

SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY  
Docket # SF-315H-22-0532-I-1  
Response to Agency Response to Appellant Petition for Review dated 10/21/2022  
Summary Page

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

**Docket Number :** SF-315H-22-0532-I-1

**Pleading Title :** Response to Agency Response to Appellant Petition for Review dated 10/21/2022

**Filer's Name :** Charles Eiser

**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-315H-22-0532-I-1

Response to Agency Response to Appellant Petition for Review dated 10/21/2022

Online Interview

1. Would you like to enter the text online or upload the 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  
WESTERN REGIONAL OFFICE**

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Sherman S. Startz,	)	
	)	Docket No. SF-315H-22-0532-I-1
Appellant,	)	
	)	
v.	)	
	)	
Department of the Army,	)	Administrative Judge: Michael S. Shachat
	)	
Agency.	)	Date: November 5, 2022

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**AGENCY’S RESPONSE TO APPELLANT’S PETITION FOR REVIEW**

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The Agency, through its designated representative, hereby submits its response to the Appellant’s Petition for Review in accordance with the October 21, 2022 Petition for Review Acknowledgement Order.

1. Appellant’s Petition for Review is Untimely and Should be Dismissed.

The Western Regional Office issued an initial decision in this case on September 9, 2022. At that time, the appellant was advised of his rights and associated deadlines. The appellant filed a Petition for Review on October 21, 2022. The appellant’s petition was untimely filed because it was not postmarked or received on or before October 14, 2022, the 35<sup>th</sup> day following the issuance of the initial decision. Under the law (5 U.S.C. § 7701(e)(1)(A)) and regulation (5 C.F.R. § 1201.114(e)) that govern petitions for review, a petition must be filed within 35 days after the date on which the initial decision was issued, or within 30 days after the receipt of the decision, whichever is later. The Merit System Protection Board’s regulation (5 C.F.R. § 1201.114(g)) also requires that a petition for review that appears to be untimely be accompanied

by a motion to (1) accept the filing as timely, and/or (2) to waive the time limit for good cause.

The appellant has failed to establish his Petition for Review as timely or make a showing of good cause for its untimely filing. Since the appeal is untimely without a showing it was timely and/or a showing of good cause, it should be dismissed in its entirety.

2. The Initial Decision Should be Upheld because Appellant was Discharged During His Probationary Period and is not Entitled to an Appeal with the MSPB.

The Initial Decision of the Board should be upheld because appellant was a probationary employee at the time he was terminated, and the MSPB has no jurisdiction in the instant case. To date, the appellant has failed to establish the MSPB has jurisdiction over this appeal. As a result, the Board should uphold its initial decision in this Petition for Review.

FOR THE AGENCY:

*Charles R Eiser*

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Charles R Eiser  
Attorney-Advisor, Labor  
Fort Wainwright Law Center

## **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: Office of the Clerk of the Board	Response to Agency Response to Appellant Petition for Review dated 10/21/2022	e-Appeal / e-Mail
Sherman S. Startz Appellant	Response to Agency Response to Appellant Petition for Review dated 10/21/2022	e-Appeal / e-Mail
Pacific Region Agency Representative	Response to Agency Response to Appellant Petition for Review dated 10/21/2022	e-Appeal / e-Mail