

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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February 24, 2025

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA) obo  
JAMIE M. KOSLOP,  
Complainant,

v.

ATLANTIC CARBON GROUP, INC.,  
Respondent

TEMPORARY REINSTATEMENT

Docket No. PENN 2025-0067  
MSHA No. PITT-CD-2025-01

Mine: Stockton Plant & Hazelton Shaft  
Mine  
Mine ID: 36-08766

## DECISION AND ORDER OF TEMPORARY REINSTATEMENT OF JAMIE M. KOSLOP

Before: Judge Lewis

On January 28, 2025, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 801, *et. seq.*, and 29 C.F.R. § 2700.45, the Secretary of Labor (“Secretary”) filed an Application for Temporary Reinstatement (“Application”) of miner Jamie M. Koslop (“Complainant” or “Koslop”) to his former position as a laborer with Atlantic Carbon Group, Inc., (“Respondent”), at Hazelton Shaft Mine and Stockton Plant (collectively, “mine”) pending final hearing and disposition of the case.

The Application followed the timely filing of a Discrimination Complaint by Koslop on October 28, 2024, alleging, in effect, that his termination from the mine was motivated by his protected activity. The Secretary represents in the Application that Koslop’s Discrimination Complaint was “not frivolously brought” under Section 105(c)(2) of the Mine Act and requests an Order directing Respondent to temporarily reinstate Koslop to his former position as a laborer. On February 6, 2025, Respondent timely filed a Request for Hearing on the Application.

A virtual hearing was held via Zoom for Government on February 14, 2025. Counsel for the Secretary gave an opening statement and presented Koslop’s testimony. 29 C.F.R. § 2700.45(d). Respondent’s counsel then cross-examined Koslop. After the Secretary rested, Respondent’s counsel gave an opening statement (which had been deferred at counsel’s request), and then presented the testimony of Michael Basile, General Manager of Respondent. The Secretary’s counsel opted not to cross-examine Respondent’s witness. During the hearing, both sides offered documentary evidence, 29 C.F.R. § 2700.45(d), and three exhibits were admitted:

J1 (stipulations); CX-C (Koslop’s Statement in support of his Discrimination Complaint),<sup>1</sup> and RX-D (Koslop’s pay statement dated Sept. 27, 2024). Hearing Transcript (“Tr.”), at 5:10-19; 112:23 – 113:5; 113:12 – 114:15. Both sides offered closing argument.

For the reasons set forth below, and consistent with Section 105(c)(2) of the Mine Act, I grant the Application and order temporary reinstatement of Koslop.

### **TESTIMONY & EVIDENCE**

#### **A. Discrimination Complaint and Application**

On October 28, 2024, Koslop filed a Discrimination Complaint with MSHA alleging:

I feel I was wrongfully terminated because of the safety violations I pointed out to management and MSHA. To be made whole, I would like my job back with backpay.

Application, Exh. B, at 2.

With the Application, the Secretary submitted the Declaration of Joseph M. Patula, a Special Investigator employed by MSHA, who attested under oath:

2. As part of my official responsibilities, I investigate claims of discrimination filed by miners pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977 (the “Mine Act”). In this capacity I have investigated the discrimination claim filed by Jamie M. Koslop on October 28, 2024. My investigation to date has
  - a. At all relevant times, Atlantic Carbon Group, Inc. (“Operator” or “ACG”), was a corporation and is a “person” as defined in § 3(f) of the Mine Act.
  - b. The applicant, Jamie M. Koslop (“Mr. Koslop”), was employed by the Operator as a laborer at the Operator’s Hazelton Shaft Mine and Stockton Plant (collectively, “mine”) and therefore, was a “miner” within the meaning of § 3(g) of the Mine Act.
  - c. Mr. Koslop was employed at the mine for approximately twenty months, from December 12, 2022, through September 24, 2024.

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<sup>1</sup> The Secretary attached select pages of Koslop’s Statement to the Application (*see* Exh. B), whereas CX-C, as admitted, contained his full 10-page Statement.

- d. On October 28, 2024, Koslop filed a discrimination complaint after his employment was terminated for “dereliction of duty” according to mine management[.]
- e. On October 31, 2024, I interviewed Mr. Koslop and he provided a statement.
- f. In his interview and statement, Mr. Koslop reported that when he arrived to work on September 24, 2024, Chief Operating Officer for ACG, Mike Bowling, terminated his employment.
- g. Mr. Koslop asserted that he was fired in retaliation because he:
  - i. provided an interview with MSHA during an investigation following a fatal mine accident that occurred on July 25, 2024;
  - ii. made safety complaints of unsafe conditions involving mine machinery and equipment to management and MSHA following the accident;
  - iii. undertook efforts to become an MSHA Miners’ Representative during the months of August and September of 2024; and
  - iv. refused to perform a work assignment on September 23, 2024, that is, unjam the picking room table using a manlift, because he was not task trained.

