

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
INFORMATION RESOURCES MANAGEMENT**

SHERMAN S. STARTZ,
Appellant,

DOCKET NUMBER
SF-1221-23-0258-W-1

v.

DEPARTMENT OF THE ARMY,
Agency.

DATE: July 17, 2023

ORDER GRANTING MOTION TO COMPEL AND SUSPENDING APPEAL

On June 15, 2023, the appellant filed a Motion to Compel responses to his discovery requests to the agency. Initial Appeal File, Tab 24. In his motion, the appellant asserts that he served the agency with his discovery requests on May 16, 2023, but did not receive any responses, either to those discovery requests or to his efforts to communicate with the agency by telephone and email. *Id.* at 4. The agency to date has not filed a response to the appellant's Motion to Compel.

As it appears from the record that the agency has failed to meet its obligation to timely respond to the appellant's discovery requests, I **GRANT** the appellant's motion to compel. The agency is **ORDERED** to respond to the appellant's discovery requests no later than **July 31, 2023**. If the agency fails to respond as ordered, I may impose sanctions in accordance with 5 C.F.R. § 1201.43, which includes drawing an adverse inference in favor of the requesting party with respect to the information sought.

Because the appellant has not been given the opportunity to complete discovery in preparation for his close of record submissions, I am reopening the record to provide sufficient time for the parties to complete discovery and for the parties to provide any additional evidence or argument not already submitted into

the record. The record in this appeal will now close on **August 18, 2023**. All evidence and argument must be filed by that date. Evidence and related argument filed after that date will not be accepted unless the party submitting the evidence shows that it is new and material evidence that was not available before the record closed. Notwithstanding the close of the record, however, pursuant to 5 C.F.R. § 1201.59(c), a party must be allowed to respond to new evidence or argument submitted by the other party just before the close of the record.

ORDER SUSPENDING CASE PROCESSING

The Board's regulations grant an administrative judge the discretion to issue an order suspending case processing for up to 30 days and to grant a second suspension for another 30-day period. 5 C.F.R. § 1201.28. I find it appropriate to suspend case processing of the appeal beginning on **July 17, 2023**. Case processing will resume on **August 16, 2023**. This case suspension does NOT extend any deadline set forth in this appeal, including the agency's deadline to respond to the appellant's discovery requests and for the parties to file their close of record submissions.

FOR THE BOARD:

/S/
Michael S. Shachat
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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July 17, 2023

(Date)

/S/

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