

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
721 19<sup>th</sup> ST. SUITE 443  
DENVER, CO 80202-2500  
TELEPHONE: 303-844-5266 / FAX: 303-844-5268

December 23, 2019

PETE TARTAGLIA, JR.,  
Petitioner,

v.

FREEPORT-MCMORAN BAGDAD,  
INC.,  
Respondent.

DISCRIMINATION PROCEEDING

Docket No. WEST 2018-0362-DM  
MSHA Case No. RM-MD-18-07

Mine: Freeport-McMoran Bagdad Inc.  
Mine ID: 02-00137

**DECISION AND ORDER**  
**ORDER GRANTING MOTION TO UPHOLD FINAL DECISION APPROVING**  
**SETTLEMENT**  
**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS**

Before: Judge Simonton

This case is before me pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, (“Mine Act”), 30 U.S.C. § 815(c)(3) and the Commission’s Order dated November 7, 2019. Pete Tartaglia, Jr. (“Tartaglia” or “Complainant”) brought this case against Freeport-McMoran Bagdad Inc. (“Freeport” or “Respondent”), alleging that the company violated the Mine Act when it terminated him. This case has settled, and the Commission has now remanded the matter to me to determine whether relief from the final order is warranted and whether sanctions against any party are appropriate.

**I. BACKGROUND**

In late April 2018, Tartaglia filed a complaint of discrimination on his own behalf with this Commission. The case was assigned to me on June 6, 2018. A hearing was held September 19–20, 2018 in Phoenix, Arizona. On those two days, the hearing was periodically paused and resumed in order to facilitate intermittent discussions of settlement. Ultimately, the parties reached a settlement and read the terms of the agreement into the record. The parties agreed to confidentiality as to its terms.

In the months following the hearing, after Freeport produced a written version of the settlement, the court held a number of conference calls with the parties to address concerns Tartaglia had with the details and language of the written version. Several revisions were made to the written document and Tartaglia ultimately signed the agreement, as did the Respondent. Before the written agreement was entered into the record in this case, however, Tartaglia allegedly encountered other conflicts at the mine and determined that he no longer wished to and was no longer required to adhere to the terms of that agreement. Respondent ultimately did not

submit the executed written version of the agreement for entrance into the record.

On January 14, 2019, this court issued an order which gave Tartaglia ten days to either provide the court with proof that he had complied with the settlement terms reached at the time of the hearing, or to notify the court and Freeport that he wished to submit a post-hearing brief and pursue a decision on the merits. Tartaglia failed to elect either option within the time provided.

On January 25, 2019, Freeport submitted a motion to enforce the settlement agreement reached at the hearing as stated on the record and to file that portion of the hearing transcript under seal. Respondent's Motion to Enforce Settlement Agreement and Motion to File Hearing Transcript Under Seal, at 2–3. Freeport contended that under Arizona state law, Freeport's offer and consideration and Tartaglia's recognition and assent to the settlement terms on the record rendered the agreement enforceable. *Id.* at 3. Freeport argued that the court should therefore approve the settlement agreement and enforce its terms as stated in the record. *Id.*

The court acknowledged receipt of Freeport's motion and allowed Tartaglia to respond as to why the settlement should not be approved and this case dismissed. On February 1, 2019, Tartaglia filed a brief response which reiterated that he would not comply with the settlement terms. Tartaglia cited alleged "fraudulent criminal activity" that occurred after the agreement was reached on the record. Complainant's Response to Order of Acknowledgement, at 2. He asserted that Freeport was taking money out of his pay in order to satisfy the terms of the settlement agreement. *Id.* at 1. These allegations were vague and were not substantiated by any evidence. More importantly, they did not relate to Tartaglia's initial Section 105(c)(3) complaint or to the specific terms of the settlement agreement.