Application, Exh. A at ¶ 2 (Jan. 27, 2025). The Secretary cited this Declaration as the basis for the formal request for temporary reinstatement. Application at ¶ 1.

## **B. Request for a Hearing**

In its Request for a Hearing, Respondent contended the Discrimination Complaint failed to refer to “any specific instance of protected activity.” Request for Hrg., ¶ 2. Respondent also denied there is reasonable cause to believe that any protected activity contributed to its decision to terminate Koslop, *id.* at ¶ 7, and contended his employment was terminated “for repeated instances of poor performance” and “substandard performance.” *Id.* at ¶¶ 10, 11. In the alternative, Respondent contended: “[T]o the extent that it is found in this or any subsequent proceeding involving this complaint that adverse action was motivated in any part by protected activity, [Respondent] was also motivated by the unprotected activity and would have taken the same adverse action against the Complainant for the unprotected activity alone.” *Id.* at ¶ 12.

### C. Joint Stipulations

The parties submitted the following joint stipulations prior to the start of the hearing:

1. Atlantic Carbon Group, Inc., is and was at all relevant times, the operator of Hazelton Shaft and Stockton mines, located in Hazle Township, Pennsylvania.
2. Hazelton Shaft, Mine ID No. 3608766 is a “mine” as defined in Section 3(h) of the of the Federal Mine Safety and Health Act of 1977 (“Mine Act”). 30 U.S.C. § 802(h).
3. Stockton, Mine ID 3608745, is a mine as defined in Section 3(h) of the Mine Act, 30 U.S.C. § 802(h).
4. At all times relevant to this proceeding, products of Atlantic Carbon Group’s Hazelton Shaft and Stockton mines entered commerce, or the operations or products thereof affected commerce, within the meaning and scope of Section 4 of the Mine Act, 30 U.S.C. § 803.
5. Atlantic Carbon Group, Inc., is an “operator” as defined in Section 3(d) of the Mine Act, 30 U.S.C. § 802(d), and is person as defined Section 3(f) of the Mine Act, 30 U.S.C. § 802(f).
6. Jamie Koslop was employed as a laborer by Atlantic Carbon Group, Inc., from on or about December 12, 2022, until he was terminated on September 24, 2024.
7. Jamie Koslop is a “miner” within the meaning of § 3(g) of the Mine Act, 30 U.S.C. § 302(g).
8. Atlantic Carbon Group, Inc., is subject to the jurisdiction of the [F]ederal [M]ine [S]afety and [H]ealth [R]eview Commission. The presiding administrative law judge has the authority to hear this case and issue a decision regarding this case, pursuant to § 105 of the Act, 30 U.S.C. § 815, as amended.

Stips. for Temp. Reinstatement Hrg. (Feb. 14, 2025), admitted as J-1.

## D. Summary of Testimony

### 1. Complainant's Testimony on Direct Examination

#### a. *Background*

Koslop was hired by Respondent as a laborer on December 12, 2022, and continuously served in that position until his employment was terminated on September 24, 2024. Tr. at 12:13-24, 63:1-3, 64:14. Koslop, 47 years old at the hearing, *id.* at 12:9-10, described his “many duties” as a laborer as “basically to clean up under . . . [and] around belts,” “shoveling, cleaning up under belts, and keeping equipment running.” *Id.* at 13:1-6. When he was hired (and up through the time of a fatal accident that occurred on July 25, 2024, *see infra* D.1.b), Koslop worked at Respondent’s Hazelton Shaft Mine, a coal preparation plant.<sup>2</sup> *Id.* at 14:6-8. “Across the street” from Hazelton Shaft Mine was Respondent’s Stockton Plant. *Id.* at 45:11-14; 46:8-12. Koslop was “task-trained on and . . . signed off on” each position he performed; he had also received basic MSHA mine safety training. *Id.* at 13:22 – 14:5. Koslop continuously worked the second shift (but for a short time described *infra* when his laborer crew was temporarily transferred to the first shift). *Id.* at 44:1-5. He worked “[t]en-hour shifts Monday through Friday and then every other Saturday,” *id.* at 44:21-23, and his hourly schedule for the second shift was 4:00 p.m. to 2:00 a.m. *Id.* at 45:1-5.

When he began working at Hazelton Shaft Mine, Koslop was assigned to “the picking room in the headhouse.” Tr. at 14:6-11. He described this as an area where basketball-sized pieces of coal “get[] dumped in from a loader into a hopper” and vibrated on a belt that goes into a crusher. *Id.* at 14:14-20. Koslop would pick pieces of log and sticks off the belt and throw those items “down to a different belt to separate the wood from the coal.” *Id.* at 14:21-23. After six months of picking room duty, he was transferred “into the breaker” for approximately four or five months, and then to “retail” where he worked until the time of the fatal accident (*see infra* D.1.b). *Id.* at 14:24 – 15:3. Koslop’s duties in retail included filling up the “coal truck as it would come in” with product held in separate hoppers as well as cleaning, i.e., sweeping up under belts, keeping “tail wheels and head wheels” clean “so they don’t back up [and] jam the belt, cause any problems.” *Id.* at 15:13 – 16:6.

