability retirement. Additionally, it is important to consider that the right to counsel in a criminal matter, as guaranteed by the Sixth Amendment to the United States Constitution, is a fundamental protection for individuals facing criminal charges. In light of the allegations of false imprisonment, which is a criminal matter, the Petitioner respectfully requests that the right to counsel be taken into account in this case. Additionally, the Petitioner would like to highlight the importance of administrative decisions, such as those made by the Merit Systems Protection Board (MSPB), in shaping legal outcomes. The Petitioner cites *Briggs v. Merit Sys. Prot. Bd.*, 331 F.3d 1307, 1311 (Fed. Cir. 2003), which establishes that the appellate court's review of a decision of the MSPB is limited by 5 U.S.C. Â§ 7703(c). According to *Briggs*, the court can set aside a decision of the MSPB only if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. In disability retirement determinations under the Civil Service Retirement System (CSRS), the court is without authority to review the substantive merits or factual underpinnings of such determinations. Rather, review is limited to determining whether there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error going to the heart of the administrative process. The importance of administrative decisions is further underscored by the doctrine of Chevron deference, as established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). This legal principle recognizes that administrative agencies possess expertise in interpreting the statutes they administer, and courts should defer to reasonable agency interpretations of ambiguous

statutory provisions. This deference underscores the critical role of administrative decisions in shaping the legal landscape and protecting the rights of affected parties. The Petitioner kindly requests that the Administrative Judge reconsider the inclusion of these documents as evidence, grant certification, and, following certification, a stay pending Interlocutory Appeal. This will ensure that all pertinent issues are examined thoroughly and that the administrative process is properly conducted while also acknowledging the significance of the right to counsel in a criminal matter and the importance of administrative decisions.

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

Yes

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

Yes

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	Motion for Certification and Stay	e-Appeal / e-Mail
Eugene R. Ingrao, Sr. Agency Representative	Motion for Certification and Stay	e-Appeal / e-Mail