

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

721 19th Street, Suite 443  
Denver, CO 80202-2536  
303-844-3577/FAX 303-844-5268

September 9, 2021

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA), on  
behalf of MIGUEL PUGMIRE,  
Complainant,

v.

NEVADA GOLD MINES, LLC,  
Respondent

DISCRIMINATION PROCEEDING

Docket No. WEST 2021-0148-DM  
MSHA CASE NO: WE-MD-2021-03

Mine: Turquoise Ridge  
Mine ID: 26-02286

**ORDER GRANTING THE SECRETARY’S MOTION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT**

This proceeding was brought by the Secretary of Labor on behalf of Miguel Pugmire against Nevada Gold Mines (“NGM”) pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, *et seq.* (“Mine Act”) and 29 C.F.R. § 2700.40 *et seq.* On August 19, 2021, the Secretary filed a Motion for Leave to File First Amended Complaint (“Mot.”). Respondent filed an opposition to the Secretary’s motion (“Opp.”). For reasons that follow, I **GRANT** the Secretary’s motion.

The complaint in this matter, as originally filed, contended that Pugmire, an underground mine engineer, was summarily terminated from his position after removing four active headings from service due to low airflow readings on his monthly secondary air ventilation survey.<sup>1</sup> The Secretary asserts that, during discovery, Respondent produced a document showing that Pugmire engaged in additional protected activity. As a result, the Secretary now seeks leave to amend the complaint to include the additional protected activity. Specifically, the Secretary asks that the complaint be amended to allege that “around early August 2020, Mr. Pugmire also raised various concerns about the Mine’s ventilation at a meeting attended by Benjamin Gunn, the manager who eventually terminated Mr. Pugmire’s employment.” Mot. 3. The Secretary avers that the proposed amendment “will not significantly affect the scope of the case or unduly prejudice Respondent.” Mot. 3.

---

<sup>1</sup> The complaint, as originally filed, alleged that Pugmire removed four active headings from service on September 2, 2020. The following day, September 3, 2020, Pugmire requested time off due to a family emergency. The complaint further alleged that the request was initially approved and Pugmire did not attend work that day, but that NGM later repealed approval and labeled Pugmire’s absence as “unexcused.” On September 9, 2020, NGM suspended Pugmire and ultimately terminated his employment on September 11, 2020. Among other defenses in its answer to the original complaint, Respondent states that Pugmire failed to take all the required steps when he first discovered the insufficient airflow such as barricading the affected areas to keep miners out.

NGM, in its opposition, argues that the motion should be denied because the alleged additional protected activity was known to the Secretary at the time the discrimination complaint was originally filed and, further, that the claims made in the motion are “duplicative” and the motion to amend is “futile.” Opp. 1-2, 5-6.

The Commission's procedural rules do not address amendments to pleadings. Nevertheless, the Commission, using the Federal Rules of Civil Procedure as guidance, has taken the view that leave to amend discrimination complaints should be “freely granted” in the interest of justice. *Sec’y of Labor obo Hannah et al. v. Consolidation Coal Co.*, 20 FMSHRC 1293, 1303 n. 10 (Dec. 1998); Fed. R. Civ. P. 15); *Cyprus Empire Corp.*, 12 FMSHRC 911,916 (May 1990); *see also Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (9<sup>th</sup> Circuit stating that the policy of granting leave to amend should be “applied with extreme liberality.”). This is especially true when such amendments “do not prejudice a party in preparing its defenses.” *Brannon v. Panther Mining, LLC*, 31 FMSHRC 1277, 1279 (Sept. 2009) (ALJ).

Here, the Secretary seeks to amend the complaint to include the additional alleged protected activity of Pugmire raising ventilation concerns at an August 2020 meeting attended by the individual who ultimately terminated him. I find that the proposed amendment does not amount to a new count of discrimination, i.e., it does not allege a new reason for the termination, but it provides potentially important context for the complaint by alleging that Pugmire raised substantially similar concerns in August. By amending the complaint, the Secretary properly seeks to conform the pleadings with evidence that will be adduced at hearing. *See Faith Coal Co.*, 19 FMSHRC 1357, 1361-62 (Aug. 1997).