#### b. *Fatal Accident*

A fatal accident occurred at Hazelton Shaft Mine on July 25, 2024, while Koslop was working. Tr. at 17:2-12. At that time, the mine was “down”—meaning “the plant wasn’t running” and the miners were “doing repairs [and] cleanup.” *Id.* at 16:7 – 17:1.

The miner who died was Brian Brotzman (“Brian”). Tr. at 21:21, 27:1. Brian had been Koslop’s neighbor for 15+ years; he was also a friend. *Id.* at 17:16-17; 20:15-16 (referring to Brian as “one of my best friends”); 33:22 (“my friend died”). Koslop had helped Brian get a job at Hazelton Shaft Mine and they would sometimes ride into work together. *Id.* at 17:16-25. The

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<sup>2</sup> In the Application, the Secretary characterized Hazelton Shaft Mine as a “coal preparation plant.” Application at ¶ 4. Koslop described it as “a coal breaker.” Tr. at 13:15-17.

fatal accident occurred on a conveyor belt near a hopper; Koslop could not recall the “exact name” of the area but described it as “a hopper that the coal went down into . . . separated between two belts. One [belt] went to the plant. The other [belt] went to a stockpile. Brian passed away on the belt that was running . . . to the stockpile.” *Id.* at 23:21 – 24:7.

On the night of the accident, and approximately 20 minutes beforehand, Koslop had been instructed by acting mine superintendent Dave Hampton (“Hampton”) to fix a rail on the scale outside the plant building. *Tr.* at 26:7-12; 20:24 – 21:8.<sup>3</sup> Koslop, Brian, and another miner (Rick) put the rail back on and re-entered the plant where Koslop, Brian, and another miner (Mark) then engaged in some welding. *Id.* at 26:12-18. Brian was twice called over the radio to report to the belt by the hopper; after the second call, Brian left the area where Koslop was working to report to the belt. *Id.* at 26:19 – 27:3. Not five minutes later, Koslop heard “*Miner down*” over the radio and went to the hopper area. *Id.* at 27:3-6. Koslop, who described the scene as one of “panic,” saw the supervisor (identified as “Hirko”) trying to remove a guard. *Id.* at 27:6-12. Koslop ran up and asked, “Where is he?” and Hirko said, “In there.” *Id.* at 27:8-10. Koslop “tore the guard off the machine” and “started pulling rocks out because [Brian] was down in between the belt and like, he was inside the hopper.” *Id.* at 27:13-14, 20-22. He found Brian’s hard hat as he removed rocks; he then found Brian’s neck and tried to take a pulse. *Id.* at 28:10-13. He did not find a pulse, observed Brian’s neck as “all black . . . [and] cold,” and then he smelled feces. *Id.* at 28:25 – 29:2. Koslop realized Brian was dead and screamed, “Could everybody just calm down. Brian is gone. Now we need to get him out of here. We got to get his body out of here.” *Id.* at 29:3-8. Asked to describe any material on the belt at the time of the accident, Koslop testified:

There was a lot of material on the belt, a lot, because at the time when I started digging, I assumed when I got up there I tore the guard up. I was in a panic. I assumed the guard it was locked out. . . . The material – there had to be about 12 tons – 12 to 15 tons of material. I mean, the belt was 75 yards long with about 3-foot of material, I’d say, basketball size balls of rocks of coal and stuff on the belt. And it pushed him. [Brian] went through an 18-inch square, and he was stuck in there.

*Id.* at 28:4-24.<sup>4</sup> Koslop testified Brian “was standing on a belt when the accident occurred. *Id.* at 26:5-6.

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<sup>3</sup> Hampton had, at the time, recently been promoted from head electrician to acting mine superintendent.

<sup>4</sup> While recounting the accident, Koslop described how, when the paramedics arrived, the miners sought to find a set of belt clamps “to lock the belt out the proper way.” *Tr.* at 24:19-20; 25:7-8. Miners at the scene could “not find a set of belt clamps on the property,” and used a pair made and stored in a personal locker by a miner named Brendan. *Id.* at 25:8-17. Koslop later testified as to his concern, raised specifically with MSHA investigators after the accident (*see infra* D.1.c) about the lack of backstops on belts, placing his testimony about belt clamps into context. It is not clear if he reported lack of belt clamps specifically to MSHA investigators, although he did testify: “this was the night of the accident we used belt clamps that were . . . homemade. I don’t

c. *Interview with MSHA Investigators, Reporting of Safety Concerns & Miners' Representative*

There was an investigation involving MSHA following the fatal accident, Tr. at 18:16-24, and Koslop was interviewed by two or three MSHA investigators and one Pennsylvania state official in a conference room at Hazelton Shaft Mine.<sup>5</sup> *Id.* at 19:13-24, 20:1-6. Hampton walked by the open conference room door at one point and Koslop told the MSHA investigator who got up to close the door, ““You don’t have to close the door. I’m not hiding what I have to say to these people here”” and ““This buddy system that happens and everybody looks the other way can’t happen. I said, Somebody died.”” *Id.* at 20:9-20.

