

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9956 / FAX: 202-434-9949

May 16, 2016

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA), on  
behalf of MICHAEL MURRAY,  
Complainants,

v.

MACH MINING, LLC,  
Respondent.

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. LAKE 2016-186-D  
MSHA Case No. VINC-CD-2016-02

Mine ID: 11-03141  
Mine: Mach #1 Mine

**ORDER DENYING MOTION TO DISSOLVE**

This case is before me upon an application for temporary reinstatement filed by the Secretary of Labor on behalf of Michael Murray (“the Complainant”) against Mach Mining, LLC (“the Respondent”) pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977 (“the Mine Act”), 30 U.S.C. § 815(c).

The Complainant filed a discrimination complaint with the Secretary of Labor on January 12, 2016, and the Secretary subsequently initiated this temporary reinstatement proceeding. Before the matter could proceed to hearing, the parties reached a settlement whereby the Respondent agreed to economically reinstate the Complainant. The parties agreed that the period of reinstatement would begin retroactively on March 7, 2016 and reinstatement would remain in effect until the entry of a final order of the Commission regarding the Complainant’s underlying discrimination complaint or until the dissolution of my order approving the settlement, whichever should occur first. I approved the settlement on April 26, 2016. On May 6, 2016, the Respondent filed a motion requesting that I dissolve my order approving the settlement and release the Respondent from its reinstatement obligation.

**Parties’ Positions**

The Respondent argues that its temporary reinstatement obligation should be terminated because the Secretary has failed to comply with the requirements of section 105(c)(3) of the Mine Act. Section 105(c)(3) sets a deadline of 90 days after receipt of a discrimination complaint for the Secretary to make a determination as to whether to initiate a discrimination proceeding on the merits. *See* 30 U.S.C. § 815(c). In this case, the deadline passed on or about April 11, 2016, but the Secretary has yet to decide whether to pursue the case on the merits. The Respondent contends that requiring the company to provide reinstatement beyond the 90-day timeframe is unfair and results in unjust enrichment to the Complainant.

The Secretary responds that the motion should be denied because the Commission has made clear that the deadline set forth in section 105(c)(3) is non-jurisdictional. The Secretary further asserts that despite Department of Labor's failure to meet the deadline, the delay has not legally prejudiced the Respondent and should not be found to trigger an outcome that will prejudice the Complainant.

Counsel for the Complainant joins in the Secretary's opposition to the motion to dissolve.

### Discussion

Section 105(c)(2) of the Mine Act provides that after the Secretary receives a discrimination complaint and initiates an investigation, "if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint." 30 U.S.C. § 815(c)(2).

Aside from the entry of a final order on the complaint, the Mine Act does not explicitly identify any conditions that interrupt the mine operator's reinstatement obligation. However, precedent has established that the obligation may be tolled or dissolved in several situations. The Commission has recognized that a subsequent change in the operator's economic status, such as closure of the mine or a mass layoff, may toll the reinstatement obligation. *See Sec'y of Labor on behalf of Gatlin v. KenAmerican Res., Inc.*, 31 FMSHRC 1050, 1054 (Oct. 2009). In addition, the federal appellate courts have held that an order of temporary reinstatement must be dissolved if and when the Secretary concludes, after investigating the underlying complaint, that no discrimination has occurred. *Vulcan Constr. Materials v. FMSHRC*, 700 F.3d 297 (7th Cir. 2012); *N. Fork Coal Corp. v. FMSHRC*, 691 F.3d 735 (6th Cir. 2012).

This case does not present either of the situations described above, and the Respondent has cited no other legal authority that would support releasing it from its obligation to comply with the settlement agreement. The Secretary's failure to meet the 90-day deadline under 105(c)(3) does not provide a basis upon which to dissolve a temporary reinstatement order. The Commission has long recognized, as is noted in one of the cases cited in the Respondent's motion, that the deadlines imposed on the Secretary under 105(c) "are not intended to be jurisdictional" and that "the complainant should not be prejudiced because of the failure of the Government to meet its time obligations." *Gilbert v. Sandy Fork Mining Co.*, 9 FMSHRC 1327, 1337 (Aug. 1987) (quoting pertinent legislative history). Rather, the Commission has emphasized that the intent of 105(c) is to make the miner whole until his case can be decided on the merits. *See Sec'y of Labor o/b/o Rieke v. Akzo Nobel Salt, Inc.*, 19 FMSHRC 1254, 1258 (July 1997). It would be contrary to the spirit of 105(c) to cut off the Complainant's relief due to the Secretary's delay, and it would be premature for me to accept the Respondent's contention that the Complainant is being "unjustly" enriched when no determination has been made yet on the merits of his complaint.

Accordingly, it is **ORDERED** that the Respondent's motion to dissolve is **DENIED**.

A handwritten signature in black ink, appearing to read "Priscilla M. Rae". The signature is fluid and cursive, with the first name being the most prominent.

Priscilla M. Rae  
Administrative Law Judge

Distribution:

R. Jason Patterson, Esq., U.S. Department of Labor, Office of the Solicitor, 230 South Dearborn Street, Room 844, Chicago, IL 60604

Tony Oppgaard, Esq., P.O. Box 22446, Lexington, KY 40522

Christopher D. Pence, Esq. & Eric L. Silkwood, Esq., Hardy Pence PLLC, 500 Lee Street East, Suite 701, Charleston, WV 25301