

SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY
Docket # SF-1221-23-0258-W-1
Motion to Dismiss
Summary Page

Case Title : SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY

Docket Number : SF-1221-23-0258-W-1

Pleading Title : Motion to Dismiss

Filer's Name : Gwendolyn L. Smith, Esq.

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

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SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY

Docket # SF-1221-23-0258-W-1

Motion to Dismiss

Online Interview

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

See attached pleading text document

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

Yes

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

Yes

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

Sherman S. Startz,)
Appellant,) Docket No. SF-1221-23-0258-W-1
v.)
Department of the Army,) Administrative Judge: Michael S. Shachat
Agency.) Date: May 5, 2023

AGENCY'S MOTION TO DISMISS FOR LACK OF JURISDICTION

COME NOW, the Agency, by and through undersigned counsel, hereby submits its motion to dismiss for lack of jurisdiction.

I. ARGUMENTS

1. The Appellant was not a government employee when terminated from his contract position with ALEUT Corporation and the MSPB does not have jurisdiction over contract employees.

The Appellant alleges retaliation as a contract worker for the ALEUT Corporation for attempting to disclose fraud, waste and abuse committed by the ALEUT Corporation against the government. He raised his complaints to the Office of Special Counsel which closed its inquiry and issued the closing letter to the Appellant with an indication of right to an Individual Right to Action appeal. *See TAB A.* The disclosure raised by the Appellant allegedly happened during his work as a contract employee. Pursuant to 5 U.S.C. 7511 and 7513, a contract employee is not considered an “employee” of the Federal Government. The

Board's jurisdiction is limited to matters specifically entrusted to it through regulation or statute. *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1327 (Fed. Cir. 2006) (en banc). Moreover, the Appellant has the burden of proving by a preponderance of the evidence that his case falls within the specific categories and more definitively, that he falls within the class of persons entitled to the appeal to the Board. 5 C.F.R. §§ 1201.56(b)(2)(A), 1201.57(c)(3). The Appellant was not in the competitive or excepted service nor was he ever executed a Standard Form (SF) 50 or SF-52 or its equivalent in his employment with ALEUT Corporation. *See Pflueger v. DOE*, 2015 MSPB LEXIS 7033. The emails in support of the Appellant's appeal are allegations raised while employed by ALEUT Corporation. *See TAB B*. He was not paid through the federal civil-service system. The allegations raised in this appeal are not within the jurisdiction of the MSPB.

2. Appellant was discharged during his probationary period due to his inability to maintain professional working relationships with coworkers and Contractors resulting in a detrimental effect on the organization. The Appellant's termination was not due to retaliation for engaging in whistleblower activity and thus, he is not entitled to an appeal with the MSPB.

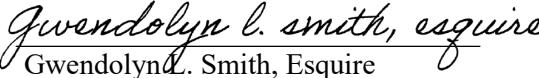
Upon Appellant's termination of employment with the ALEUT Corporation, Appellant was subsequently hired under a career-conditional appointment into a permanent competitive service, construction control inspector position on January 31, 2022. *See Tab C*. The Appellant was terminated from this position during his probationary period on June 27, 2022 for the reasons outlined in the discharge notice dated June 27, 2022. *See Tab D*. The Board previously ruled it lacked jurisdiction over the Appellant's appeal for removal during his probationary

period. See Tab E. The Appellant now seeks to raise retaliation claims for alleged whistleblowing and a hostile work environment as the reasons for his termination. Yet, Appellant did not raise a formal hostile work environment claim with the Equal Employment Opportunity Commission (EEOC). The Appellant arguments fail because he indicated that he raised the whistleblower concerns to the Army while working for the ALEUT Corporation, but the Army proceeded to hire him upon his termination from the ALEUT Corporation. That the Army retaliated against the Appellant by employing him is illogical and inaccurate. The reasons for the Appellant's removal during his probationary period was due to his inability to maintain professional working relationships with coworkers and Contractors resulting in a detrimental effect on the organization. *Id.* There was no unlawful motive behind the Agency's decision to terminate the Appellant during his probationary period. The Appellant was a probationary employee at the time he was terminated, and the MSPB has no jurisdiction in the instant case.

II. CONCLUSION

WHEREFORE, the Agency, by and through undersigned counsel, respectfully ask the Honorable Judge Shachat to dismiss the Appellant's appeal due to lack of jurisdiction. The Appellant was not a federal employee at the time of his alleged disclosures and was subsequently hired as a federal employee despite his alleged disclosures. He was terminated during his probationary period for the aforementioned stated reasons. Neither event falls under the jurisdiction of the MSPB.

FOR THE AGENCY:


Gwendolyn L. Smith, Esquire
Labor and Employment Law Attorney
Consolidated Legal Office
1046 Marks Road #5700

Fort Wainwright Alaska
Gwendolyn.l.smith8.civ@army.mil
(907) 356-6546

CERTIFICATE OF SERVICE

I certify that the attached document was sent as indicated on 5 May 2023 to the following:

MSPB e-Appeal: Hon. Michael S. Shachat
Federal Administrative Judge

MSPB e-Appeal: Sherman S. Startz
Appellant

Gwendolyn L. Smith, Esquire
Gwendolyn L. Smith, Esquire
Labor and Employment Law Attorney
Consolidated Legal Office
1046 Marks Road #5700
Fort Wainwright Alaska
Gwendolyn.l.smith8.civ@army.mil
(907) 356-6546



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 22, 2023

VIA ELECTRONIC MAIL

Mr. Sherman Startz
116 Kelsan Way
Fairbanks, AK 99709
shelbystartz@outlook.com

Re: OSC File No. MA-23-000527 – Final Determination

Dear Mr. Startz:

On February 10, 2023, we sent you a letter setting out our preliminary determination to close your prohibited personnel practice complaint. At that time, we notified you that you had 13 days to respond with any additional information for us to consider. That same day, you responded to our letter, stating that you disagreed with our preliminary findings. However, we note that your response did not contain any information or facts that would change our ultimate analysis and conclusions. Accordingly, for all the reasons stated in our February 10, 2023 letter, we are now closing OSC's inquiry into your prohibited personnel practice complaint.

