

MOTION TO SUPPLEMENT THE RECORD OR, IN THE ALTERNATIVE, FOR REMAND

Case No. 25-1375

IN THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SHERMAN S. STARTZ, JR.,
Petitioner,

v.

DEPARTMENT OF THE ARMY,
Respondent.

MOTION TO SUPPLEMENT THE RECORD OR, IN THE ALTERNATIVE, FOR REMAND

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 10(e) of the Federal Rules of Appellate Procedure, Petitioner respectfully moves the Court to supplement the administrative record or, in the alternative, to remand this case to the Merit Systems Protection Board (MSPB) for further proceedings based on newly obtained material evidence that was not available at the time of the original proceedings.

I. BACKGROUND

Petitioner was terminated from his position with the Department of the Army after disclosing systemic procurement fraud, billing abuse, and retaliatory conduct at Fort Wainwright, Alaska. The initial decision of the MSPB was issued without full access to critical documents later obtained through ongoing FOIA litigation and DOD investigative channels. These documents include referral records from the Department of Defense Office of Inspector General (DoD OIG), U.S. Army Criminal Investigation Division (CID), and the Defense Contract Audit Agency (DCAA).

II. BASIS FOR SUPPLEMENTATION OR REMAND

A. Newly Obtained Records Were Material and Unavailable Previously

Under Fed. R. App. P. 10(e)(2)(B), supplementation is appropriate where documents are material to the merits and were unavailable despite due diligence. FOIA disclosures received after the close of the MSPB record contain audit trails, referral confirmations, and

investigative timelines (including DoD OIG Case No. 20230213-083550) that directly contradict DOJ's prior representations that no investigation was conducted.

B. DOJ's Representations to the Court Conflict with Agency Evidence

Respondent's opposition to record supplementation (email dated March 28, 2025) states no such records existed or were relied upon by the MSPB. However, the existence of FOIA-confirmed documents from multiple oversight agencies demonstrates that relevant evidence was actively withheld or not disclosed to Petitioner, necessitating reconsideration under 5 U.S.C. § 7703(c).

C. Remand is Warranted Where Misrepresentation or Suppression Occurred

A remand is warranted where the agency's decision was tainted by material omission, misrepresentation, or bad faith suppression of evidence. See *INS v. Ventura*, 537 U.S. 12, 16 (2002); *McDonnell Douglas Corp. v. United States*, 323 F.3d 1006, 1015 (Fed. Cir. 2003). Here, the combination of delayed FOIA responses, inter-agency referrals, and newly surfaced DCAA audit links justify limited remand to allow supplementation or reconsideration of findings.

III. CONCLUSION

Petitioner respectfully requests that this Court grant this motion to supplement the record with newly discovered evidence, or alternatively, remand the case to the Merit Systems Protection Board for reconsideration in light of this material evidence.

Respectfully submitted,

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Appendix Index – Motion to Supplement or Remand

Appendix A: USACE FOIA Email Confirmation – Showing delayed response to referred DCAA audits.

Appendix B: DCAA Referral Package (FOIA Case I-25-079-H) – Confirming multiple audit reports referred to USACE and DCMA.

Appendix C: DoD OIG FOIA Final Response (2025-000890) – Showing referral of investigative records to SAIG.

Appendix D: DoD OIG Response for Case #20230213-083550 (2025-000761) – Confirming active referral to Army CID and Army IG.

Appendix E: FOIA Email Log (Fort Wainwright Contracting) – Confirming patterns of agency delay and referral.

Appendix F: MSPB FOIA Confirmation Letter (MSPB-2025-00140) – Acknowledging withheld case file communications.

Appendix G: OSC FOIA Response – Confirming case activity and relevant OSC tracking references.

All appendices are submitted in support of Petitioner's Motion to Supplement the Record or, in the Alternative, for Remand. Each exhibit is referenced by its corresponding label in the motion body.