On February 11, 2019, this court issued a Decision Approving Settlement Under Seal and Order Enforcing Settlement Agreement. In that decision and order, I found that the agreement entered into on the record during the hearing on September 20, 2018 was valid and enforceable. Tartaglia had put forth no evidence that Freeport misrepresented or failed to comply with its responsibilities under the settlement agreement. Instead, Tartaglia had consistently refused to comply with the terms of the agreement, that he had agreed to at the hearing. Having received no valid legal justification to set aside the settlement agreement and no request from Tartaglia stating he wished to pursue a decision on the merits, I granted Freeport's motion to enforce the settlement agreement.

The February 11, 2019 decision and order concluded my jurisdiction over this case. 29 C.F.R. § 2700.69(b). Tartaglia then had 30 days to file a petition for discretionary review of the decision with the Commission. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). He did not file a petition within that time frame.

On March 14, 2019, one day after the 30-day window for filing a petition for discretionary review had passed, the Commission received a letter from Tartaglia ("March Letter"). At that time, the Commission was still within the 40-day window in which it could

direct review of my initial decision in this matter. 30 U.S.C. § 823(d)(1). However, the Commission did not direct review of the decision and it became final on March 25, 2019.

Tartaglia's March Letter remained unaddressed by the Commission for several months. Furthermore, according to Freeport, Tartaglia never served the Respondent with a copy of the letter. This court's review confirms that Tartaglia never provided the Commission with confirmation that he served the Respondent with the letter. Both Freeport and this court remained unaware that the letter existed until September 9, 2019, when Tartaglia referenced the document during a conference call between the parties and the court concerning a separate case brought by Tartaglia against Freeport. After the call, the court located the letter, sent a copy to Freeport, and inquired with the Commission as to the status of the document.

On October 9, 2019, Freeport filed a Motion for Clarification with the Commission, seeking confirmation that the court's February 11, 2019 decision and order was considered final. Tartaglia's response was received by the Commission on October 16, 2019. On October 22, 2019, before the Commission had taken action on the Motion for Clarification, Freeport filed an Amended Motion for Sanctions against Tartaglia, claiming that Tartaglia's response to the motion contained "false, threatening, and slanderous accusations" in violation of Commission Procedural Rule 80. Respondent's Amended Motion for Sanctions, at 2-3.

On November 7, 2019, the Commission issued an order confirming that my decision and order was final, but remanding the case to me nonetheless. The Commission explained that, in the March Letter, Tartaglia was "essentially requesting review of [my] decision approving the settlement in the discrimination proceeding." *Tartaglia v. Freeport-McMoRan Bagdad Inc.*, 41 FMSHRC \_\_\_, slip op., at 1, No. 2019-362-DM (Nov. 7, 2019). The case was remanded for me to determine whether relief from the final order is warranted, and whether sanctions against any party are appropriate.

On November 25, 2019, Freeport filed with the court a Motion to Uphold Final Decision Approving Settlement Under Seal and Order Enforcing Settlement Agreement in Docket No. WEST 2018-362-DM and to Impose Sanctions ("Freeport's November Motion"). The motion conveys Freeport's opinion that the settlement should be upheld and enforced and reiterates its request for sanctions against Tartaglia. Freeport's November Motion, at 6-8. After Freeport submitted this motion, I issued an Acknowledgement of Receipt informing Tartaglia that he had an opportunity to respond. He submitted a response on December 16, 2019, which essentially repeats previous nonspecific allegations of fraud and requests review of the record in this case.