During the interview, Koslop told the MSHA investigators about safety concerns and violations at Hazelton Shaft Mine. Specifically, he told them about an incident involving the same belt involved in the fatal accident and how it did not have a backstop, which he described as “a gear that is going to prevent the conveyor belt from rolling backwards.” Tr. at 21:17 – 23:20. Koslop relayed how the same belt had “jammed up on [him] maybe two times” when he was working in the headhouse and that such was not normal. *Id.* at 21:17-24. When that belt backed up three months after Koslop started working, miners “locked the electric motor out” and Koslop opted to shove steel bars through the rollers on the head wheel and tail wheel. When another miner asked what he was doing, Koslop explained—in so many words—that he did not trust, while cleaning the belt, that locking out the electric motor was sufficient to hold the belt, in light of the “maybe 10 tons of material” on the belt. *Id.* at 22:4-23:2. Koslop had told his supervisor, Eddie Engle (“Engle”), about his concern and recalled Engle responding: “That belt has been like that for four years. There hasn’t been a backstop in it.” *Id.* at 23:7-11.

Koslop also told the MSHA investigators about an incident involving “the main feed plant belt,”<sup>6</sup> that occurred four or five weeks prior to the fatal accident—an incident he also brought to the attention of mine management. *Id.* at 29:14 – 30:22.<sup>7</sup> Koslop described what he told the investigators about that incident with the main feed plant belt:

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even know because I was supposed to ask – actually ask the MSHA employee for the clamps back for my friend because he didn’t get them back.” *Id.* at 25:24 – 26:4. He also testified regarding lack of lighting at the accident scene. *Id.* at 24:19 – 25:6.

<sup>5</sup> Koslop could not recall if the interview was held the day after the accident or the following Monday. Tr. at 18:23-24; 19:9-12. I take judicial notice July 25, 2025, was a Thursday. Koslop identified the state official as “Ollie,” testified that he knew this official, and referred to him by name at many points in his testimony. *E.g., id.* at 20:3-5; 29:15; 30:23.

<sup>6</sup> This was “another belt at the plant”—it “wasn’t the belt that Brian died on.” Tr. at 30:19-22.

<sup>7</sup> Koslop refers specifically to Ollie, the state official, while describing what he told officials about the incident with the main feed plant belt. He also refers to “them” and “they,” presumably including the MSHA investigators. *See* Tr. at 29:10-24; 30:25 – 31:1.

‘Five weeks ago,’ I said [to the investigators], ‘There was four of us working, shoveling that out because the same thing had happened. It was packed up like that. And we had shoveled it out. And I gave the radio call to Ricky, the plant operator, after we shoveled 15 feet of material off the back of the belt to get it so it would be able to move, we radioed into Ricky to start the belt. The sound – . . . you’ll hear a buzzer when he starts it, then you have 30 seconds, another buzzer and then the belts will engage. Well, we had the first buzzer. We waited for a second until it did, and there was a click and then all the material, a good 45 yards that we didn’t shovel off came crashing back down into the thing and almost took us all out. Like – and it was – and I went to my acting supervisor at the time, Dan Makara, and told him, and I said, ‘What the hell, Dan?’ He . . . said he had mentioned that to Dave Hampton . . . I said, ‘Well, what did he say?’ Dan said, ‘Dave [Hampton] put his hands in his pocket and looked at him and said, ‘it ain’t supposed to do that.’

*Id.* at 29:19 –30:18.<sup>8</sup>

Koslop told the MSHA investigators to check the belts as they did not have backstops, and testified that MSHA officials subsequently “red-tagged everything, *id.* at 30:24 – 31:2, and “shut the plant down.” *Id.* at 34:7. More specifically, he recalled MSHA officials red-tagging equipment including “the main feed, the belt that I told them that . . . four weeks prior almost killed five of us.” *Id.* at 34:13-19; *see also* 37:20-38:14, 39:7-8 (referring to the main feed belt being red-tagged and shut down); *id.* at 34:7-11 (describing his understanding of “red-tagged”).

Koslop testified that, in the days immediately after the accident, he was still working at Hazelton Shaft Mine and, during that time, reported additional safety concerns to MSHA inspectors. As he was shoveling near the belt involved in the fatal accident, he “noticed cracks in the welds in the crusher in the headhouse was only held on with one bolt” on one side and that he “brought that up to MSHA.” *Id.* at 31:9-17. *See also id.* at 34:20 – 36:10 (“everywhere they were putting me, I was looking, like if there was something that was unsafe, . . . I would report it . . . I just reported it to MSHA . . . when they had us up at the headhouse shop, and then I said about the holes in the conduit, that the conduit was all rotted, the crusher and then the cracks underneath all the welds because – I mentioned that to them because I was up in the headhouse. . . . And then when I was digging it out, I crawled under it . . . and I looked. There was a lot of welds, and there was cracks going down the welds. I pointed that all out to MSHA inspectors. . . . This was after the interview. . . . I figured while I’m up here digging, I might as well look . . . and that’s when I seen all the cracks, and I pointed them out. And the conduit was all rotted. And I . . . reported all of that”). Koslop testified that following his interview, MSHA performed an inspection “on the mine site” *id.* at 36:14-16, and “we [meaning Hazelton Shaft Mine] shut down because we had to repair a bunch of major plate beams.” *Id.* at 37:4-13. *See also id.* at 39:1-8 (recalling other equipment was out of service after the inspection).

