

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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March 16, 2021

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
on behalf of TRACY A. LEWIS,
Complainant,

v.

TIP TOP MATERIALS, LLC,
Respondent

TEMPORARY REINSTATEMENT

Docket No. VA 2021-0008-D
MSHA Case No.: NORT-CD 2021-03

Mine: Tip Top Materials, LLC
Mine ID: 44-07399

ORDER OF TEMPORARY ECONOMIC REINSTATEMENT

Before: Judge Young

This matter is before me on an application for temporary reinstatement filed by the Secretary of Labor (“Secretary”) on behalf of Tracy Lewis (“Complainant”) pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(c)(2), against Tip Top Materials, LLC (“Tip Top”). The Secretary filed the Application for Temporary Reinstatement on February 26, 2021. The Respondent did not file a timely Request for Hearing, and the temporary reinstatement of Tracy A. Lewis was ordered by me on March 11, 2021.

The Respondent subsequently retained counsel and the parties to this case – the Secretary; Tracy A. Lewis; and Tip Top Materials, LLC - through their respective counsel filed a Joint Motion to Approve Economic Temporary Reinstatement Agreement for Tracy A. Lewis on March 16, 2021. Pursuant to the Agreement, Tip Top, effective March 12, 2021, shall place Lewis “in the same financial and legal position that he would be in had he physically returned to work” while his discrimination case on the merits is pending.

The Agreement sets forth the terms of the temporary economic reinstatement, including Complainant’s rate of pay and benefits. Lewis shall be paid every Friday via a check mailed to him at 8717 Lewis Mountain Road, Pound, VA 24279. The Agreement includes other terms and conditions which are incorporated into this order by reference.

ORDER

I have considered the representations and documentation submitted in this case and I conclude that the terms set forth in the Agreement are appropriate under section 105(c)(2) of the Mine Act. Consequently, the Agreement is **APPROVED** and Tip Top is **ORDERED** to economically temporarily reinstate Tracy A. Lewis pursuant to the terms and conditions set forth in the Agreement.

This Order **SHALL** remain in effect until such time as there is a final determination in this matter by hearing and decision, approval of settlement, or other order of this court or the Commission.

I retain jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4). The Secretary **SHALL** provide a report on the status of the underlying discrimination complaint **as soon as possible**. Counsel for the Secretary **SHALL** also **immediately** notify my office of any settlement or of any determination that Tip Top Materials, LLC, did not violate Section 105(c) of the Act.



Michael G. Young
Administrative Law Judge

Distribution (Via Certified Mail & E-mail)

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