

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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WASHINGTON, DC 20004-1710

October 24, 2017

SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR on
behalf of STACEY WAYNE PUCKETT,
Complainant

v.

PANTHER CREEK MINING, LLC,
Respondent

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. WEVA 2017-426

Mine: American Eagle Mine
Mine ID: 46-05437

**ORDER DISSOLVING
GRANT OF TEMPORARY REINSTATEMENT**

Before: Judge Feldman

This temporary reinstatement proceeding is based on an application for temporary reinstatement filed on June 7, 2017, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2) (“Act” or “Mine Act”), by the Secretary of Labor (“Secretary”) on behalf of Stacey Wayne Puckett against Panther Creek Mining, LLC (“Panther Creek”). Under section 105(c)(2), “if the Secretary finds that [the underlying discrimination] complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the reinstatement of the miner pending final order on the complaint.” 30 U.S.C. § 815(c)(2).

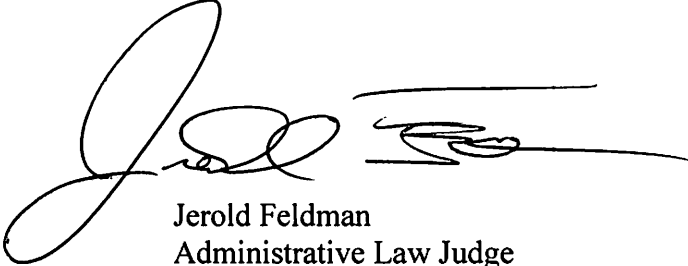
The Secretary’s temporary reinstatement application was supported by a sworn affidavit by a Mine Safety and Health Administration (“MSHA”) Special Investigator that Puckett was terminated shortly after he was questioned regarding a section 110(c) investigation at the American Eagle Mine. Panther Creek did not deny that the subject interaction with the Special Investigator had occurred, arguing instead that it was unaware of any communication between Puckett and the MSHA investigator. The Secretary’s reinstatement application was summarily granted on July 12, 2017. *Sec’y of Labor on behalf of Puckett v. Panther Creek Mining, LLC*, 39 FMSHRC 1406 (July 2017). The Order of Temporary Reinstatement was subsequently modified by the grant of economic reinstatement as agreed upon by the parties. Amendment of Order of Temporary Reinstatement, 39 FMSHRC ____ (Aug. 22, 2017). The modified order noted that continued economic reinstatement was contingent on the Secretary’s prosecution, pursuant to section 105(c)(2) of the Mine Act, of Puckett’s discrimination complaint. *Id.*

Panther Creek has now filed an October 19, 2017, motion to vacate Puckett’s economic reinstatement based on correspondence dated October 12, 2017, in which MSHA advised Puckett that MSHA’s investigation failed to reveal “sufficient evidence to establish, by a preponderance of the evidence[,] that a violation of Section 105(c) occurred.” Panther Creek Mot. to Vacate Order of Temporary Reinstatement, Ex. A at 1. Consequently, Puckett was advised that the Secretary had declined to bring a discrimination complaint on Puckett’s behalf. *Id.*

An order temporarily reinstating a miner cannot survive the Secretary of Labor's decision not to proceed with the miner's discrimination complaint under section 105(c)(2). *Sec'y of Labor on behalf of Dunne v. Vulcan Constr. Materials, L.P.*, 34 FMSHRC 3070 (Dec. 2012) (citing 700 F.3d 297 (7th Cir. 2012)); *see also North Fork Coal Corp. v. FMSHRC*, 691 F.3d 735, 744 (6th Cir. 2012). Consequently, the grant of the Secretary's application for temporary reinstatement that awarded economic reinstatement shall be dissolved.

ORDER

In view of the above, **IT IS ORDERED** that Panther Creek's October 19, 2017, Motion to Vacate Order of Temporary Reinstatement **IS GRANTED**. Consequently, **IT IS FURTHER ORDERED** that the underlying July 12, 2017, Order Granting Temporary Reinstatement **IS DISSOLVED** effective as of the date of this Order.¹ Nothing herein shall bar the filing by Puckett of a discrimination complaint on his own behalf pursuant to section 105(c)(3) of the Mine Act. 30 U.S.C. § 815(c)(3).



Jerold Feldman
Administrative Law Judge

Distribution:

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¹ This Order dissolving Puckett's temporary reinstatement has been served on the parties by electronic and certified mail.