

No. 24A _____ (23-7127, 24-83, 24-339, 24-443, 24A658)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

APPLICATION TO EXTEND THE TIME TO FILE
AN INTERLOCUTORY PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MARTIN AKERMAN, PRO SE
2001 North Adams Street, Unit 440
Arlington, VA 22201
makerman.dod@gmail.com
(202) 656-5601

QUESTIONS TO BE PRESENTED

- Does the Supreme Court's practice of denying certiorari petitions without requiring or allowing a response conflict with the Suspension Clause and the due process rights of petitioners seeking habeas corpus relief or challenging unconstitutional agency actions?
- Do procedural limitations imposed by the Merit Systems Protection Board and overlapping jurisdictional barriers violate a petitioner's First Amendment rights under the Petition Clause by effectively denying meaningful access to the judiciary?
- In light of *Loper Bright Enterprises v. Raimondo*, do federal courts have a duty to exercise jurisdiction over claims involving fraud and misconduct by federal agencies, particularly where statutory schemes like the Federal Employees' Compensation Act preclude state remedies and judicial review?

ORDERS BELOW

Attachment A: Federal Circuit Order (Case No. 2024-1926, ECF 31):

Issued on October 16, 2024, denying the applicant's motion to consolidate related cases and certify the September 24, 2024 ORDER for interlocutory appeal under 28 U.S.C. § 1292(b).

Attachment B: Virginia Court of Appeals Order (Record No.

1234-24-4): Issued on December 19, 2024, granting an extension to file an amended brief until February 3, 2025, in a related matter concerning overlapping constitutional and statutory questions.

Attachment C: Federal Circuit Order Denying Leave to Appeal ECAB

Decision (Case No. 2024-1926, ECF 26): Issued on September 24, 2024, denying the applicant's motion to file an appeal of a decision from the Employees' Compensation Appeals Board (ECAB), citing lack of jurisdiction. The motion confirms that the wrong agency was listed in the caption, with the National Guard Bureau identified as the correct agency in related proceedings.

Attachment D: Federal Circuit Motion to Certify for Interlocutory Appeal (Case No. 2024-1926): Filed on September 25, 2024, requesting certification of the September 24, 2024 order for interlocutory appeal under 28 U.S.C. § 1292(b). The motion incorporates arguments from the Virginia case and references *Loper Bright Enterprises v. Raimondo* to emphasize the need for judicial review of federal agency actions.

NGB argued that, as a federal agency, it falls under the federal workers' compensation scheme established by FECA, which provides exclusive jurisdiction for federal employee injury claims. The NGB emphasized that FECA precludes state-level claims, and the Supremacy Clause of the U.S. Constitution prohibits state workers' compensation systems from intervening in federal matters.

Attachment E: Virginia Workers' Compensation Commission Dismissal (Claim No. VA02000039708): Issued on May 16, 2024, and affirmed on July 24, 2024, dismissing the applicant's claims for lack of jurisdiction, citing the Federal Employees' Compensation Act (FECA) as the exclusive remedy for federal employees. The dismissal emphasizes that the Virginia Workers' Compensation Commission (VWCC) lacks authority to adjudicate claims involving federal agencies and federal employees, underscoring the preemption of state jurisdiction by FECA.

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

APPLICATION TO EXTEND THE TIME TO FILE
A CERTIFIED PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,
AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT


Pursuant to Supreme Court Rule 13.5, I, Martin Akerman, respectfully request a 20-day extension of time to file an interlocutory petition for a writ of certiorari in the above-captioned case, extending the current deadline from January 14, 2025 (90 days from October 16, 2024) to February 3, 2025. This application is timely, being submitted more than ten days prior to the original due date, in accordance with S. Ct. R. 13.5.

This extension is necessary to align the filing deadline with an extension granted in a related matter by the Virginia Court of Appeals (Record No. 1234-24-4), which allows for the filing of an amended brief by February 3, 2025. Aligning these deadlines will facilitate the preparation of legal arguments addressing interrelated constitutional and statutory issues in this case and others, including 23-7127, 24-339, and 24-443, Appendix B.

Applicant, proceeding pro se, is managing multiple complex legal proceedings in various jurisdictions and requires additional time to ensure the proper and thorough preparation of this filing. This request is not intended to delay but to enable the presentation of clear, comprehensive, and well-supported arguments in compliance with the Court's rules.

For these reasons, I respectfully request that the Court grant this application and extend the filing deadline to February 3, 2025.

Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 5601

No. 24A _____ (23-7127, 24-83, 24-339, 24-443, 24A658)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

ATTACHMENT A: Federal Circuit Order (Case No. 2024-1926, ECF 31)

Issued on October 16, 2024, this order denied the applicant's motion to consolidate related cases and certify the September 24, 2024, order for interlocutory appeal under 28 U.S.C. § 1292(b). The Federal Circuit also prohibited further requests for consolidation.

The order highlights the difficulties posed by fragmented judicial proceedings, where procedural restrictions prevent the applicant from addressing interconnected claims in a unified manner.

Denying certification for interlocutory appeal leaves substantive issues unresolved, particularly where jurisdictional gaps and agency misidentifications hinder accountability and oversight.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1926

Petition for review of the Merit Systems Protection Board in No. DC-0752-23-0457-I-1.