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<sup>8</sup> Makara and Makora refer to the same person in the Transcript.



Sometime soon after the accident, Makara, Koslop’s acting supervisor, held a meeting at Hazelton Shaft Mine. *Id.* at 30:12; 40:20-22.<sup>9</sup> Koslop recalled Makara saying at the start of the meeting, “this run, run, run mentality is done. We need to start being safe.” *Id.* at 40:21 – 41:2. Koslop “stopped [Makara] right there,” shook his hand and said “I went for miner’s rep, Dan. . . . You’ll probably hate me in three months.” *Id.* at 41:2-7. Koslop also testified that subsequently:

I went over to Mike [Bowling, the mine operator], I told Mike Bowling this. I said, ‘Out of all the supervisors here,’ I said, ‘Dan [Makara], I have the most respect for’ – I said, ‘because he said to run, run, run.’ And after that, Mike Bowling all of a sudden, he got all, ‘What do you mean my supervisor is talking about me like that? I won’t have that.’ And then he’s like writing stuff down in a book and then they got on his phone and then he did something, like he text messaged or something on his phone and then he got up. But I thought that was strange because I’m thinking, well, he’s the mine operator and this guy [Makara]. . . I had respect for him because he said things were going to change. But he actually got in trouble for it. That’s what – that was the assumption I got the way Mike Bowling acted when I told him what [Makara] had said.

*Id.* at 41:10 – 42:4.

Sometime after Koslop’s interview with MSHA and after the Makara meeting, Makara told the laborer crew, including Koslop: “You guys need to go down and see Dave Hampton at noon.” *Id.* at 31:18-20. At that meeting, Hampton told the miners they “had to go over to the other plant across the street” (i.e., Stockton Plant). *Id.* at 31:21-25. *See also id.* at 32:2-4 (“[Hampton] told us everybody from our shift was going across the street.”); *id.* at 47:9-12 (“I feel I was transferred [from Hazelton Shaft Mine to Stockton Plant] just to get me out of the plant, so I wasn’t making no observations to tell MSHA.”)

The next day, unsure where to “clock in” and seeing two miners from his crew (Zach & Claudio) at Hazelton Shaft Mine, Koslop reported to Hazelton Shaft Mine where he normally clocked in and worked there, perceiving “[n]obody was on the other side of the street.” Tr. at 32:4-12. Sometime later that day he was called to Hampton’s office and, once there, told Hampton “I’m trying to be an MSHA rep.” *Id.* at 32:13-16.<sup>10</sup> Koslop recalled Hampton responding, “I never heard of such a thing in a nonunion shop.” *Id.* at 32:16-17. Koslop then asked why two miners from his laborer crew were still at Hazelton Shaft Mine and recalled Hampton’s response as “some people handle their emotions better.” *Id.* at 32:24 – 33:1. Koslop—who testified “And . . . I’m like, ‘Dude, the kid was my best friend. I dug him out; and you’re going [to] say that to me?’”—left Hampton’s office and went across the street to Stockton

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<sup>9</sup> This meeting was held when Koslop’s laborer crew was “still on the shaft side,” i.e., before they were transferred to Stockton Plant. Tr. at 40:21-22. *See also infra.*

<sup>10</sup> I assume Koslop understood the phrase “MSHA rep” to be synonymous with “miner’s rep” or “miners’ representative.” *See* Tr. at 32:16, 33:16; 33:12 (using both phrases).

Plant. *Id.* at 33:2-6.<sup>11</sup> Sometime soon thereafter, Koslop was called to Bowling’s office.<sup>12</sup> *Id.* at 33:6-7. On his way to Bowling’s office, Koslop spoke to John Evans, the first shift supervisor at Stockton Plant and told Evans he was going to be an MSHA rep. *Id.* at 33:13-16; 78:5-6. Evans told Koslop “the same thing”—“you can’t. You can’t be an MSHA rep.” *Id.* at 33:16-18.