Because you alleged potential violations of 5 U.S.C. § 2302(b)(8) and (b)(9), you may have a right to seek corrective action from the Merit Systems Protection Board (Board) under the provisions of 5 U.S.C. §§ 1214(a)(3) and 1221, also referred to as an individual right of action appeal. You may file a request for corrective action with the Board within 65 days of the date of this letter. The Board regulations concerning rights to file a corrective action case can be found at 5 C.F.R. Part 1209. We have sent you a separate letter on this date regarding your right to file a corrective action case with the Board.

Sincerely,

Alex Kish
Attorney
Retaliation and Disclosure Unit
(202) 804-7048
akish@osc.gov

From: [Melanie Morris](#)
To: shelbystartz@outlook.com
Subject: RE: [External] Thank you
Date: Wednesday, September 29, 2021 4:21:48 PM
Attachments: [image001.png](#)

Hi Shelby. I know it's almost end of day and I am trying to finish up looking into the below so I can get back with you.

It may be early tomorrow, but working my best to wrap things up on my end.

Appreciate your patience!

Melanie

Melanie Morris, PHR, SHRM – CP

Senior Human Resources Manager

Aleut Corporation

4000 Old Seward Hwy, Suite 300

Anchorage, Alaska 99503

Phone 907.561.4300 | Fax 907.563.4328

www.aleutcorp.com



From: Sherman Startz <shelbystartz@outlook.com>

Sent: Tuesday, September 28, 2021 8:14 AM

To: Melanie Morris <MMorris@aleutcorp.com>

Subject: [External] Thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Melanie Morris,

Thank you for taking the time to hear me out and look into the possibility of re-employment; I do appreciate it.

It is my hope that a role can be salvaged from this retaliatory termination. You may or may not be aware the Army Corp of Engineers received a notice of concern (email) from me regarding the Lock Out Tag Out non-compliance and the problem I was having getting Jeremy Jones to properly address this safety concern. It seems Jeremy Jones was more concerned about not “upsetting” Melvin Weeks; according to Jeremy Jones; “Mel has a special relationship with GHEMM and FULFORD ELECTRIC, and we don’t upset the apple cart and make them do anything they don’t want to do, or make them look bad”. A disturbing response to say the least and lends itself to poor ethical decision making on Jeremy Jones and Melvin Weeks part and appear to be negligent. This is a reflection on Patrick Constructors Inc, Patrick Mechanical Inc. and ultimately on Aleut. The fact is the email sent to the Corp with concern was not the first reporting. I had actually verbally reported to Thomas Thorton with the Corp of Engineers earlier that day and informed him I was working on a resolve or I would not be accepting this role and the COE intervention would be necessary. Literally 4 hours later I was fired. This appears to be direct retaliation recognized by your client; the Army Corp of Engineers; to a very high level I might add. I simply cannot in good faith turn my back on such obvious non compliance to serious safety items. I do not share the same allegiance to GHEMM and FULFORD ELECTRIC as Jeremy Jones and Melvin Weeks.

This clearly looks and is retaliation for reporting blatant non compliance of critical life saving safety rules. Remember I first pointed to this concern even before going out on this project back in July.

Jeremy Jones allowed this problem to perpetuate; which speaks loudly to knowing and willful misconduct and had someone been electrocuted it would could have been very serious, including potentially jail.

See the potential cost had AKOSH or OSHA been called rather than simply reporting to the COE.

<https://www.enr.com/articles/41800-firms-face-882k-safety-fine-for-alaska-power-project-violations>

The hopes of regaining my employment will enable me to get back to work and PCL / PMI and Aleut to save face in what is considered a non-safety supportive approach to addressing safety concerns on an Army Corp of Engineers project by Patrick Constructor Inc.

I would rather just get back to work and avoid any further Army Corp of Engineer inquiries as well as finding myself filing a wrongful termination claim / whistle blower retaliation claim against PCL and Aleut.

Your considerations is appreciated.

Respectfully

S. Shelby Startz

From: [Melanie Morris](#)
To: shelbystartz@outlook.com
Subject: RE: [External] Re: [External] RE: [External] RE: Follow up
Date: Friday, October 8, 2021 2:17:20 PM
Attachments: [image001.png](#)

Hi Shelby. I sent a note letting you know that I would have to call around 3:30. Hopefully that works for you.

I will call you.

Thanks!

Melanie

Melanie Morris, PHR, SHRM – CP
Senior Human Resources Manager

Aleut Corporation
4000 Old Seward Hwy, Suite 300
Anchorage, Alaska 99503
Phone 907.561.4300 | Fax 907.563.4328
www.aleutcorp.com



From: Sherman Startz <shelbystartz@outlook.com>

Sent: Friday, October 8, 2021 2:13 PM

To: Melanie Morris <MMorris@aleutcorp.com>

Subject: [External] Re: [External] RE: [External] RE: Follow up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Are we still on? Were you wanting me to call you?