ON MOTION

PER CURIAM.

O R D E R

Upon consideration of Martin Akerman's motion for this court "to certify its recent order for interlocutory appeal under 28 U.S.C. § 1292(b)," ECF No. 27 at 1, his request to consolidate his cases in this court, ECF No. 29, and this court's August 26, 2024 order that denied Mr. Akerman's previous request for consolidation,

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AKERMAN v. MSPB

IT IS ORDERED THAT:

The motions are denied. The court will take no action on any further requests from Mr. Akerman to consolidate his cases.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

October 16, 2024
Date

No. 24A_____ (23-7127, 24-83, 24-339, 24-443, 24A658)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

**ATTACHMENT B: Virginia Court of Appeals Order
(Record No. 1234-24-4)**

Issued on December 19, 2024, this order granted the applicant an extension until February 3, 2025, to file an amended opening brief in a related case involving the dismissal of claims by the Virginia Workers' Compensation Commission. The order underscores the jurisdictional complexities arising from federal preemption and the procedural challenges in coordinating state and federal claims.

The extension reflects procedural barriers created by jurisdictional conflicts between state and federal systems and the need for careful judicial oversight to address overlapping constitutional and statutory issues.

VIRGINIA:

In the Court of Appeals of Virginia on Thursday the 19th day of December, 2024.

Martin Akerman,

Appellant,

against

Record No. 1234-24-4
Claim No. VA02000039708

National Guard Bureau, et al.,

Appellees.

From the Virginia Workers' Compensation Commission

On December 17, 2024, came the appellant, in proper person, and filed a motion requesting that the Court grant him an additional extension of time to file an amended opening brief with the clerk of this Court.

On consideration whereof, an extension of time is granted the appellant until February 3, 2025, to file the amended opening brief in this case.

A Copy,

Teste:

A. John Vollino, Clerk

By:



Deputy Clerk

No. 24A _____ (23-7127, 24-83, 24-339, 24-443, 24A658)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

**ATTACHMENT C: Federal Circuit Order Denying Leave to Appeal ECAB
Decision (Case No. 2024-1926, ECF 26)**

Issued on September 24, 2024, this order denied the applicant's motion to appeal a decision by the Employees' Compensation Appeals Board (ECAB), citing lack of jurisdiction under 28 U.S.C. § 1295(a)(10). The motion confirms that the wrong agency was listed in the caption, with the National Guard Bureau correctly identified in related proceedings.

The inability to appeal ECAB decisions highlights the lack of judicial oversight in cases involving procedural errors and misidentifications, raising concerns about due process violations and effective habeas corpus protections.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARTIN AKERMAN,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1926

Petition for review of the Merit Systems Protection Board in No. DC-0752-23-0457-I-1.

ON MOTION

PER CURIAM.

ORDER

In this appeal from the Merit Systems Protection Board, Martin Akerman moves for leave to “file a new” appeal from a decision of the Employees’ Compensation Appeals Board (“ECAB”) under the Federal Employees’ Compensation Act.

Though parties do not generally need to be granted leave to seek appellate review at this court, we lack

jurisdiction over such an appeal. See 28 U.S.C. § 1295(a)(10) (granting jurisdiction over a final decision “of an agency board of contract appeals pursuant to [41 U.S.C. § 7107(a)(1)]”); 41 U.S.C. § 7101(2) (not including the ECAB in the definition of “agency board of contract appeals”).

Accordingly,

IT IS ORDERED THAT:

The motion is denied as moot.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

September 24, 2024

Date

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

**ATTACHMENT D: Federal Circuit Motion to Certify for
Interlocutory Appeal (Case No. 2024-1926)**

Filed on September 25, 2024, this motion requested certification of the September 24, 2024, order for interlocutory appeal under 28 U.S.C. § 1292(b). The applicant incorporated arguments from the Virginia case and cited *Loper Bright Enterprises v. Raimondo* to emphasize the necessity of judicial review in checking federal agency overreach and resolving jurisdictional conflicts.

References to *Loper Bright Enterprises v. Raimondo* underscore the constitutional significance of judicial oversight, particularly in cases where federal agency actions evade review under existing procedural frameworks.

CASE NO: 2024-1926

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Akerman, Pro Se

Appellant,

v.

Army, MSPB, NGB, ECAB

Appellees.

**MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL
AND INCORPORATION OF VIRGINIA STATE BRIEF**

Petitioner Martin Akerman respectfully moves this Court to certify its recent order for interlocutory appeal under 28 U.S.C. § 1292(b). In support of this motion, Petitioner incorporates the Brief of Appellees from the related matter in the Court of Appeals of Virginia (Case No. 1234-24-4) and cites the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, which underscores the importance of judicial review in checking the expansive powers of federal agencies.

Congressional Intent and Oversight in Light of Loper Bright

Enterprises v. Raimondo

In *Loper Bright Enterprises v. Raimondo*, the Supreme Court emphasized the improbability that Congress intended for federal agencies to operate unchecked by judicial oversight. This case reinforces the argument that agencies like the National Guard Bureau and the Department of the Army must remain accountable, particularly when their actions involve potential fraud or the violation of federal statutes, such as the Federal Employees' Compensation Act (FECA).

