

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of Administrative Law Judges
1331 Pennsylvania Avenue, N.W., Suite 520N
Washington, D.C. 20004

October 14, 2014

SECRETARY OF LABOR, : TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH : PROCEEDING
ADMINISTRATION (MSHA), on behalf of :
JEFFERY HARRIS, : Docket No. WEST 2014-935-DM
Petitioner, : WE MD 14-22
 :
v. :
 : Clayton Mine
HANSON AGGREGATES MID-PACIFIC, : Mine ID 04-00159
INC., :
Respondent. :

DECISION DISSOLVING TEMPORARY REINSTATEMENT ORDER

This temporary reinstatement proceeding is before me upon the Application for Temporary Reinstatement brought by the Secretary of Labor (“Secretary”), on behalf of Jeffery Harris, pursuant to section 105 of the Federal Mine Safety and Health Act of 1977 (“Mine Act”). 30 U.S.C. § 815. The Secretary made his application on August 15, 2014, and Chief Administrative Law Judge Robert J. Lesnick assigned this case to me on August 20, 2014.

On August 28, 2014, I issued an order approving the terms of the parties’ Settlement Agreement and Joint Motion for Temporary Reinstatement. My August 28 Order temporarily reinstated Harris and directed the Secretary to report to my law clerk regarding the status of his investigation. According to the terms of the agreement, Harris’s temporary economic reinstatement would terminate upon a finding by the Secretary that section 105(c)(1) of the Mine Act has not been violated.

On October 9, 2014, MSHA’s Technical Compliance and Investigation Office issued a letter to Harris and Hanson Aggregates Mid-Pacific, Inc. (“Hanson” or “Respondent”) stating that due to insufficient evidence the Secretary would not file a merits discrimination case with the Commission on Harris’s behalf. (MSHA Determination Letter at 1.)

Several federal appellate courts have recently determined that for section 105(c) discrimination claims, “the temporary reinstatement provision ends when the Secretary’s involvement ends.” *Vulcan Constr. Materials, L.P. v. FMSHRC*, 700 F.3d 297, 310 (7th Cir. 2012); *see also N. Fork Coal Corp. v. FMSHRC*, 691 F.3d 735, 744 (6th Cir. 2012) (holding that temporary reinstatement order must be dissolved when the Secretary concludes there is no evidence of discrimination). Thus, binding precedent requires that I dissolve my August 28, 2014, order.

WHEREFORE, it is hereby **ORDERED** that my August 28, 2014, order directing the temporary reinstatement of Harris is hereby **DISSOLVED**. Furthermore, the terms and obligation of the parties’ Settlement Agreement are **TERMINATED** effective October 9, 2014.

Harris may elect to file a discrimination complaint on his own behalf with the Commission within 30 days' notice of the Secretary's determination.¹ 30 U.S.C. § 815(c)(3).



Alan G. Paez
Administrative Law Judge

Distribution: (Via Electronic Mail & U.S. Mail)

Bruce L. Brown, Esq., U.S. Department of Labor, Office of the Solicitor, 300 Fifth Street,
Suite 1120, Seattle, WA 98104
(brown.bruce.l@dol.gov)

Margaret S. Lopez, Esq., Ogletree, Deakins, Nash, Smoak & Stewart PC, 1909 K Street, Suite 1000,
Washington, D.C. 20006
(Margaret.Lopez@ogletreedeakins.com)

Jeffery Harris, 3365 Gray House Lane, Stockton, CA 95206 (Via U.S. Mail Only)

/pjb

¹ If Harris elects to file a section 105(c)(3) complaint, he is directed to file his complaint by mail no later than November 10, 2014, to: Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, D.C. 20004