Sent from my iPhone

On Oct 7, 2021, at 3:44 PM, Melanie Morris <MMorris@aleutcorp.com> wrote:

Perfect, thanks Shelby. Talk soon.

Melanie Morris, PHR, SHRM – CP
Senior Human Resources Manager

Aleut Corporation
4000 Old Seward Hwy, Suite 300
Anchorage, Alaska 99503
Phone 907.561.4300 | Fax 907.563.4328
www.aleutcorp.com
<image001.png>

From: Sherman Startz <shelbystartz@outlook.com>

Sent: Thursday, October 7, 2021 1:37 PM

To: Melanie Morris <MMorris@aleutcorp.com>

Subject: [External] RE: [External] RE: Follow up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Yes, I will make sure I am available to chat.

907-231-9270

Respectfully

S. Shelby Startz

From: Melanie Morris <MMorris@aleutcorp.com>

Sent: Thursday, October 7, 2021 1:30 PM

To: Sherman Startz <shelbystartz@outlook.com>

Subject: RE: [External] RE: Follow up

Hi Shelby. Yes. I would like to ask some follow up questions for you. Can we meet tomorrow afternoon at 2pm?

If so, what number should I call you on?

Melanie Morris, PHR, SHRM – CP

Senior Human Resources Manager

Aleut Corporation

4000 Old Seward Hwy, Suite 300

Anchorage, Alaska 99503

Phone 907.561.4300 | Fax 907.563.4328

www.aleutcorp.com

<image001.png>

From: Sherman Startz <shelbystartz@outlook.com>

Sent: Thursday, October 7, 2021 1:19 PM

To: Melanie Morris <MMorris@aleutcorp.com>

Subject: [External] RE: Follow up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good day,

Are you still investigating and considering me for re-employment?

Respectfully

From: Melanie Morris <MMorris@aleutcorp.com>

Sent: Thursday, September 30, 2021 2:43 PM

To: Sherman Startz <shelbystartz@outlook.com>

Subject: Follow up

Hi Shelby. I will need a bit more time to conduct a thorough review of your claims.

Any documentation you have would be helpful. For example, you mention about the concerns you brought forward to the Army Corp. If you have those emails, please send them. Also, if you have any communications between yourself and Jeremy that you haven't already sent, please send.

I will most likely need to connect with you once I have all the documentation that I have requested from the other parties involved. I will ensure to keep you updated on my progress.

Thank you Shelby.

Melanie

Melanie Morris, PHR, SHRM – CP

Senior Human Resources Manager

Aleut Corporation

4000 Old Seward Hwy, Suite 300
Anchorage, Alaska 99503
Phone 907.561.4300 | Fax 907.563.4328
www.aleutcorp.com
<image001.png>

From: Sherman Startz <shelbystartz@outlook.com>
Sent: Thursday, September 30, 2021 9:31 AM
To: Melanie Morris <MMorris@aleutcorp.com>
Subject: [External] RE: [External] Re: [External] Thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

OK, you need anything from me in the way of information; emails demonstrating timelines and so on?

Respectfully

From: Melanie Morris <MMorris@aleutcorp.com>
Sent: Thursday, September 30, 2021 9:24 AM
To: Sherman Startz <shelbystartz@outlook.com>
Subject: RE: [External] Re: [External] Thank you

Good morning Shelby. I have a meeting at 10:30 to hopefully finalize the review of your concerns and request.

I will follow up by end of day.

Melanie

Melanie Morris, PHR, SHRM – CP
Senior Human Resources Manager

Aleut Corporation
4000 Old Seward Hwy, Suite 300
Anchorage, Alaska 99503
Phone 907.561.4300 | Fax 907.563.4328
www.aleutcorp.com
<image001.png>

From: Sherman Startz <shelbystartz@outlook.com>
Sent: Wednesday, September 29, 2021 5:42 PM
To: Melanie Morris <MMorris@aleutcorp.com>
Subject: [External] Re: [External] Thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you

Sent from my iPhone

On Sep 29, 2021, at 4:21 PM, Melanie Morris <MMorris@aleutcorp.com> wrote:

Hi Shelby. I know it's almost end of day and I am trying to finish up looking into the below so I can get back with you.
It may be early tomorrow, but working my best to wrap things up on

my end.

Appreciate your patience!

Melanie

Melanie Morris, PHR, SHRM – CP
Senior Human Resources Manager

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Phone 907.561.4300 | Fax 907.563.4328

www.aleutcorp.com

<image001.png>

From: Sherman Startz <shelbystartz@outlook.com>

Sent: Tuesday, September 28, 2021 8:14 AM

To: Melanie Morris <MMorris@aleutcorp.com>

Subject: [External] Thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Melanie Morris,

Thank you for taking the time to hear me out and look into the possibility of re-employment; I do appreciate it.

It is my hope that a role can be salvaged from this retaliatory termination. You may or may not be aware the Army Corp of Engineers received a notice of concern (email) from me regarding the Lock Out Tag Out non-compliance and the problem I was having getting Jeremy Jones to properly address this safety concern. It seems Jeremy Jones was more concerned about not “upsetting” Melvin Weeks; according to Jeremy Jones; “Mel has a special relationship with GHEMM and FULFORD ELECTRIC, and we don’t upset the apple cart and make them do anything they don’t want to do, or make them look bad”. A disturbing response to say the least and lends itself to poor ethical decision making on Jeremy Jones and Melvin Weeks part and appear to be negligent. This is a reflection on Patrick Constructors Inc, Patrick Mechanical Inc. and ultimately on Aleut. The fact is the email sent to the Corp with concern was not the first reporting. I had actually verbally reported to Thomas Thornton with the Corp of Engineers earlier that day and informed him I was working on a resolve or I would not be accepting this role and the COE intervention would be necessary. Literally 4 hours later I was fired. This appears to be direct retaliation recognized by your client; the Army Corp of Engineers; to a very high level I might add. I simply cannot in good faith turn my back on such obvious non compliance to serious safety items. I do not share the same allegiance to GHEMM and FULFORD ELECTRIC as Jeremy Jones and Melvin Weeks.