The Petitioner asserts that Congress could not have intended to allow federal agencies to operate without meaningful oversight, as that would permit fraud and misconduct to go unchallenged. The *Raimondo* decision supports the necessity of courts to intervene when an agency's actions appear to violate the rights of individuals or subvert the statutory protections established by Congress.

Fraud by the Army and Preclusion of State Protections

Additionally, this motion is based on fraud perpetrated by the Army, and the improper constraints placed on the State of Virginia's ability to protect its citizens from such fraud. The attached Brief of Appellees outlines Virginia's belief that it is precluded from providing oversight or protection for individuals, even in cases of fraud, due to the preemption established by FECA and federal law.

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* further illustrates the necessity of judicial oversight when state and federal jurisdictions overlap, especially in cases where fraud and federal administrative actions are involved. The Petitioner's reliance on this decision highlights the argument that state authorities and courts should not be barred from addressing issues of fraud and misconduct merely because of the involvement of a federal agency.

Attachment of the Virginia State Brief

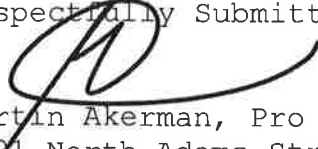
The attached Brief of Appellees demonstrates the jurisdictional limitations of the Virginia Workers' Compensation Commission when dealing with federal employees and federal agencies. Virginia's position is that it lacks jurisdiction due to the federal supremacy established by FECA, which effectively leaves the Petitioner without state remedies, even in the face of fraudulent actions by federal agencies.

The Brief of Appellees also underscores the broader legal context in which the petitioner's claims have been consistently dismissed due to jurisdictional preclusions. This creates a situation where fraud and misconduct by the Army go unchallenged, as the state is unable to intervene, and FECA provides no adequate remedy.

Conclusion

Given the significant legal and constitutional issues involved, Petitioner respectfully requests that this Court certify the order for interlocutory appeal. The need for judicial oversight, as emphasized in *Loper Bright Enterprises v. Raimondo*, is critical in ensuring that federal agencies are held accountable for their actions, particularly in cases involving fraud. The attached Brief of Appellees further highlights the jurisdictional challenges and the limits of state protections in this case.

Respectfully Submitted,

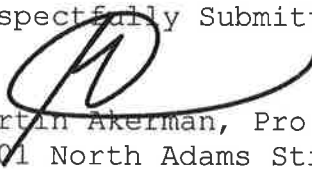


Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656-5601

CERTIFICATE OF COMPLIANCE

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules. The filing has been prepared using a proportionally-spaced typeface and includes 533 words.

Respectfully Submitted,



Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656-5601

In the
Court of Appeals of Virginia
At Richmond

1234-24-4

MARTIN AKERMAN,

Appellant,

– v. –

NATIONAL GUARD BUREAU and
NO RECORD OF INSURANCE, INSURANCE CARRIER,

Appellees.

BRIEF OF APPELLEES

Joseph Giordano (VSB No. 23154)
Kathryn L. Harman (VSB No. 73724)
SEMMES, BOWEN & SEMMES
8444 Westpark Drive, Suite 830
McLean, Virginia 22102
(703) 760-9473 (Telephone)
(703) 356-6989 (Facsimile)
jgiordano@semmes.com
kharman@semmes.com

Counsel for Appellees

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STATEMENT OF THE CASE

On April 12, 2023, the claimant, Martin Akerman (“Akerman”) filed a claim for benefits with the Workers’ Compensation Commission (“the Commission”), naming the National Guard Bureau (“the NGB”) as his employer. R. 12.

On December 8, 2023, the NGB filed a motion to dismiss on jurisdictional grounds. R. 332-35, 624-37.

On February 13, 2024, the UEF filed a motion to dismiss. R. 594-95.

On February 13, 2024, Akerman filed a motion to proceed on the written record. R. 596-600.

On February 14, 2024, the deputy commissioner issued a notice of On-the-Record Hearing. R. 639-42.

On May 16, 2024, the deputy commissioner issued an Opinion, dismissing Akerman’s claims for lack of jurisdiction. R. 857-63, 867-73.

On May 22, 2024, Akerman filed a request for review of the May 16, 2024 decision. R. 864-66.

On July 24, 2024, the Commission issued an Opinion, affirming the dismissal of Akerman’s claims based on the Commission's lack of jurisdiction. R. 17-23, 895-901.

On July 24, 2024, Akerman filed a Notice of Appeal to this Court. R. 1-11.

STATEMENT OF THE FACTS

On April 12, 2023, Akerman filed a claim for benefits with the Workers' Compensation Commission, naming the NGB as his employer. R. 12. He asserted that his last date of employment with the NGB was June 6, 2022, and claimed he suffered from PTSD, with a communication date of October 5, 2022. *Id.* He subsequently claimed that his injury date was April 5, 2022, based on his allegation that he suffered psychological damage from alleged retaliatory action on that date. R. 384-85.

Among the items Akerman submitted as part of his claim for benefits was a premium notice for federal employees' long-term disability benefits. R. 39. A Civilian Leave and Earnings Statement LES confirmed that Akerman was a federal civilian employee at the time of his alleged injury. R. 79-83.