When he got to Bowling’s office, Bowling apologized to Koslop for Hampton’s comment about emotions; Bowling also said that he “had no problems with [Koslop] being miners’ rep.” *Id.* at 33:7-12; 39:15-22. Bowling shook Koslop’s hand, told Koslop “he was all for me going for the MSHA rep and this and that[,] but he wanted me to follow – he goes ‘I just want you – he goes ‘follow the proper procedure.’” *Id.* at 39:23 – 40:3. Koslop responded:

I said, ‘Yes. I will report it to my foreman,’ and then . . . if [my] foreman didn’t do nothing, I report it to the acting supervisor and then I go to – call him [Bowling]. He goes, ‘Well, . . . I’d appreciate it if you would come to me before you would call MSHA.’ . . . And I just thought that was strange . . . That didn’t make sense to me.”

*Id.* at 40:4-15.

Koslop testified he applied to be a miners’ representative for the second shift at the same time a miner named John, who worked the first shift, applied to be a miners’ representative for the first shift. *Id.* at 42:18; 43:12-15 (“me and John both put in for miners’ rep, then, after the death.”)<sup>13</sup> Koslop recalled the application required notification to mine management, and testified John had told him that John had “put everything on Dave Hampton’s desk” because Hampton was the acting mine superintendent. *Id.* at 42:19 – 43:8. Koslop testified “they didn’t want a miners’ rep there. That was the vibe I got.” *Id.* at 43:14-15.

Production was down at Hazelton Shaft Mine when Koslop’s laborer crew was transferred “across the street” to Stockton Plant—which he described as “smaller plant with a “totally different setup.” Tr. at 49:3-5, 10-16; *id.* at 49:17-18 (“There was a lot to learn when we went over to that other site”). At some point, in the days after the fatal accident, the laborer crew was temporarily assigned to work first shift hours “for a week,” but eventually returned to the second shift at Stockton Plant. *Id.* at 44:10-12; 47:3-6:5-15.<sup>14</sup>

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<sup>11</sup> It is unclear if Koslop’s response to Hampton was said out loud or was simply internalized.

<sup>12</sup> Koslop was uncertain if the call to Bowling’s office occurred the same or the day after Hampton’s comment about his emotions. Tr. at 33:6-9.

<sup>13</sup> The exact timing of this application was not identified.

<sup>14</sup> Asked if the two miners from his laborer crew (Zach & Claudio) not initially assigned “across the street” were allowed to remain at Hazelton Shaft Mine, Koslop testified both transferred to Stockton Plant a few days later, but one subsequently quit. Tr. at 46:14 – 47:2.

d. *Assigned Duties at Stockton Plant and the Manlift Incident*

Koslop testified that once transferred to Stockton Plant, he “found violations there, too” and mentioned “stuff” to supervisors. Tr. at 47:13-16.<sup>15</sup> Asked what his duties were at Stockton Plant, Koslop explained:

My duties [at Stockton Plant], they actually assigned duties to us. And then we were shown – because there was a problem there with something with the belts, like, not – there was some kind of argument over people not doing their jobs. So we were called into an office again, a group [of] us<sup>[16]</sup> into Mike Bowlings’ office. And he had stated that, ‘These are your jobs. This is what you have to do,’ and this is and that. He goes, ‘You’s ain’t doing your jobs. People are going to get fired.’ And all of that. And that’s what it – that was the meeting we had there.

*Id.* at 50:5-17.<sup>17</sup> Based on that meeting, Koslop’s assigned duties consisted of “four belts” that he “had to keep clean.” *Id.* at 51:10-11. Engle, his foreman, showed Koslop “what to do on these belts,” which Koslop described:

And then it was like – like, the one belt, it was every three and a half hours. Because our duties were to clean out the head and the tail wheels from them and it would take a while because it was – we were running coal about the size of – like, golf ball size coal, pe[a] size coal. And all the coal dust would build up under the belts. And belts, you got about maybe 23 24 to 27, 28 inches off the ground. But all that dust would build up and then back up on the tail wheel and jam the belts up. But it would take about three to three and a half hours on the one. So I would go up there every two hours, blast it all out, hose it all out and all of that. And they were my duties.

*Id.* at 51:13 – 52:5.

On September 23, 2024, while Koslop was working his typical 4:00 p.m. to 2:00 a.m. shift at Stockton Plant with Engle as foreman, Tr. at 49:19 – 50:2; 51:12, Koslop refused a work assignment. The incident (hereinafter “manlift incident”) occurred “right at the beginning of the shift” because “the belt had jammed going through the crusher over at that plant.” *Id.* at 52:9-13.

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<sup>15</sup> He recounted an incident at Stockton Plant when an acting foreman (Alex) told him he could not use a high-pressure hose to clean out under a belt. Koslop recalled the foreman saying “That’s city water” and “You will have a cheaper water bill”—as the reason he had to use a shovel. *Id.* at 47:17 – 48:19; *see also id.* at 85:14-18.

<sup>16</sup> Koslop testified five miners attended the meeting: “Me, Mark, Claudio, I think everybody that was a laborer on that side that got transferred from the shift was at that meeting.” Tr. 50:22 – 51:5.

<sup>17</sup> Koslop testified about this meeting during cross-examination, *see infra*, and placed the date of the meeting as two weeks prior to September 24, 2024. *See infra* D.2.