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misconduct and had someone been electrocuted it would could have been very serious, including potentially jail.

See the potential cost had AKOSH or OSHA been called rather than simply reporting to the COE.

<https://www.enr.com/articles/41800-firms-face-882k-safety-fine-for-alaska-power-project-violations>

The hopes of regaining my employment will enable me to get back to work and PCL / PMI and Aleut to save face in what is considered a non-safety supportive approach to addressing safety concerns on an Army Corp of Engineers project by Patrick Constructor Inc.

I would rather just get back to work and avoid any further Army Corp of Engineer inquiries as well as finding myself filing a wrongful termination claim / whistle blower retaliation claim against PCL and Aleut.

Your considerations is appreciated.

Respectfully

S. Shelby Startz

From: [Melanie Morris](#)
To: shelbystartz@outlook.com
Subject: RE: [External] FW: FTW 435 Revitalize Barracks Safety Concerns
Date: Thursday, September 30, 2021 2:59:06 PM
Attachments: [image001.png](#)

Thank you Shelby. By chance did you get a response for this or the other email?

Melanie Morris, PHR, SHRM – CP
Senior Human Resources Manager

Aleut Corporation
4000 Old Seward Hwy, Suite 300
Anchorage, Alaska 99503
Phone 907.561.4300 | Fax 907.563.4328
www.aleutcorp.com



From: Sherman Startz <shelbystartz@outlook.com>
Sent: Thursday, September 30, 2021 2:55 PM
To: Melanie Morris <MMorris@aleutcorp.com>
Subject: [External] FW: FTW 435 Revitalize Barracks Safety Concerns

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The next day

From: Sherman Startz
Sent: Tuesday, September 21, 2021 7:55 AM
To: Thornton, Thomas Mark CIV USARMY CEPOA (USA) <thomas.m.thornton@usace.army.mil>;
John.D.Hammett@usace.army.mil; David.Prado@usace.army.mil
Cc: POA.ExecutiveOffice@usace.army.mil

Subject: FTW 435 Revitalize Barracks Safety Concerns

On FTW 435 -- areas of open concern.

The Hazard Communication program is non-existent. There is a throw down binder of SDS but it is not job specific ad does not meet COE or OSHA standards.

No emergency action plan posting.

No 300 on site or first aid log.

No Traffic Control plan for the worst spot anyone could have chosen for an office.

Most alarming is the LOTO is not being followed at all. I addressed it directly on day 1 with the Competent Person from Fullford Electric; day 2 and day 3. On the beginning of the second full week on the job I demanded Jeremy get involved and he did; but nothing moved after that. I kept telling him day after day nothing is happening and he even told me to just go complete the paperwork myself. I was shocked at his lack of understanding. Then at last weeks meeting hearing the dissertation of Safety Items deficient and knowing he is not supporting me like I needed and in-fact was directing me wrong, I decided enough for me here. This is a very unsettling situation with the construction being open to soldiers and no real barrier to prevent entry into the work site; LOTO needs to be solid on every level including hanging the permit at the box while work is underway; start to finish.

The poorly written APP is lacking an org chart (a critical element that avoids this situation) and was signed off by a CHST OHST. This credentialing does not meet the COE criteria for an approver.

After 2 weeks of filling in for the SSHO, and realizing how much this project was disconnected and seeing how Jeremy was tying my hands, debating what the safety should look like and how it is to be delivered on the job I chose to not take the role; wanting to go back to the position I was hired; CQCSM; requesting the same in an email sent to Jeremy 9-20-2021 in the early morning hours, I instead was fired on the evening of 9-20-2021.

The COE has sent in inspector to check the safety on this job, and the programs I am speaking of "passed" only because a genuine examination of work products was not reviewed (it could not have been because it is not there); especially like an agent or plaintiff attorney would look at it. Just poor work on so many level and it is happening all over. Not genuine safety but smoke and mirrors. I am sure there are some that still take it seriously but this early stage "Prime Contractor" and so many like them do not.

Jeremy Jones will act as if this was about me and respect, when the truth is seeing the conditions of the SMS on the project, and knowing full well he watched this non-compliance and allowed it to get the shape it was in; seeing he "he out smarted the COE" by adding himself as ALT SSHO so the project could be staffed by anyone American Health and Safety could find, and worse the project going week after week with no SSHO; I did loose respect for him. Jeremy Jones interpretation of safety compliance is complicit, negligent and he should not be accepted as even interim SSHO. His motivation is too bottom line influenced; which for a PM is normal but not an SSHO.

Further, Dennis Parker is not an SSHO by no stretch of the imagination and should not be approved. For a program intended to improve quality of life for soldiers ; the lack of safety oversight on this project is shameful as it relates to COE standards. This project is happening in occupied buildings and there have already been problems with soldiers entering these areas at night and cutting up.

Unfortunately, with the evolutions Safety has taken as a result of COVID and restrictions; a time when a true and ethical person should step up their game, knowing they are their oversight, safety is being compromised all over. Process and procedures intended to prevent are not being followed, the system is diluted, it is happening within your organization and the contractors. People are taking advantage.