Akerman admitted that he was pursuing workers' compensation through the U.S. Department of Labor. R. 256, 392-3. He included with his claim for benefits a letter from the U.S. Department of Labor concerning his claim for benefits under the federal system of workers' compensation. R.

46. The U.S. Department of Labor ultimately denied the claim for federal workers' compensation benefits filed by Akerman. R. 188-195, 338-344.

On April 27, 2023, the Commission issued a Notification of Injury, requesting that a First Report of Injury be filed, and noting that the NGB had no record of workers' compensation insurance in the Commonwealth of Virginia. R. 69-72. Also on April 27, 2023, the Commission issued a letter to Akerman, informing him that because there is no remedy for federal employees under the Virginia Workers' Compensation Act ("the Act"), the Commission did not have jurisdiction to consider his claim. R. 73-4.

In a November 7, 2023 letter to the deputy commissioner to whom the claim was assigned, Akerman admitted that the federal Office of Workers' Compensation was the proper entity to hear his claim of workplace injury. R. 329-330.

On December 8, 2023, Col. Joseph Ruiz of the United States Air Force filed a motion to dismiss, which provided a detailed explanation of the federal government's jurisdiction over any workers' compensation claim asserted by Akerman. R. 332-34. The motion noted that the Federal Employees' Compensation Act ("FECA") was the exclusive remedy for federal employees claiming workplace injuries. R. 333-34. The motion further pointed out that under the Supremacy Clause of the United States

Constitution, the federal workers' compensation law superseded the Commonwealth's workers' compensation law. R. 333.

On February 13, 2024, Akerman filed a Memorandum in Support of Claim for Occupational Disease ("Akerman Memorandum"). R. 386-591. In the Akerman Memorandum, Akerman acknowledged that, as a federal employee, he filed a claim for federal workers' compensation benefits. R. 392-94, 396. On February 13, 2024, he also filed a rebuttal to the UEF's opposition to his objection to deposition. R. 601-03. In his rebuttal, he contended that he was entitled to pursue both federal and state claims for workers' compensation. R. 602.

STANDARD OF REVIEW

The standard of review is *de novo*. This appeal involves questions of the Virginia Workers' Compensation's interpretation of the Virginia Workers' Compensation Act and the Commission's jurisdiction. As this Court stated in *Wardell Orthopaedics P.C. v. Colonna's Shipyard, Inc.*, 72 Va. App. 296, 301, 844 S.E.2d 436 (2020), "[t]he Commission's construction of the Act is entitled to great weight on appeal." (quoting *Ceres Marine Terminals v. Armstrong*, 59 Va. App. 694, 722 S.E.2d 301 (2012)).

The *Colonna's Shipyard* Court held that "[a]s issues of statutory interpretation present question of law, [the Court] examine[s] the

Commission's ruling using a *de novo* standard of review." *Colonna's Shipyard* at 301 (citing *Llewellyn v. White*, 297 Va. 588, 831 S.E.2d 494 (2019)).

ARGUMENT AND AUTHORITIES

I. The Commission Correctly Found That It Does Not Have Jurisdiction

At the heart of Akerman's argument is his contention that the federal government has wronged him by denying his federal workers' compensation claim and that the Commission must provide him with relief. He is wrong. Whether he is entitled to procedures and protections as a federal employee under the federal workers' compensation scheme is irrelevant. The Virginia Workers' Compensation Commission simply does not have jurisdiction over his claim. Merriam Webster defines jurisdiction as "1. the power, right, or authority to interpret and apply the law; 2b. the power or right to exercise authority." *Merriam Webster*. Without jurisdiction, no tribunal has the power or authority to hear or rule on a claim.

There can be no dispute that Akerman was a federal employee at all times pertinent to his claim. Akerman does not even attempt to dispute that at the time of his alleged injury, he was an employee of the NGB. In fact, the crux of his allegations appears to be that the NGB, his federal employer, took actions that caused him to sustain injuries.

Without jurisdiction, neither the Commission nor this Court can consider the merits, or lack thereof, of Akerman's claim that he is or should be eligible for workers' compensation under the Virginia Workers' Compensation Act. Akerman was a federal employee at all times alleged in his claim for benefits. The Commission correctly found that it lacks jurisdiction over the claim for benefits asserted by Akerman.

Under the Federal Employees' Compensation Act ("FECA"), Congress provided the federal government with a comprehensive system for compensating injured federal employees. See 5 U.S.C. §§ 8101 *et seq.* The states are not permitted to interfere with that system. The Virginia Workers' Compensation Commission does not have jurisdiction over federal employees. See *Boyer v. Navy Exchange Little Creek*, VWC File No. 172-25-41 (Feb. 1, 1995); See also VA Code §65.2-101.

In the claim before the Commission, the NGB is a federal agency and not a private entity doing business in Virginia. Akerman is a federal employee by virtue of his admitted employment with the. NGB. Therefore, the Commission has no jurisdiction over the workers' compensation claim filed by Akerman against the. NGB

Under the Supremacy Clause of the United States Constitution, if there is a conflict between state law and federal law, federal law prevails.

