

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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October 6, 2014

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA) On Behalf  
of Cameron Garcia,  
Petitioner,

v.

VERIS GOLD U.S.A., INC.,  
Respondent.

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. WEST 2014-788-DM  
MSHA Case No.: WE MD 14-17

Mine: Jerritt Canyon Mill Mine  
Mine ID 26- 01621

**DECISION DISSOLVING TEMPORARY REINSTATEMENT ORDER**

On July 16, 2014, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Act”) and 29 C.F.R. §2700.45, this court ordered the temporary reinstatement of the Petitioner, Cameron Garcia, upon a finding that his Temporary Reinstatement Application was “non-frivolous.” *Sec’y of Labor o/b/o Cameron Garcia v. Veris Gold USA*, 2014 WL 3725868, \* 8-9 (ALJ)(July 2014).

On August 20, 2014, this court approved the terms of the parties’ Amended Joint Agreement, which agreed to the temporary economic reinstatement of Cameron Garcia in lieu of physical reinstatement.<sup>1</sup> Within the Agreement, the parties stated:

The parties agree that the economic reinstatement shall remain in place: (1) until such time as the Secretary declines to pursue a discrimination proceeding on Mr. Garcia’s behalf; or, (2) if a discrimination proceeding is brought by the Secretary, until the disposition of the discrimination proceeding by the Commission; or (3) an agreement of the parties. ...

August 20, 2014 Decision Approving Temporary Economic Reinstatement Agreement, 2.

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<sup>1</sup> After reviewing the parties original Joint Motion, this court requested that parties submit an amended motion with language pursuant to *Vulcan Constr. v. FMSHRC*, 700 F.3d 297, 310 (7<sup>th</sup> Cir. 2012) regarding the potential termination of Mr. Garcia’s temporary reinstatement. The parties complied with the court’s request without delay or objection.

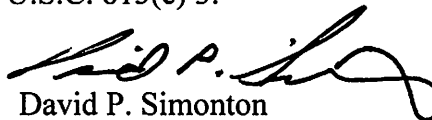
On September 30, 2014, MSHA's Technical Compliance and Investigation Office issued a letter to Mr. Garcia and the Respondent, stating that due to insufficient evidence, the Secretary of Labor would not file a merits discrimination case with the Commission on Mr. Garcia's behalf. MSHA Determination Letter. On October 3, 2014 the Respondent filed a Motion to Dissolve Mr. Garcia's temporary reinstatement. Mot. to Dissolve. The Respondent stated that they consulted with the Secretary on this matter and that the Secretary did not oppose the dissolution of Mr. Garcia's temporary economic reinstatement. Mot. to Dissolve, 1.

Several federal appellate courts have recently announced that for 105(c) discrimination claims, "the temporary reinstatement provision ends when the Secretary's involvement ends." *Vulcan Constr. v. FMSHRC*, 700 F.3d 297, 310 (7<sup>th</sup> Cir. 2012); *See also North Fork Coal Corp. v. FMSHRC*, 691 F.3d 735, 744 (6<sup>th</sup> Cir. 2012) (holding that temporary reinstatement order must be dissolved when the Secretary of Labor concludes there is no evidence of discrimination).

As such, binding precedent requires that this court's July 16 Temporary Reinstatement Order and the August 20 Temporary Economic Reinstatement Agreement be dissolved.

### ORDER

This court's July 16, 2014 Order directing the temporary reinstatement of Cameron Garcia is hereby **DISSOLVED**. Furthermore, the terms and obligations of the August 20, 2014 Temporary Economic Agreement are **TERMINATED** effective September 30, 2014.<sup>2</sup> Mr. Garcia may elect to file a discrimination complaint on his own behalf with the Commission within 30 days' notice of the Secretary's determination.<sup>3</sup> 30 U.S.C. 815(c) 3.

  
David P. Simonton  
Administrative Law Judge

Distribution: (First Class U.S. Mail)

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<sup>2</sup> MSHA notified Mr. Garcia and the Respondent that it did not intend to pursue a 105(2) complaint on September, 30, 2014. The parties' August 20th Temporary Economic Agreement stated that the temporary reinstatement would continue "until such time as the Secretary declines to pursue a discrimination proceeding." As such, the Respondent is obligated to compensate Mr. Garcia per the terms of the Temporary Economic Reinstatement Agreement through September 29, 2014.

<sup>3</sup> Mr. Garcia is directed, if he elects to file a Section 105 (c) (3) complaint, to file his complaint by mail no later than October 30, 2014 to the: Federal Mine Safety and Health Review Commission 1331 Pennsylvania Avenue, NW 520 N Washington, D.C. 20004-1710.