I could have fixed it if allowed to work freely without an incompetent dictator holding me back. Nevertheless, this will likely result in yet two more potential employers for me in the Fairbanks area, PCL and Fullford Electric. As much as I would like to stay in this area and arena I may not be able to find an employer of job.

Respectfully

S. Shelby Startz; SMS

From: [Melanie Morris](#)
To: shelbystartz@outlook.com
Subject: RE: [External] RE: Follow Up
Date: Thursday, October 14, 2021 9:03:40 AM
Attachments: [image001.png](#)

Morning!

Agreed Shelby. I think that is what makes you a great Safety person.

No resentment and you are more than welcome to apply for other positions. Sometimes, jobs are just not a good fit and that is okay. You want to wake up in the morning and feel good about what you do, that is the goal for everyone. Or that is my wish as a HR person for everyone.

I don't have preview into ARS jobs since they have their own HR Department. Is it a local job?

ARS is located in Louisiana.. but they have jobs all over the US.

Melanie

Melanie Morris, PHR, SHRM – CP
Senior Human Resources Manager

Aleut Corporation
4000 Old Seward Hwy, Suite 300
Anchorage, Alaska 99503
Phone 907.561.4300 | Fax 907.563.4328
www.aleutcorp.com



From: Sherman Startz <shelbystartz@outlook.com>

Sent: Thursday, October 14, 2021 8:44 AM

To: Melanie Morris <MMorris@aleutcorp.com>

Subject: [External] RE: Follow Up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for the response and time you spent looking into this matter. Hind sight is always 20/20 but even that is left to the individual.

At the end of the day, if all of this prevented one injury; it was all worth it.

I do hope this has not caused resentment towards me and result in any future opportunities under all ARS Aleut operations. I happened to notice an open role with the remediation group I do feel I would be a good fit for; I am hopeful.

If you know anyone in that group, a kind word would be appreciated.

Respectfully

S. Shelby Startz
907-231-9270

From: Melanie Morris <MMorris@aleutcorp.com>

Sent: Wednesday, October 13, 2021 5:21 PM

To: Sherman Startz <shelbystartz@outlook.com>

Subject: Follow Up

Hi Shelby.

Hope all is well. I am working on the final determination and formal letter to send out for your

records. However, that may take me a day or more to write up and I wanted to make sure you did not have to wait longer than needed for the determination.

First, I want to share with you Shelby that Patrick Constructors truly appreciated your skill set and expertise as a QCSM and SSHO. The recommendations you brought forward were appreciated and implemented per both Jeremy and Mel.

Patrick Constructors has been able to provide documentation that the LOTO concern brought forward have been resolved and is not a current safety concern and this is due to you bringing it forward, which again is what they wanted and expected you to do as the SSHO.

The At Will release was based solely on the behavior (disrespect) you showed towards Jeremy as your supervisor. Jeremy communicated that the employment relationship was okay until the two week period leading up to your separation, which you also shared was an accurate statement.

You mention about reporting to someone outside of the project, which most likely would have been Mel Weeks if explored formally.

Patrick Constructors has declined to rescind the separation and TAC does not have any vacant positions, we are only a office of 17 and mostly administrative in nature.

I truly wish you the best of luck on your future employment search and hope that you find a job that is satisfying and allows you to use your skills and education to the fullest!

Again, I will provide a formal response via a letter to you so you have for your records. It was a pleasure getting to know you and I know you will find something that will bring you joy Shelby. That's what is most important!

I am happy to touch base Shelby if you would like.

Again, wishing you the best! Wish we could have connected under better circumstances.

Melanie

Melanie Morris, PHR, SHRM – CP

Senior Human Resources Manager

Aleut Corporation

4000 Old Seward Hwy, Suite 300

Anchorage, Alaska 99503

Phone 907.561.4300 | Fax 907.563.4328

www.aleutcorp.com



NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) STARTZ, JR, SHERMAN S.		2. Social Security Number 572-17-5981	3. Date of Birth 05-31-1961	4. Effective Date 01-31-2022
FIRST ACTION				
5-A. Code 101	5-B. Nature of Action Career-Cond Appointment	6-A. Code	6-B. Nature of Action	
5-C. Code Z5C	5-D. Legal Authority Direct-Hire Authority 5 U.S.C. 9905, 10/15/2021	6-C. Code	6-D. Legal Authority	
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority	

7. FROM: Position Title and Number					15. TO: Position Title and Number CONSTRUCTION CONTROL INSPECTOR 496104 - 4280800						
8. Pay Plan	9.Occ. Code	10.Grade or Level	11.Step or Rate	12. Total Salary	13.Pay Basis	16. Pay Plan	17. Occ. Code	18.Grade or Level	19.Step or Rate	20. Total Salary/Award	21. Pay Basis
12A. Basic Pay		12B. Locality Adj. \$0		12C. Adj. Basic Pay		20A. Basic Pay \$47,097.00	0809	09	01	\$61,424.00	PA
						20B. Locality Adj. \$14,327.00		20C. Adj. Basic Pay \$61,424.00		20D. Other Pay \$0	

14. Name and Location of Position's Organization					22. Name and Location of Position's Organization US ARMY INSTALLATION MANAGEMENT CMD US ARMY GARRISON ALASKA DIRECTORATE OF PUBLIC WORKS ENGINEERING DIVISION CONTRACT MANAGEMENT BRANCH FORT WAINWRIGHT, AK 99703 4PAAC				
--	--	--	--	--	--	--	--	--	--