U.S. Const. amend. VI Clause 2. See also *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011). As noted *supra*, the United States Congress established FECA, the purpose of which is to provide compensation for federal employees injured in the course of their employment. See 5 U.S.C. §§ 8101 *et seq.* Thus, there is a set of federal laws dealing with precisely the sort of claim at issue here.

Because there is a federal law that comprehensively covers the claims asserted by Akerman, and Akerman has availed himself of FECA, the Commission has no jurisdiction over this claim. The Commonwealth of Virginia does not and cannot adjudicate a claim filed by a federal employee against a federal agency.

Moreover, Akerman has not pointed the Commission to any statute or regulation that would permit him to pursue claims against the Bureau under the Virginia Workers' Compensation Act. He filed a claim against a federal agency and therefore cannot dispute that he was a federal employee at the time of his alleged injury. The federal government has exclusive jurisdiction over his claim.

The Commission correctly concluded that it did not have jurisdiction over Akerman's claim.

II. Akerman's Argument That the NGB Did Not Have FECA Insurance Is Without Merit

Akerman alleges that the NGB “lacked proper FECA insurance” and that therefore the Virginia Workers’ Compensation Commission should have jurisdiction over his claim. There is no such thing as “FECA insurance.” The federal system of workers’ compensation has no connection to insurance.

Akerman conflates FECA with Virginia’s requirement that most private employers maintain workers’ compensation insurance. Akerman contends that because his workstation was physically located in Virginia, his federal employer should be subject to Virginia’s workers’ compensation statutory scheme. Akerman’s contention is incorrect. FECA defines a covered employee as “a[n] employee in any branch of the United States . . .” 5 U.S.C. § 8101(1)(A). The provisions of FECA apply to federal employees, wherever they are employed. See 5 U.S.C. §§ 8101 *et seq.* Akerman was employed by a branch of the United States. His claims arose, if at all, under FECA, and not the Virginia Workers’ Compensation Act.

Unlike private employers, the NGB is not required to purchase workers’ compensation insurance coverage. FECA expressly states “There is in the Treasury of the United States the Employees’ Compensation Fund which consists of sums that Congress . . . may appropriate for or transfer to

it . . .” 5 U.S.C § 8147(a). Thus, the funds to pay claims to federal employees under FECA come not from workers’ compensation insurance policies, but from money appropriated by Congress.

The NGB does not have workers’ compensation insurance coverage in the Commonwealth of Virginia because the NGB is not required to have such coverage. Akerman’s argument that the fact that the NGB does not have insurance coverage somehow entitles him to proceed against the NGB under Virginia law is without merit.

The Commission correctly found that it does not have jurisdiction over this matter.

III. Substantial Employment Activities Do Not Create Jurisdiction for a Federal Employee

In Akerman’s first Assignment of Error, he contends that because the NGB performs “substantial employment activities within Virginia,” the Commission has jurisdiction over his claim. Akerman has pointed this Court to no authority that supports his contention that the criterion for state jurisdiction over a federal employee is whether a federal entity performs substantial employment activities within the state. Akerman’s argument would make the federal system of workers’ compensation redundant. If a federal employee working in a state could be eligible for state workers’ compensation benefits, there would be no need for a federal workers’

compensation law at all. Federal employees, like private employees, would simply apply for workers' compensation benefits under state workers' compensation laws. Congress enacted the FECA to provide federal employees with a system to compensate them for work injuries. A state does not have jurisdiction over a FECA claim.

The statute Akerman cites in support of his claim that Virginia should exert jurisdiction permits a state to apply state workers' compensation laws to "lands and premises in the State which the Federal Government *owns or holds by deed or act of cession* and to all projects, buildings . . . and property in the State and *belonging to the Government.*" 40 U.S.C. § 3172(a) (emphasis added). Akerman produced no evidence that the NGB, a federal entity, owned or held by deed in Virginia any property or building in which he worked. Akerman produced no evidence that any building in which he worked belonged to the federal government.

Akerman's reliance on 40 U.S.C. § 3172(a) is misplaced. There is no evidence that the NGB (or any other federal government entity) owned or held by deed any property or building in which Akerman worked.

Therefore, the statute does not apply to his claim.

IV. The Commission Did Not Misinterpret Whether Federal and State Jurisdictions Overlapped

In his second assignment of error, Akerman asserts that his claim falls within a “twilight zone” between state and federal jurisdiction. His assertion relies on *Davis v. Dep’t of Labor*, 317 U.S. 249 (1942) and *American Original Foods v. Ford*, 221 Va. 557, 272 S.E.2d 187 (1980). His reliance is misplaced. Both cases revolved around the interplay between the Federal Longshore and Harbor Workers’ Act (the FLHWA) and state workers’ compensation laws with respect to those injured while working on or around the navigable waters of the United States. See 33 U.S.C. § 903.

In *Davis*, the Court’s task was to determine whether the widow of a steelworker employed by a construction company, who drowned while engaged in moving a drawbridge, could recover under state law or what was then the Federal Longshoremen’s and Harbor Workers’ Act (33 U.S.C. § 901). *Davis* 317 U.S. at 2. The worker in *Davis* was employed by a private, rather than federal, entity. There is no dispute in the instant matter that Akerman was a federal employee at all times.