## **II. DISPOSITION**

### **A. The March Letter**

In now reviewing the March Letter and all other filings in this matter, I find that relief is not appropriate for several reasons. First, if Tartaglia's March Letter is to be treated as a petition for review, it is a defective filing. It was late and was not served upon the Respondent. Commission Procedural Rule 70(a) allows parties 30 days to file a petition for discretionary review with the Commission, which is effective upon receipt. 29 C.F.R. § 2700.70(a).

requires that “[a] copy of each document filed with the Commission shall be served on all parties.” *Id.* § 2700.7. Rule 7(e) mandates that “[a]ll pleadings and other filed documents shall be accompanied by a statement setting forth the date and manner of service.” The March Letter was not served to Freeport, and did not contain a statement asserting the date and manner of service. Even if Tartaglia was unaware of the requirements of Rule 7, the notice accompanying the Decision Approving Settlement Under Seal and Order Enforcing Settlement Agreement should have adequately alerted him to the need to serve filings on Respondent. The Commission has interpreted the March Letter essentially as a petition for review. The notice states plainly that “[a] Petition for Review must be served on the opposing party.”

The Commission holds the pleadings of pro se litigants to less stringent standards than pleadings submitted by attorneys. *Martin v. Asarco, Inc.*, 14 FMSHRC 1269, 1273 (Aug. 1992) (citations omitted). However, pro se litigants are not exempt from following the agency’s procedural rules. The Commission has denied requests for relief from final Commission decisions where pro se litigants have submitted untimely requests without satisfactory explanations for why the requests were late. *See Cusic Trucking, Inc.*, 21 FMSHRC 701, 702–03 (July 1996); *see also Dykhoff v. U.S. Borax Inc.*, 21 FMSHRC 976, 977-78 (Sept. 1999). Here, Tartaglia provided no explanation for his late submission. Treating the letter as a request for relief, this deficiency coupled with his critical failure to serve the letter on Freeport warrant a finding that relief from the Decision Approving Settlement Under Seal and Enforcing Settlement Agreement is not appropriate.

Second, prior to issuing the February 11, 2019 decision, and after multiple conference calls to address Tartaglia’s issues with the written agreement, I gave Tartaglia a choice. He had an opportunity to either comply with the terms of the agreement or to request that the parties be permitted to submit post-hearing briefs and seek a decision from this court on the merits of the case. Tartaglia failed to avail himself of either option. After Freeport submitted its Motion to Enforce Settlement Agreement, I gave Tartaglia yet another opportunity to address why the settlement agreement should not be enforced. Though he submitted a timely response, he failed to address why the settlement agreement should not be enforced. As discussed above, his allegation that money was being taken from his check to pay the settlement was not relevant to his initial discrimination complaint or to whether the agreement reached orally at hearing was enforceable and valid. In his multiple opportunities to speak up before the decision was issued, Tartaglia did not once claim that the agreement reached at hearing was invalid. On the contrary, his own references to the settlement support the contention that Tartaglia understood the agreement to be both valid and enforceable.

Third, even if it had been filed on time and properly served on Respondent, I do not consider Tartaglia’s March Letter to be an adequate request for relief of the decision approving settlement. The document consists of one handwritten page dated March 11, 2019, one undated typed page, copies of Tartaglia’s prior submissions, various copies of employment reports and letters, and tax records. A close reading of the submission reveals that Tartaglia does not specifically request a review of the settlement agreement reached at hearing. The March Letter

does allege fraudulent activity,<sup>1</sup> but the claims do not relate to Tartaglia's initial complaint of discrimination or to any supposed invalidity of the settlement agreement. Instead, the purpose of the March Letter appears to be to notify the Commission that Tartaglia had ordered a portion of the hearing transcript containing one witness's testimony and to complain about said testimony. He notes new, unspecified retaliatory activity and brings up an overpayment issue that was discussed at hearing but that was not material to the settlement reached by the parties. Even under a generous interpretation, this filing does not request review of the court's decision approving settlement.