EMPLOYEE DATA																
23. Veterans Preference <table border="1" style="margin-left: auto; margin-right: auto;"><tr><td>1</td><td>1 - None 2 - 5-Point</td><td>3 - 10-Point/Disability 4 - 10-Point/Compensable</td><td>5 - 10-Point/Other 6 - 10-Point/Compensable/30%</td><td></td></tr></table>					1	1 - None 2 - 5-Point	3 - 10-Point/Disability 4 - 10-Point/Compensable	5 - 10-Point/Other 6 - 10-Point/Compensable/30%		24. Tenure <table border="1" style="margin-left: auto; margin-right: auto;"><tr><td>2</td><td>0 - None 1 - Permanent</td><td>2 - Conditional 3 - Indefinite</td><td></td></tr></table>	2	0 - None 1 - Permanent	2 - Conditional 3 - Indefinite		25. Agency Use	26. Veterans Pref for RIF <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
1	1 - None 2 - 5-Point	3 - 10-Point/Disability 4 - 10-Point/Compensable	5 - 10-Point/Other 6 - 10-Point/Compensable/30%													
2	0 - None 1 - Permanent	2 - Conditional 3 - Indefinite														
27. FEGLI C0 Basic only					28. Annuitant Indicator 9 Not Applicable	29. Pay Rate Determinant 0										
30. Retirement Plan KF FERS (FRAE) FICA		31. Service Comp. Date (Leave) 01-31-2022			32. Work Schedule F Full-Time	33. Part-Time Hours Per Biweekly Pay Period										
POSITION DATA					35. FLSA Category N E - Exempt N - Nonexempt	36. Appropriation Code 131079A0000	37. Bargaining Unit Status AR2029									
34. Position Occupied 1 - Competitive Service 2 - Excepted Service					38. Duty Station Code 020801090	39. Duty Station (City - County - State or Overseas Location) FORT WAINWRIGHT / FAIRBANKS NORTH STAR / ALASKA										
40. AGENCY DATA SMD	41. PON# OA	42.	43.	44.	TDA DATA XA/W6L7AA/051C/12											

45. Remarks

OPF maintained by Civilian Personnel Records Center (CivPRC), 305 Marshall Ave, Fort Riley, KS 66442.

Appointment affidavit executed 31-JAN-2022.

Frozen Service: None

Creditable Military Service: None

Previous retirement coverage: Never Covered.

Employee is automatically covered under FERS, FERS-RAE or FERS-FRAE

You must elect to enroll or not to enroll in Health Benefits within 60 days after the effective date of this action.

You are automatically covered for basic life insurance. You have 60 days from the effective date of this action to elect additional coverage or to decline all coverage.

46. Employing Department or Agency U.S. Army Installation Management Command(ARXA)			50. Signature/Authentication and Title of Approving Official Debbie L. Forrester		
47. Agency Code ARXA	48. Personnel Office ID 2289	49. Approval Date 01-24-2022	SUPV HUMAN RESOURCES SPECIALIST		

TURN OVER FOR IMPORTANT INFORMATION
5-Part

1 - Employee Copy - Keep for Future Reference

Editions Prior to 7/91 Are Not Usable After
6/30/93
NSN 7540-01-333-6236

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) STARTZ, JR, SHERMAN S.		2. Social Security Number 572-17-5981		3. Date of Birth 05-31-1961		4. Effective Date 01-31-2022							
FIRST ACTION													
5-A. Code 101	5-B. Nature of Action Career-Cond Appointment		6-A. Code		6-B. Nature of Action								
5-C. Code Z5C	5-D. Legal Authority Direct-Hire Authority 5 U.S.C. 9905, 10/15/2021		6-C. Code		6-D. Legal Authority								
5-E. Code	5-F. Legal Authority		6-E. Code		6-F. Legal Authority								
7. FROM: Position Title and Number				15. TO: Position Title and Number CONSTRUCTION CONTROL INSPECTOR									
				496104 - 4280800									
8. Pay Plan	9.Occ. Code	10.Grade or Level	11.Step or Rate	12. Total Salary	13.Pay Basis	16. Pay Plan	17. Occ. Code	18.Grade or Level	19.Step or Rate	20. Total Salary/Award	21. Pay Basis		
12A. Basic Pay				\$0		GS	0809	09	01	\$61,424.00	PA		
	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay		\$0	20A. Basic Pay	\$47,097.00	20B. Locality Adj.	\$14,327.00	20C. Adj. Basic Pay	\$61,424.00	20D. Other Pay	\$0
14. Name and Location of Position's Organization				22. Name and Location of Position's Organization US ARMY INSTALLATION MANAGEMENT CMD US ARMY GARRISON ALASKA DIRECTORATE OF PUBLIC WORKS ENGINEERING DIVISION CONTRACT MANAGEMENT BRANCH FORT WAINWRIGHT, AK 99703 4PAAC									
EMPLOYEE DATA													
23. Veterans Preference				24. Tenure				25. Agency Use		26. Veterans Pref for RIF			
1	1 - None 2 - 5-Point	3 - 10-Point/Disability 4 - 10-Point/Compensable	5 - 10-Point/Other 6 - 10-Point/Compensable/30%	2	0 - None 1 - Permanent	2 - Conditional 3 - Indefinite				<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO		
27. FEGLI				28. Annuitant Indicator				29. Pay Rate Determinant					
C0	Basic only			9	Not Applicable			0					
30. Retirement Plan				31. Service Comp. Date (Leave)				33. Part-Time Hours Per Biweekly Pay Period					
KF	FERS (FRAE) FICA			01-31-2022									
POSITION DATA													
34. Position Occupied				35. FLSA Category		36. Appropriation Code		37. Bargaining Unit Status					
1	1 - Competitive Service 2 - Excepted Service	3 - SES General 4 - SES Career		N	E - Exempt N - Nonexempt	131079A0000	AR2029						
38. Duty Station Code				39. Duty Station (City - County - State or Overseas Location) FORT WAINWRIGHT / FAIRBANKS NORTH STAR / ALASKA									
40. AGENCY DATA		41. PON# OA	42.	43.	44. TDA DATA XA/W6L7AA/051C/12								
45. Remarks													