The *Davis* Court, in determining that the state could assert jurisdiction, noted that “no conflicting process of administration is apparent. The federal authorities have taken no action under the Longshoremen’s Act

...” In contrast, in the instant matter, the Department of Labor has heard Akerman’s claim and made a determination under FECA.

In *Ford*, the deceased worker was “welding hydraulic lines in . . . a ship moored at his employer’s dock at Cape Charles.” 272 S.E.2d at 188. The “twilight zone” between state and federal law refers to the jurisdictional issues between a state workers’ compensation law and the FLHWA, not to the FECA. The *Ford* court stated that “both the federal and the state government are constitutionally competent to provide workmen’s [sic] compensation remedies to workmen [sic] who are killed or injured *on navigable waters in Virginia.*” *Id.* at 190 (emphasis added). The court held that in “applying the doctrine of ‘maritime but local’, the Commission was “not plainly wrong.” *Id.*

Akerman does not claim that he sustained injuries on navigable waters in Virginia. He was not a worker employed on a navigable water; he was a federal employee employed by a federal agency. Neither *Davis* nor *Ford* has any applicability to his contention that the Commission should have jurisdiction.

V. The Commission Does Not Have Jurisdiction to Determine Whether the NGB Violated Akerman’s Due Process Rights

In his third assignment of error, Akerman contends that the Commission should have certified the question of whether the NGB

violated his right to due process under the Fifth Amendment to the U.S. Constitution. He contends that his due process rights were violated because the NGB failed to provide him with adequate relief and lacked FECA insurance. As noted *supra*, Akerman was a federal employee. All his remedies and right to relief were available only under FECA. Any inadequacies under FECA must be addressed by federal courts. The Commission does not have jurisdiction to consider whether the relief offered by FECA is adequate.

Akerman also contends that there was a constitutional issue concerning NGB's alleged failure to have FECA insurance. As noted *supra*, the NGB was not required to have "insurance." Federal employers do not purchase or obtain FECA insurance; FECA is wholly funded by Congress. A federal entity is not required to purchase or maintain workers' compensation insurance in Virginia.

VI. The Commission Did Not Have Jurisdiction to Review the Claim on the Merits

In his fourth assignment of error, Akerman contends that the Commission erred in not considering and weighing his alleged symptoms, the fact that the NGB did not have workers' compensation insurance, and the NGB's alleged failure to provide him with adequate relief. As noted *supra*, the Commission did not have jurisdiction over any claim Akerman

asserted. The Commission did not have the authority to consider the claims on the merits. Without jurisdiction, a tribunal is simply unable to hear or weigh the alleged facts.

VII. The Federal Employees' Compensation Act is the Sole Remedy for Any Claim Espoused by Akerman

In his fifth assignment of error, Akerman contends that his state law claim is not preempted by federal law. He relies on 40 U.S.C. § 3172(a) and 40 U.S.C. § 290. As explained *supra*, 40 U.S.C. § 3172(a) applies in situations in which an injury occurred on property owned by the federal government. Similarly, 40 U.S.C. § 290 grants to state entities which “have the power and authority to apply such [workers’ compensation] laws to all lands and premises *owned or held by deed or act of cession . . .* in the same way as if said premises were under the exclusive jurisdiction of the State . . .” (emphasis added). As noted *supra*, Akerman produced no evidence that the NGB owned or held by deed or act of cession the location where he allegedly sustained injuries. Neither statute cited by Akerman applies to his situation.

Akerman’s reliance on *Adams v. Alliant Techsystems, Inc.* is similarly misplaced. In *Adams*, union employees of a private employer working at the Radford Ammunitions Plant filed a personal injury suit. *Adams v. Alliant Techsystems, Inc.*, 201 F. Supp. 2d 700 (W.D. Va. 2002). The issue was

whether “Congress intended the LMRA [Labor Management Relation Act] to occupy the field of work place [sic] safety to the exclusion of other remedies[.]” *Adams* at 709 (citing 29 U.S.C. § 185(a)). The court concluded that there was “no indication that Congress intended for the LMRA to preclude personal injury suits . . . for workplace injuries.” *Adams* at 709.

Akerman did not bring a civil suit for personal injury, so the reasoning in *Adams* does not apply to his claim.

The NGB did not own or hold by deed the location where Akerman allegedly sustained injuries. Akerman did not file a personal injury action in civil court. The legal precedents upon which he relies have no application to this matter.

CONCLUSION

The deputy commissioner correctly determined, and the Commission correctly affirmed, that Akerman’s claim does not fall within the boundaries of the Virginia Workers’ Compensation Act. The Commission does not have jurisdiction over any claim Akerman has asserted. Because the Commission lacks jurisdiction over the asserted claims, the Commission properly dismissed Akerman’s claim.

The deputy commissioner also correctly determined, and the Commission correctly affirmed, that because there is no jurisdiction over

Akerman's claim, the Commission cannot adjudicate the merits of Akerman's claim.

The UEF respectfully requests that this Court affirm the dismissal of Akerman's claim.