Fourth is Tartaglia's currently pending discrimination case against Freeport. Assigned to this court, Docket No. WEST 2019-0382-DM concerns substantially the same issues as those addressed by Tartaglia in the March Letter. As noted by the Commission in its order remanding this case to me, the March Letter and Freeport's motion for clarification "raise issues that are not directly or fully addressed in the current record." *Tartaglia*, 41 FMSHRC \_\_\_, slip op., at 2. This is an accurate assessment. These issues are, however, being addressed in Tartaglia's currently pending 2019 case against Freeport. In his one-page complaint in that case, Tartaglia alleges fraudulent activity concerning a supposed double-payment of an arbitration award and accuses Freeport of breaching the settlement agreement. The overpayment issue and any concerns regarding a possible breach of the valid settlement agreement will be heard by this court at a hearing currently scheduled for WEST 2019-0382-DM on January 15, 2019. Accordingly, for this reason and the others noted above, I find it appropriate once again to affirm the validity and enforceability of the settlement agreement the parties have entered into and dismiss this docket.

### **B. Freeport's Motion for Sanctions**

On October 22, 2019, Freeport filed an Amended Motion for Sanctions with the Commission. In its order remanding this case, the Commission directed this court to determine if sanctions are appropriate in this matter. Freeport alleges that Tartaglia's response to Freeport's motion for clarification contained false, threatening, and slanderous accusations and

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<sup>1</sup>The March Letter contains allegations that Respondent's counsel and Respondent "have there [sic] own agenda but its not according to the law, its Flagrant Fraudulent Activity at will to [sic] the level of criminal activity ." March Letter, at 2. It further alleges that Respondent's witness lied on the stand at hearing. *Id.* at 1. The decision I issued in this matter solely approved the parties' settlement agreement reached orally at the hearing held in this matter. Because I did not issue a decision on the merits of this case, no testimony or other evidence presented at hearing factored into the final disposition of this case. Accordingly, these allegations are immaterial to the issue before me—the settlement. Though I may refer disciplinary concerns to the Commission in the form of a referral pursuant to Procedural Rule 80(c), I choose not to do so in this case because I do not have actual knowledge of circumstances which warrant disciplinary proceedings. To the extent that Tartaglia wished to make a disciplinary referral to the Commission either in the March Letter or in subsequent filings, he has not done so under the procedure set forth in the rules. If he wishes to now make such a referral, he must follow the procedure outlined in Rule 80(c). The entirety of Rule 80 is attached as Appendix A.

threats in violation of Commission Procedural Rule 80, 29 C.F.R. § 2700.80(a). Respondent's Amended Motion for Sanctions, at 2–3. Through its motion, Freeport seeks an order of dismissal, “and/or other appropriate disciplinary action, including monetary sanctions, against Tartaglia for engaging in unprofessional conduct and failing to follow Commission Rules in failing to serve his prior pleading before the Commission on [Freeport's] counsel,” and also seeks an order “barring Tartaglia from appearing before the Commission or Commission Judges.” *Id.* at 4.

At this time, I find that dismissal based on Tartaglia's allegations and unprofessional conduct unnecessary.<sup>2</sup> Additionally, I will not impose monetary sanctions on Mr. Tartaglia or prohibit him from appearing before me. However, I grant Freeport's request, in part, for “other appropriate disciplinary action” by issuing Tartaglia a warning about his actions and behavior before this court. Tartaglia's response to Respondent's Motion for Clarification contained inappropriate, unsubstantiated accusations. These have no place in the filings before this court or the Commission. Tartaglia is hereby instructed to treat counsel for Freeport with an appropriate level of respect and professionalism in all future matters before this court. Personal attacks by either party toward each other will not be tolerated in future conference calls between the court and the parties, in filings, or at the hearing scheduled for Docket No. WEST 2019-0382-DM. Tartaglia is also hereby placed on notice that the Federal Mine Safety and Health Review Commission does not refer cases for criminal prosecution. Tartaglia's requests to this effect, such as his most recent demand that counsel for Freeport be placed on “the list to be Prosecuted [sic] to the fullest” are inappropriate and unwarranted. Complainant's Response to Respondent's Motion for Clarification, at 1.