Flexible Spending Account (FSA), you have 60 days from the date of hire but no later than October 01 of the plan year to elect coverage. If hired on or after Oct 01, you are eligible to elect FSA during the FSA open season. Please visit: <https://www.fsafeds.com/GEM> for more information.

You have 60 days from the date of this action to enroll in the Federal Employees Dental or Vision (FEDVIP) plan. Please visit <https://www.benefeds.com/> for more information .

You have 60 days from this appointment date to enroll in the Federal Long Term Care Insurance Program (FLTCIP). More information can be found at <http://www.ltcfeds.com>

Questions regarding this Notification of Personnel Action (SF-50) should be addressed to either your servicing CPAC or first line supervisor

You are automatically enrolled in the Thrift Savings Plan (TSP) at a contribution rate of 5% of your basic biweekly pay. You may change or stop your TSP contributions at any time.

46. Employing Department or Agency U.S. Army Installation Management Command(ARXA)			50. Signature/Authentication and Title of Approving Official Debbie L. Forrester		
47. Agency Code ARXA	48. Personnel Office ID 2289	49. Approval Date 01-24-2022	SUPV HUMAN RESOURCES SPECIALIST		
TURN OVER FOR IMPORTANT INFORMATION 5-Part			1 - Employee Copy - Keep for Future Reference		

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NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) STARTZ, JR, SHERMAN S.		2. Social Security Number 572-17-5981	3. Date of Birth 05-31-1961	4. Effective Date 01-31-2022
FIRST ACTION				
5-A. Code 101	5-B. Nature of Action Career-Cond Appointment	6-A. Code	6-B. Nature of Action	
5-C. Code Z5C	5-D. Legal Authority Direct-Hire Authority 5 U.S.C. 9905, 10/15/2021	6-C. Code	6-D. Legal Authority	
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority	

7. FROM: Position Title and Number					15. TO: Position Title and Number CONSTRUCTION CONTROL INSPECTOR						
					496104 - 4280800						
8. Pay Plan	9.Occ. Code	10.Grade or Level	11.Step or Rate	12. Total Salary	13.Pay Basis	16. Pay Plan	17. Occ. Code	18.Grade or Level	19.Step or Rate	20. Total Salary/Award	21. Pay Basis
S				\$61,424.00	PA	GS	0809	09	01		
12A. Basic Pay	12B. Locality Adj. \$0	12C. Adj. Basic Pay	12D. Other Pay \$0	20A. Basic Pay \$47,097.00	20B. Locality Adj. \$14,327.00	20C. Adj. Basic Pay \$61,424.00	20D. Other Pay \$0				

14. Name and Location of Position's Organization					22. Name and Location of Position's Organization US ARMY INSTALLATION MANAGEMENT CMD US ARMY GARRISON ALASKA DIRECTORATE OF PUBLIC WORKS ENGINEERING DIVISION CONTRACT MANAGEMENT BRANCH FORT WAINWRIGHT, AK 99703 4PAAC				
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EMPLOYEE DATA									
23. Veterans Preference					24. Tenure	25. Agency Use	26. Veterans Pref for RIF		
1	1 - None 2 - 5-Point	3 - 10-Point/Disability 4 - 10-Point/Compensable	5 - 10-Point/Other 6 - 10-Point/Compensable/30%	2	0 - None 1 - Permanent 2 - Conditional 3 - Indefinite		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
27. FEGLI					28. Annuitant Indicator	29. Pay Rate Determinant			
C0	Basic only				9	Not Applicable	0		
30. Retirement Plan		31. Service Comp. Date (Leave)			32. Work Schedule		33. Part-Time Hours Per Biweekly Pay Period		
KF	FERS (FRAE) FICA			01-31-2022	F	Full-Time			
POSITION DATA					35. FLSA Category			36. Appropriation Code	37. Bargaining Unit Status
34. Position Occupied	1 - Competitive Service 2 - Excepted Service	3 - SES General 4 - SES Career	N	E - Exempt N - Nonexempt	131079A0000			AR2029	
38. Duty Station Code 020801090					39. Duty Station (City - County - State or Overseas Location) FORT WAINWRIGHT / FAIRBANKS NORTH STAR / ALASKA				

40. AGENCY DATA	41. PON# OA	42.	43.	44. TDA DATA XA/W6L7AA/051C/12
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45. Remarks

Appointment is subject to completion of two year initial probationary period beginning 31-JAN-2022.

Service counting toward career tenure from 31-JAN-2022.

Selected from 20211103-CAQK-001, dated 03-NOV-2021.

46. Employing Department or Agency U.S. Army Installation Management Command(ARXA)			50. Signature/Authentication and Title of Approving Official Debbie L. Forrester		
47. Agency Code ARXA	48. Personnel Office ID 2289	49. Approval Date 01-24-2022	SUPV HUMAN RESOURCES SPECIALIST		

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NSN 7540-01-333-6236

NOTICE TO EMPLOYEE

This is your copy of the official notice of a personnel action. Keep it with your records because it could be used to make employment, pay, and qualifications decisions about you in the future.