Respectfully submitted,

/s/ Joseph Giordano

Joseph Giordano (VSB No. 23154)
Kathryn L. Harman (VSB No. 73724)
SEMMEs, BOWEN & SEMMEs
8444 Westpark Drive, Suite 830
McLean, Virginia 22102
(703) 760-9473 (Telephone)
(703) 356-6989 (Facsimile)
jgiordano@semmes.com
kharman@semmes.com

Counsel for Appellees

CERTIFICATE

I hereby certify that on this 18th day of September, 2024, pursuant to Rules 5A:1 and 5A:19, an electronic copy of the Brief of Appellees has been filed, via VACES, with the Clerk of the Court of Appeals of Virginia. On the same day, an electronic copy of the Brief of the Appellees was served, via e-mail, upon:

Martin Akerman
2001 N. Adams St., Apartment 440
Arlington, Virginia 22201-3783
202-656-5601
Makerman.dod@gmail.com
Pro Se Appellant

One copy was also served, via first class mail, upon:

National Guard Bureau
c/o Joseph Ruiz, Col.
111 S George Mason Dr
Arlington, Virginia 22204-1373
Employer

This Brief contains 3,090 words, excluding those portions that by rule do not count toward the word limit.

Counsel for the Appellees does not waive oral argument.

/s/ Joseph Giordano
Joseph Giordano (VSB No. 23154)

No. 24A _____ (23-7127, 24-83, 24-339, 24-443, 24A658)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.

MSPB,
RESPONDENT

**ATTACHMENT E: Virginia Workers' Compensation Commission
Dismissal (Claim No. VA02000039708)**

Issued on May 16, 2024, and affirmed on July 24, 2024, this decision dismissed the applicant's claims for lack of jurisdiction, citing the Federal Employees' Compensation Act (FECA) as the exclusive remedy for federal employees. The Commission ruled that the Virginia Workers' Compensation Act does not provide jurisdiction over claims involving federal employees or federal employers such as the National Guard Bureau (NGB), which are exclusively governed by federal law.

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by PLUNKETT
Deputy Commissioner

May 16, 2024

MARTIN AKERMAN v. NATIONAL GUARD BUREAU
NO RECORD OF INSURANCE, Insurance Carrier
Jurisdiction Claim No. VA02000039708
Claim Administrator File No.
Date of Injury: April 5, 2022

Martin Akerman
Claimant, *pro se*.

Joseph H. Ruiz, Colonel, NJANG
For the National Guard Bureau.

Joseph F. Giordano, Esquire
For the Uninsured Employer's Fund (Fund).

Submitted On-The-Record before Deputy Commissioner Plunkett in Fairfax, Virginia on April 4, 2024.

PRESENT PROCEEDINGS

This matter is before the Commission pursuant to the claimant's Request for Hearing/Claim for Benefits filed April 25, 2023 asserting an occupational disease of PTSD with an October 5, 2022 date of diagnosis, and last date worked for employer stated as June 6, 2022.

Pursuant to the Notice of On-The-Record Hearing issued February 14, 2024, the sole issue docketed to be addressed, based on the bifurcated proceedings, is jurisdiction. All other portions of the claimant's claims are reserved.

DEFENSES

The defendants dispute jurisdiction.

SUMMARY OF THE EVIDENCE

Pursuant to the On-The-Record Hearing Notice, the following evidence is admitted as part of the record, and has been considered in connection with the adjudication of the disputed issues:

- (1) Claimant's Position Statement filed February 29, 2024 (10 pages);
- (2) Defendants' Position Statement filed March 21, 2024 (21 pages);
- (3) Claimant's Responsive Statement filed March 21, 2024 (5 pages);

The record in this matter closed effective April 4, 2024. The entire record has been reviewed; however, we summarize only those facts necessary to our decision.

ISSUES

1. Jurisdiction

FINDINGS OF FACT AND RULINGS OF LAW

It is well settled that the claimant has the burden of proving every essential element of his case by a preponderance of the evidence. Concurrent jurisdiction exists only when the employer is subject to the jurisdiction of the Virginia Workers' Compensation Act by virtue of being a private entity doing business in Virginia. Where the named employer is an instrumentality of the Federal Government it is not under the jurisdiction of the Commission, and the claimant's exclusive remedy is that afforded by the Longshore and Harbor Workers' Act. *Boyer v. Navy Exchange Little Creek*, VWC File No. 172-25-41 (Feb. 1, 1995).

We have reviewed in full the claimant's position statement and responsive statement, as well as the defendants' position statement. In his position statements, as well as expressed in other documents filed with the Commission, the claimant asserts that he should not be precluded from pursuing benefits in Virginia. The sole issue here is whether the Commission has jurisdiction to hear and decide his substantive claim.

Although not addressed specifically in the position statements, the claimant alleges in other documents that his job with the government in 2022 was as the Chief Data Officer of the National Guard. (December 20, 2023 letter filed with the Commission, and referenced in the claimant's position statements). As best we can tell from the claimant's position statements, he has filed a claim for PTSD under Virginia Workers' Compensation based upon the mental stressors asserted to be from his employer's processing of his other grievances.

Claimant's position statement filed February 29, 2024, asserts: "request for the VWCC to certify a critical constitutional question to the appropriate court, seeking judicial clarification on the Commission's jurisdiction over workers' compensation claims against the National Guard Bureau for incidents occurring within Virginia."