I find it necessary to reiterate here that I am not making any rulings on the issue of breach of the settlement agreement in this decision. To whatever extent the parties still have yet to comply with the terms of that agreement, they should effectuate compliance now. Issues pertaining to any potential breach by either party may be addressed at the hearing scheduled in WEST 2019-0382-DM.

### III. ORDER

As detailed above, Respondent's Motion for Sanctions against Complainant is **GRANTED IN PART AND DENIED IN PART**. For the aforementioned reasons, I find that relief from the final decision issued in this matter is unwarranted. Freeport's Motion to Uphold Final Decision Approving Settlement is **GRANTED**. Freeport and Tartaglia are **ORDERED** to comply with the terms of the settlement agreement entered into on the record at hearing. Accordingly, this case is **DISMISSED**.

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<sup>2</sup> This case is being dismissed based on my finding that relief from the Decision Approving Settlement Under Seal and Order Enforcing Settlement Agreement is not warranted. *See supra* Part II.A. If Respondent wishes to pursue a disciplinary proceeding against Tartaglia, it may do so under the procedure provided by Rule 80(c). Rule 80 is attached as Appendix A.



David P. Simonton  
Administrative Law Judge

Distribution: (U.S. First Class Mail and e-mail)

Pete Tartaglia, Jr., 8340 N. Thornydale Road, #209 Suite 110, Tucson, AZ 85741

Laura E. Beverage, Karl F. Kumli, Jackson Kelly PLLC, 1099 18<sup>th</sup> Street, Suite 2150, Denver,  
CO 80202

## APPENDIX A

### § 2700.80 Standards of conduct; disciplinary proceedings.

(a) Standards of conduct. Individuals practicing before the Commission or before Commission Judges shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(b) Grounds. Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that such person has engaged in unethical or unprofessional conduct; has failed to comply with these rules or an order of the Commission or its Judges; has been disbarred or suspended by a court or administrative agency; or has been disciplined by a Judge under paragraph (e) of this section.

(c) Disciplinary proceedings shall be subject to the following procedure:

(1) Disciplinary referral. Except as provided in paragraph (e) of this section, a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. Whenever the Commission receives a disciplinary referral, the matter shall be assigned a docket number.

(2) Inquiry by the Commission. The Commission shall conduct an inquiry concerning a disciplinary referral and shall determine whether disciplinary proceedings are warranted. The Commission may require persons to submit affidavits setting forth their knowledge of relevant circumstances. If the Commission determines that disciplinary proceedings are not warranted, it shall issue an order terminating the referral.

(3) Transmittal and hearing. Whenever, as a result of its inquiry, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, determines that the circumstances warrant a hearing, the Commission's Chief Administrative Law Judge shall assign the matter to a Judge, other than the referring Judge, for hearing and decision. The Commission shall specify the disciplinary issues to be resolved through hearing and may designate counsel to prosecute the matter before the Judge. The Judge shall provide the opportunity for reply and hearing on the specific disciplinary matters at issue. The individual shall have the opportunity to present evidence and cross-examine witnesses. The Judge's decision shall include findings of fact and conclusions of law and either an order dismissing the proceedings or an appropriate disciplinary order, which may include reprimand, suspension, or disbarment from practice before the Commission.

(d) Appeal from Judge's decision. Any person adversely affected or aggrieved by the Judge's decision is entitled to review by the Commission. A person seeking such review shall file a notice of appeal with the Commission within 30 days after the issuance of the Judge's decision.



(e) Misconduct before a Judge. A Judge may order the removal of any person, including a representative of a party, who engages in disruptive conduct in the Judge's presence. If a representative is ordered removed, the Judge shall allow the party represented by the person a reasonable time to engage another representative. In all instances of removal of a person for disruptive conduct, the Judge shall place in the record a written statement on the matter. A party aggrieved by a Judge's order of removal may appeal by requesting interlocutory review pursuant to § 2700.76 or, alternatively, may assign the Judge's ruling as error in a petition for discretionary review.

29 C.F.R. § 2700.80.