The Action

- Blocks 5-B and 6-B describe the personnel action(s) that occurred.
- Blocks 15-22 show the position and organization to which you are assigned.

Pay

- When the personnel action is an award or bonus, block 20 shows the amount of that one-time cash payment. When the action is not an award or bonus, block 12 shows your former total annual salary, and block 20 shows your new total annual salary (block 20C plus 20D). The amount in blocks 12 and 20 do NOT include any one-time cash payments (such as performance awards and recruitment or relocation bonuses) or payments that may vary from one pay period to the next (such as overtime pay), or other forms of premium pay.
- Block 20A is the scheduled amount for your grade and step, including any special salary rate you receive. It does NOT include any locality-based pay. This rate of pay serves as the basis for determining your rate of pay upon promotion, change to a lower grade, or reassignment, and is used for pay retention purposes.
- Block 20B is the annual dollar amount of your Interim Geographic Adjustment or, beginning in 1994, your locality-based comparability payment.
- Block 20C is your Adjusted Basic Pay, the total of blocks 20A and 20B. It serves as the basis for computing your retirement benefits, life insurance, premium pay, and severance pay.
- Block 20D is the total dollar amount of any Retention Allowances, Supervisory Differentials, and Staffing Differentials that are listed in the remarks block. These payments are made in the same manner as basic pay, but are not a part of basic pay for any purpose.

Block 24 - Tenure

- Identifies the nature of your appointment and is used to determine your rights during a reduction in force (RIF). Tenure groups are explained in more detail in subchapter 26 of FPM Supplement 296-33 and RIF is explained in FPM Supplement 351-1; both should be available for review in your personnel office.

Block 26 - Veterans Preference for RIF

- Indicates whether you have preference for reduction-in-force purposes.

Block 30 - Retirement Plan

- FICA - Social Security System
- CS - Civil Service Retirement System
- CS-Spec - Civil Service Retirement System for law enforcement and firefighter personnel
- FS - Foreign Service Retirement and Disability System
- FERS - Federal Employees' Retirement System
- FERS-Reserve - Federal Employees' Retirement System for National Guard Reserve Technicians
- ATC - Federal Employees' Retirement System for Air Traffic Controllers
- FERS-Spec - Federal Employees' Retirement System for law enforcement and firefighter personnel
- FSPS - Foreign Service Pension System

OTHER INFORMATION

- If your appointment entitles you to elect health benefits or life insurance, and you have not been provided materials explaining the programs available and the enrollment forms, contact your personnel specialist.
- Your personnel specialist will also tell you if your position is covered by an agreement between an employee organization (union) and your agency. If you are eligible to and elect to join an employee organization, you can

Block 31 - Service Computation Date (Leave)

- Shows when your Federal service began unless you have prior creditable service. If so, this date is constructed to include your total years, months and days of prior creditable civilian and military service.
- Full-time employees with fewer than 3 years of service earn 4 hours of annual leave each pay period; those with 3 or more years but less than 15 years earn 6 hours each pay period; and those with 15 or more years earn 8 hours each pay period.
- Your earnings and leave statement or your time and attendance card will show the rate at which you earn leave and your current unused leave balance.

Block 32 - Work Schedule

- Your work schedule is established by your supervisor.
- A full-time employee works on a prearranged scheduled tour of duty that is usually 40 hours per week. A part-time employee has a prearranged scheduled tour of duty that is usually between 16 and 32 hours per week. An intermittent employee has no prearranged scheduled tour of duty and works when needed.
- Full-time and part-time employees whose appointments are for 90 days or more are usually eligible to earn annual leave; intermittent employees are not.
- Seasonal employees work on an annually recurring basis for periods of less than 12 months each year; they may have a full-time, a part-time, or an intermittent schedule during their work season.
- On-call employees work during periods of heavy workload and are in pay status for at least 6 months of each year; they may have either a full-time or a part-time schedule when they are in pay status.

Block 33 - Part-time Hours Per Biweekly Pay Period

- Indicates the number of hours a part-time employee is scheduled to work during a two-week pay period.

Block 34 - Position Occupied

- Identifies the employment system under which you are serving -- the Competitive Service, the Excepted Service, or the Senior Executive Service (SES).
- The employment system determines your eligibility to move to other jobs in the Federal service, your rights in disciplinary and adverse actions, and your eligibility for reemployment if you leave Federal service.

Block 35 - FLSA Category

- Exempt employees are not covered by the minimum wage and overtime Law (the Fair Labor Standards Act); nonexempt employees are covered.

Block 37 - Bargaining Unit Status

- Identifies a bargaining unit to which you belong, whether or not you are actually a member of a labor organization. Code "7777" indicates you are eligible but not in a bargaining unit; code "8888" indicates you are ineligible for inclusion in a bargaining unit.

Block 38 and 39 - Duty Station

- Identifies the city, county, and state or the overseas location, where you actually work.

elect to have your dues withheld from your salary.

- If you have questions or need more information about your rights and benefits, ask your supervisor or your personnel office.

- Definitions for any coded data in Blocks 1-24, 27-39 and 45-50 may be found in Federal Personnel Manual Supplement 292-1.

It is your responsibility to read all the information on the front of this notice and tell your personnel office immediately if there is an error in it.

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: Western Regional Office	Motion to Dismiss	e-Appeal / e-Mail
Sherman S. Startz Appellant	Motion to Dismiss	e-Appeal / e-Mail
Pacific Region Agency Representative	Motion to Dismiss	e-Appeal / e-Mail