Engle instructed Koslop to “get on the manlift and unjam the belt.” *Id.* at 52:14-15. Koslop described this manlift as “like a PP&L boom truck that would work on [ ] power lines with a bucket.” *Id.* at 54:10-11.<sup>18</sup> Asked to explain how this manlift could be used to unjam the belt, he explained:

it gets you up to the top of the belt because there’s nowhere to stand there. Like, you get in the man lift and then you’ll able to come up – the man lift goes to the side of the belt and you’ll be able to reach out of the man lift with a bar or whatever and unjam the rocks or whatever is there because sometimes it’s pretty big rocks. . . . [The belt] was up about . . . 20 feet off the ground, 15 to 20 feet. Because there was no way to get a ladder up to it. . . . I would have had to put the ladder . . . in about two foot of mud. Silt mud. . . . And that silt mud you sink in, you get stuck.

*Id.* at 58:13 – 59:14. After Engle assigned the task, Koslop went to the manlift and “couldn’t find a harness on it.” *Id.* at 52:17-18. He was also worried he “wasn’t signed off on [the manlift],” meaning he “wasn’t task trained on that type of manlift across the street [i.e., at Stockton Plant].” *Id.* at 52:19 – 53:3. Koslop told Engle “I can’t. . . . I’m not trained on that [manlift],” *id.* at 53:2-3, and Engle “started flipping out,” which Koslop described as “[a]rms flying, yelling.” *Id.* at 53:4, 7. At that point, Koslop told Engle “For one, I’m not signed off on the machine” and “[t]here isn’t a harness in it.” *Id.* at 53:8-10. Engle, who was wearing a harness at the time, “got on the machine,” threw a “new style” harness at Koslop, *id.* at 53:11-13, and used the manlift himself to unjam the belt. *Id.* at 53:14-18.

A “couple hours later,” Koslop spoke with Engle in Engle’s office and Engle said, “we’re going to get you task trained on that [man]lift.” *Tr.* at 53:21-23. Koslop told Engle he was familiar with “the up, down, side-to-side” controls, but had never moved or driven this manlift which had wheels and levelers. *Id.* at 53:24 – 54:6. Koslop testified:

he [Engle] told me he was going to sign me off on the machine. He was going to task train me, but it was raining out. He said, ‘Well, after it’s done raining, we’ll go out and I’ll show you how to drive it back and forth and this.’ And he put the thing [i.e., a task training slip] in front of me. And I said, ‘Well, all right. I’ll sign that when I’m done.’ It was, like, nonchalantly. Like, yeah. I said, ‘I’ll sign it after I’m trained on the machine.’ And we never got trained.

*Id.* at 54:15-55:1. *See also id.* at 56:23 – 57:12 (“The paper that he put in front of me. He was going to task train me on the man lift over there. . . . I told him . . . I just wasn’t familiar with the forward, the back and the leveling controls . . . And he said that he would go over that with me. And then he put – he didn’t say to sign it, but he set the paper in front of me on the desk. Like, ‘here’s your slip to sign it.’ And I said, ‘Well’ – I pushed it. I said, ‘Well, all right. I’ll sign it then after I do it.’”). Koslop never signed the slip, *id.* at 59:15-19, and testified he did not feel it was safe for him to use the manlift to perform the assigned task as it would have required him to use the manlift on unstable ground. *Id.* at 57:17-21 (“where you’re at on that side, the ground is so unlevel and you have to use levelers and all that. You’re in a bucket hanging over to unjam

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<sup>18</sup> I understand PP&L to refer to the utility company “Pennsylvania Power & Light.”

stuff. It's not – it wasn't something I felt safe doing.”); 57:24 – 58:12 (further explaining the terrain and the difficulty).

After work on September 23, 2024, Koslop gave another miner (Ryan) a ride home, Tr. at 55:2-5, and Ryan told him Engle had been “snapping that [Koslop] wouldn't sign that paper.” *Id.* at 55:5-6, 11-12; 60:1-4. Koslop called Engle when he got home, *id.* at 55:12-13, 60:11-12, and told Engle: “I'm worried they're going to get rid of me.’ I said, ‘That's the reason’ – I said . . . ‘I wasn't doing that to be a dick. I wasn't signed off on it. It wasn't safe.’” *Id.* at 55:13-17; *see also id.* at 60:11-17 (“I called Eddie . . . and I told him . . . because I didn't want him . . . thinking I was being an asshole . . . ‘The reason I didn't get on that [manlift] is I wasn't trained on it.’” And I said, ‘We're at a different mine site.’”). Engle responding “Oh, yeah” and “Okay. No problem.” *Id.* at 55:19, 23. Koslop did not know what Engle had done with the slip or with the fact that Koslop had not signed it; he perceived Engle was “fine with [him].” *Id.* at 59:20-25. He also believed Engle had “realized we had to get recertified when we went across the street to that separate site.” *Id.* at 55:19-22. *See also id.* at 52:21-24; 80:7-11.