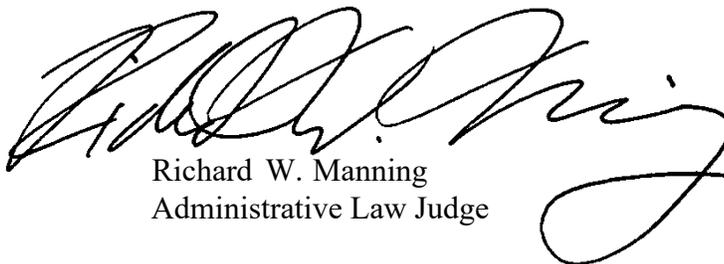
Administrative pleadings are to be broadly construed and easily amended if adequate notice is provided and there is no prejudice to the opposing party. Respondent seemingly argues that the Secretary should be barred from amending the complaint to include information that was known at the time, but not included in the complaint as originally filed. I disagree. The Secretary only learned of the details of the meeting after Respondent provided its responses to written discovery. Moreover, I find that the motion provides ample notice of the proposed amendment. As the Secretary correctly points out, although written discovery has commenced, “there is currently no deadline set for written discovery, depositions have not been scheduled, and there is currently no hearing date.” Mot. 6. Further, to avoid additional discovery and possibly resolve this matter without the need for a hearing, the parties recently agreed to participate in mediation facilitated by court appointed settlement counsel. Given the early stage of this proceeding, I find that Respondent has adequate notice of the proposed amendment.<sup>2</sup>

---

<sup>2</sup> In *Brannon v. Panther Mining, LLC*, 31 FMSHRC 1277, 1279 (Sept. 2009) (ALJ) Former Commission Judge Barbour granted a motion to amend a discrimination complaint to include additional protected activity even though the proceeding was much further along, i.e., a hearing date had been set and depositions had already occurred. In granting the motion he stated that “the company may feel compelled to amend its answer, conduct additional discovery, amend its pending motion and supplement its brief in support of the motion, the expenses inherent in such activities are the necessary consequences of litigation, costs the company (and any litigant) must be prepared to bear.” *Id.*

While Respondent does not allege that it will suffer prejudice, it asserts that the motion should nevertheless be denied because the claims made in the Secretary's motion are "duplicative" and, in turn, "futile." I disagree. Even if the concerns raised during the August 2020 meeting are substantially like those raised when Pugmire removed the headings from service, the events took place on two separate occasions. Again, as mentioned above, I find that the proposed amendment provides potentially important context for the claim. As a result, I find that the two alleged protected activities are not duplicative and, in turn, that the proposed amendment is not futile for purposes of this discrimination complaint.

For the reasons set forth above, the Secretary's Motion for Leave to File First Amended Complaint is **GRANTED**.<sup>3</sup>



Richard W. Manning  
Administrative Law Judge

Until further notice, case issuances of the Federal Mine Safety and Health Review Commission (FMSHRC), including notices, decisions, and orders, will be sent only through electronic mail. This includes notices, decisions, and orders described in 29 CFR 2700.4(b)(1), 2700.24(f)(1), 2700.45(e)(3), 2700.54, and 2700.66(a). Further, FMSHRC will not be monitoring incoming physical mail or facsimile described in Procedural Rule 2700.5(c)(2). If possible, all filings should be e-filed as described in 29 CFR 2700(c)(1).

---

<sup>3</sup> By granting the motion, the court is not passing judgement on whether the additional allegations amount to protected activity. Complainant bears the burden of proof and must present credible evidence on this point at hearing.

Distribution:

Laura E. Beverage, Jackson Kelly PLLC, 1099 18th Street, Suite 2150, Denver, CO 80202  
([lbeverage@jacksonkelly.com](mailto:lbeverage@jacksonkelly.com))

Natasha Magness, Office of the Solicitor, U.S. Department of Labor, 300 Fifth Ave., Suite 1120,  
Seattle, WA 98104 ([magness.natasha.a@dol.gov](mailto:magness.natasha.a@dol.gov))

Miguel Pugmire ([miguelpugmire@gmail.com](mailto:miguelpugmire@gmail.com))