

SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY
Docket # SF-1221-23-0258-W-1
RESPONSE TO AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION
Summary Page

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

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

Pleading Title : RESPONSE TO AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION

Filer's Name : Sherman S. Startz

Filer's Pleading Role : Appellant

Details about the supporting documentation

N/A

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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

RESPONSE TO AGENCY'S MOTION TO DISMISS FOR LACK OF JURISDICTION

Come now, PRO SE Appellant SHERMAN SHELBY STARTZ with a Pleading "RESPONSE TO AGENCY'S MOTION TO DISMISS FOR LACK OF JURISDICTION" in the Appeal, SF -1221-23-0258-W-1

MERITS and JURISDICTION ARGUEMENT

PRO SE Appellant SHERMAN SHELBY STARTZ Objects to the **1) AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION**; 1.a.) AGENCY FILE B1; 1.b.) AGENCY FILE B2; 1c.) AGENCY FILE B2B / **2) AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION**; 2.a.) AGENCY MOTION TO DISMISS TAB D PART E; 2.b.) AGENCY MOTION TO DISMISS TAB E; and 2.c.) AGENCY MOTION TO DISMISS TAB E duplicate, based of misinterpretation of facts and time line. The below response will speak to **1) AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION** and **2) AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION** and include subsequent filings by reference above.

1) **AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION** – Respondent object and would argue the Agency Motion based on a complete misinterpretation of the facts. It is true I was retaliated by ALEUT CORPORATION for Whistleblower; protected activity, before I in fact was a Federal Employee, a fact never disputed. However, this retaliation and the reporting of PATRICK CONSTRUCTORS; an ALEUT CORPORATION Company was exasperated by ALEUT FEDERAL EMPLOYEES and Government Employees whom had been impacted from my previous Whistleblower outcry (FTW 435) because that was a project being exploited by compromised federal employees and civilian personnel. Further the Agency points to the "reason for termination by the DPW / US ARMY as a federal employee was based on the inability to get along with fellow employees and Contractors; this simply means my Senior can lie, declare I am being terminated for conduct and unwillingness to get along with contractors, the same contractor whom wanted me to sign for materials not received on multiple occasions. It means my senior can lie and steal while in the process of illicit conduct with individuals who are complaining I won't break the law for them; with absolutely no proof, yet I have supplied proof of illicit activity taking place. The employees I allegedly did not get along with were either compromised and directly involved with the fraud described in the Response for Jurisdiction Appeal or conditioned to think I was a MOLE, SPY; "going to turn them in." I was actually told this was the case, people were conditioned to think this> Originally I thought this was regarding safety issues reported by me to the Army while I was a civilian employee; nevertheless be it Whistleblower Retaliation prior to being Federal Employee I was still being retaliated against for this disclosure but the real fear was ultimately the theft I discovered, that's what they were worried about me doing. "Turning them in for Fraud, Conspiracy to Commit Fraud. Further my Termination also said I did not get along with contractors. The only contractor company I was assigned to was ALEUT FEDERAL; whom openly and with criminal intent set out to cause me great harm to my job and career. This harm was done with the help of Federal Employees. While Agency Council makes an argument my termination was based on Conduct and Performance, this is totally based on the opinion of a Senior Government Employee who has a history of criminal activity and is considered a liar, cheat and thief. Respondent testimony is not in question, nor is my credibility. Further I would add my position was a COMPETITIVE SERVICE role and while my tenure term was conditional my basic civil rights as well as Prohibited Personnel Practice violated and described in the original Appeal SF-1221-23-0258-W-1 briefly, and my protection and jurisdiction under 5 CFR 315.80 is extended to me; "Terminating Probationer for Conditions Arising Prior to

Appointment”; and as describes the Office of Special Counsel Final Response and Closure letter with a supporting IRA; Individual Right to Action was based on retaliation and whistleblower outcry while working for Aleut; before working for the USARMY. This basic interpretation couldn’t be further from the truth, as Special Counsel Alex Kish completely understood the retaliation, I was speaking and the connection between Federal, Civilian Employees and 2 Prime Contracting Companies and how it was Retaliation for a former Whistleblower Outcry. The employees described were involved in Fraud and stealing from the government; they all worked collaboratively to get me fired and they cheated and lied to do it. The IRA speaks solely to the retaliation I experienced while a federal employee and the initial outcry prior to becoming a federal employee was only to establish a pattern of behavior and set precedence. Agency Counsel seeks to dismiss this Appeal with no regard to my Civil Rights USC 18 241, 242 and 254 (Note the footnote from OSC and Closing Document found in original appeal).