In his responsive statement filed March 21, 2024, the claimant asserts: "the nature of my claim, which involves alleged misconduct and lack of due process within federal channels, warrant state-level intervention."

The claimant's responsive March 21, 2024 statement also asserts: "the core issue: the alleged interference by federal entities that has precluded me from obtaining a fair and comprehensive review of my claim."

In their position statement filed March 21, 2024, the defendants assert the following facts:

[t]he Claimant was employed as a United States civilian employee at all relevant times. He was offered an IT position with the Department of the Army through the National Guard Bureau, a federal agency. *See the Motion to Dismiss filed by the National Guard enclosed as Exhibit A.* This job offer was contingent upon the Claimant obtaining the required top-secret security clearance. *See Exhibit A.* When the Claimant failed to obtain the requisite clearance, he was placed on paid suspension as of February 14, 2022. *See copy of the U.S. Department of Labor's Office of Workers' Compensation Program's Decision of the Hearing Representative attached hereto as Exhibit A.* The claimant subsequently resigned his employment with the U.S. government on or about June 6, 2022. *See Exhibit A.*

The Claimant filed a workers' compensation claim with the United States Department of Labor pursuant to the Federal Employee Compensation Act ["FECA"] for post-traumatic stress disorder allegedly as a result of being "gaslighted, marginalized, and bullied", among other reasons. *Id.* His claim was denied as not compensable under FECA, so he appealed.

In addition, based upon the numerous filings by the claimant with the Virginia Worker's Compensation Commission, it appears the claimant has filed with numerous governmental agencies in an effort to obtain some type of recompense or retribution. For example, he filed with the U.S. Merit Systems Protection Board, the US District Court for the District of Columbia, the US District Court in Nevada, the Virginia Employment Commission, the Equal Employment Opportunity Commission, etc.

Finding no satisfaction with the U.S Department of Labor's decision, the claimant filed a Claim for Benefits with the Virginia Workers' Compensation Commission, to which Deputy Commissioner Bruner replied by letter advising the claimant that the Virginia Workers' Compensation Act does not provide a remedy for federal employees, and that the Virginia Act does not grant jurisdiction over federal employees or federal employers pursuant to Section 65.2-101, Code of Virginia, as amended.¹ Because the claimant refused to abide by this jurisdictional admonition, the issue was referred to the hearing docket.

In argument, the defendants cite to the Supremacy Clause, Article VI of the United States Constitution, Va. Code §65.2-101, and the premise that where the named employer is an instrumentality of the federal government, there is no Virginia jurisdiction. We agree. In this matter, we have carefully considered the evidence presented and DENY the present claim finding that the Commission is without jurisdiction to adjudicate this matter.

¹ See April 27, 2023 Judicial Correspondence, Letter of DC Bruner.

Further, the claimant asserts in his March 21, 2024 responsive statement that the Fund's assertion of no Virginia jurisdiction "fails to consider situations where the federal process is compromised, as alleged in my case." On this ground we also find that the Commission lacks jurisdiction to make any determination that a federal process is compromised.

Accordingly, the claimant's claim, on the basis of jurisdiction, is DENIED and DISMISSED.

This case is hereby ORDERED removed from the hearing docket.

REVIEW

Any party may appeal this decision to the full Commission by filing a Request for Review with the Commission within thirty (30) days of the date of this Opinion.

Additional Parties

**Joseph H. Ruiz, Colonel, NJANG
National Guard Bureau, Office of General Counsel
TARC2 111 S. George Mason Drive, 3TI200
Arlington, VA 22204**

**SmartCasualtyClaims
191 Johnson St
Abingdon, VA 24210-2934**

**Martin Akerman
Paperless**

Interested Parties

Injured Worker:
Martin Akerman
Paperless

Joseph F. Giordano
Paperless

Insurance Carrier:
NO RECORD OF INSURANCE
333 E FRANKLIN ST STE SUPPRESS
Richmond, VA 23219-2213

Employer:
NATIONAL GUARD BUREAU
111 South George Mason Dr
Arlington, VA 22204-1373

No. 24A _____ (23-7127, 24-83, 24-339, 24-443, 24A658)

IN THE SUPREME COURT OF THE UNITED STATES

MARTIN AKERMAN, PRO SE,
APPLICANT

v.


MSPB,
RESPONDENT

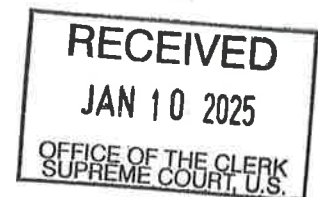
PROOF OF SERVICE









I, Martin Akerman, hereby certify that on January 4, 2025, I delivered an original and three copies of the attached application to extend the time to file a petition for a writ of certiorari, along with all exhibits and accompanying documents, to the clerk of the Supreme Court, and a copy to the Solicitor General of the United States by mailing a true and correct copy via United States Postal Service, first-class mail, postage prepaid, addressed as follows:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001








Respectfully Submitted,


Martin Akerman, Pro Se
2001 North Adams Street, Unit 440
Arlington, VA 22201
(202) 656 - 5601



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