Further, the Agency is proposing to Dismiss this Appeal based on the interpretation solely jurisdiction; Probationary Period and the Whistleblower Retaliation took place prior to me becoming a Federal Employee. The Agency fails to recognize the other merits of this Appeal, the Scope of the IRA Letter from OSC (which is supported with Jurisdiction and Appeal Authorization) found in USC 5 SUBPART A 1209.2 (a), (b) and (c). The Agency has filed a Motion to Dismiss with no regard to the Fraud Disclosure to DoD OIG / DoD AIOG; nor does the agency speak to my violations my Prohibited Personnel Practices; most especially PPP 8, 11 and 12. Agency Counsel seeks to Dismiss this Appeal without the benefit of Discovery (both written and request for production), Deposition and all the usual activity associated with legal proceeding as allowed and expected.

Lastly, to further support my claims for jurisdiction and why a “probationer” can be fired for almost any reason except. USC 5 – 315.805 Termination of Probationer for conditions arising before appointment, an argument I am able to make, and is prohibited and thus migrates this case under the Jurisdiction of MSPB.

2) **AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION** – Respondent objects based on improperly introducing documentation from a completely different case; SF-315H-22-0532-I-1. Objection also to incompleteness evidence. Agency Counsel Gwendolyn Smith has failed to provide my formal objection to Charles Eisler Motion to Dismiss without providing the subsequent documentation supporting Pro Se Appellant Sherman S. Startz request for late response as well as other supporting documentation that show relevant critical time lines and clearly parallel the Fraud of Government Contractors, Prime Contractors and Aleut Corporation. It is this information and the ultimate to desire to conceal fraud that lead to the unusual conduct I was faced with and clearly speaks to a motive to retaliate against me with Malice and Intent. Further, this Case is an EEO case supported by 5 CFR 212.101; my position was competitive service and I had disclosed directly to David Zrna I had previously turned in an ALEUT COMPANY for serious safety violations and was terminated. The merit of this case SF-315H-22-0532-I-1 is solely supported on the not only lack of responsiveness to my outcry for simple accommodations to avoid any conflict and direct request to not be assigned to any ALEUT FEDERAL Projects as I already knew this company had great contempt and issue with me and knowingly (yes, they were verbal about it) wanted to create problems for me and get me fired. These same individuals are the same individuals involved in the Flooring Fraud Case attached to this law suit. Nevertheless, Respondent Pro Se is still waiting to actually get a reply to case a Pleading Filed for a “REQUEST FOR LEAVE TO FILE ADDITIONAL PLEADING,” which has yet to be accepted. Once accepted I intended to provide supporting

documentation and further argument on this case that was never finally dismissed. Further Pro Se Appellant asks the court to disregard this Agency Motion to Dismiss; which, considering Respondent graciously accepted the late response and request for extension of time on a completely different case, that being this case this response is in. Lastly, to further support my claims for jurisdiction and why a “probationer” can be fired for almost any reason except. USC 5 – 315.805 Termination of Probationer for conditions arising before appointment is prohibited and thus migrates this case under the Jurisdiction of MSPB. All points of argument I am ready to make in the proper forum as soon as the Honorable Administrative Judge allows my Request for Leave.

CLOSING and PRAYER

Pro Se Appellant SHERMAN SHELBY STARTZ asks the court to dismiss the Agency Motion to Dismiss and allow this / these cases to migrate to discovery. **Pro Se Appellant SHERMAN SHELBY STARTZ** Prays the Honorable Administrative Judge Michael Shachat grant immediate relief. **Pro Se Appellant SHERMAN SHELBY STARTZ** Prays the Honorable Administrative Judge Michael Shachat will forgive my form and manner as well as the late responses associated with my original case SF-315H-22-0532-I-1; early on I struggled with the MSPB E APPEAL On Line System and the role I needed to take as well as what my understanding of notification system automatic prompts expectations were and figuring out what and how the repository works.

As stated in 28 U.S Code 1746 Unsworn Declaration Under Penalty of Perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I, SHERMAN SHELBY STARTZ, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on (5-7-2023). *Sherman Shelby Startz*

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
Executed on (5-7-2023).

Sherman Shelby Startz

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	RESPONSE TO AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION	e-Appeal / e-Mail
Gwendolyn L. Smith, Esq. Agency Representative	RESPONSE TO AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION	e-Appeal / e-Mail
Pacific Region Agency Representative	RESPONSE TO AGENCY MOTION TO DISMISS FOR LACK OF JURISDICTION	e-Appeal / e-Mail