*e. Meeting in Bowling's Office on September 24, 2024*<sup>19</sup>

The next day, September 24, 2024, before he reported to work, Koslop took a call from Engle around 2:30 p.m. Tr. at 55:24 – 56:2; 71:24 – 72:1. Engle told Koslop he had to go with Engle to see Bowling about the “belt incident from yesterday.” *Id.* at 55:24 – 56:8 (“He goes, “Yeah, the manlift. You refusing to get on it.”); 63:1-15 (recalling that when Engle said Koslop needed to see Bowling, Koslop said ““What for now?”” and Engle said “For the incident with the manlift last night.”); 80:3-11. Koslop (and he believed Engle) were both “under the impression [that] when [he and Engle] went into Mike Bowling's office that that's what we were going there for [i.e., for the manlift incident].” *Id.* at 60:18-22; 63:16-17.

When he got to Stockton Plant, Koslop saw Evans, the first shift supervisor, who walked him to Bowling's office. Tr. at 63:22-24.<sup>20</sup> Engle and Bowling were already in Bowling's office when Koslop arrived, *id.* at 56:8-12, and Koslop recalled Engle giving him “this weird look” when Koslop came in. *Id.* at 56:9-10; 64:2-3 (“Eddie had this weird look on his face.”). Bowling showed Koslop a picture on Bowling's phone and asked: “Is this your belt?” *Id.* at 64:5-6. Asked to describe what he saw on Bowling's phone, Koslop testified:

A picture of the belt broken. It was the belt that . . . they're telling me that I left. . . . It was the belt with a bunch of coal all over the floor that – I would never leave something like that. . . . It was up in an elevated headhouse. I don't know

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<sup>19</sup> The progression of the verbal exchange during this meeting is uncertain. As the Transcript reflects, counsel did not elicit testimony in chronology, and Koslop repeatedly testified that this meeting progressed quickly. Tr. at 78:13-17; 86:5-6.

<sup>20</sup> Koslop testified: “Well, I got to the mine site and John Evans was there. John Evans, like, I think it was John Evans, like walked me to the office that day.” Tr. at 63:22-24. Koslop's testimony was unequivocal that Evans attended and spoke during the meeting in Bowling's meeting. *See infra.*

the exact name of it because the plant that this was – I was only at the plant for a total maybe five weeks. I was unfamiliar with what they called everything. . . .

*Id.* at 64:24-25, 65:2-3, 66:4-6, 17-21. Koslop testified Bowling “held his phone up” and “let [Koslop] glance” at the picture.”<sup>21</sup> *Id.* at 65:6-7. Koslop testified the belt in the picture “was the belt” he was assigned to, and that he quickly responded to Bowling: “I didn’t leave it that way.” *Id.* at 65:8, 11-12. *See also id.* at 64:7-10 (“And I was like, . . . ‘Yeah, that’s the belt that I’m assigned to clean.’ [Bowling said] ‘Well, why did you leave it like that?’ I said, ‘I didn’t leave it like that.’”); 78:17-23. Koslop further testified he did not leave the belt—

the way the picture [Bowling] showed me because it was coal . . . it’s, say, a 10-by-10-foot square building. And one belt – with the belt feeding material from the plant is falling onto another small belt. And the building is only – you’ve got 4 foot of space before the walls on each side. And like, if they said, like, they said that it had to take four hours,<sup>[22]</sup> if you ran that plant with that belt busted the way it was, the sides would blow off that building in a matter of ten minutes. There’s no way possible.

*Id.* at 66:24 – 67:10. *See also* 67:20-22 (“in the picture [Bowling] showed me of the belt, . . . the room was full of coal.”).<sup>23</sup> Koslop explained that because he was trained to know that the belt would fill up “every three and half hours,” and because Stockton Plant “shut down at 1:00 [a.m.]” and miners left “at 2:00 [a.m.],” “sometime between 11:00 [p.m.] and 12:00 [midnight] [he] would go up there and hose that down for a final time so then it was – it was good for the night, and [he] wouldn’t have to go back up there.” *Id.* at 66:7-15. Koslop had been cleaning that belt for two weeks by September 23, 2024. *Id.* at 66:8-9.

At some point during the meeting in Bowling’s office, Evans told Koslop the picture depicted the condition of the belt on the morning of September 24, 2024: “that’s how it was when they got there. They couldn’t run [coal] in the morning.” Tr. at 70:2-5. *See also id.* at 60:23-25 (“belt busted”); 61:22-24 (“I was told that the belt broke”); 82:18-21 (“Q: So you were blamed for the backup on the belt resulting in a belt tear, which stopped production? A: Yes.”) After Koslop told Bowling he had not left the belt in the condition shown in the picture, Bowling

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<sup>21</sup> Koslop also testified Bowling had handed him his phone. Tr. at 64:5. *But see id.* at 109:3-5 (“The picture . . . I never even got to really look at. It was like somebody showing you a photo, like just pointing the phone up to you and catching a glance at it.”).

<sup>22</sup> *See infra* capturing how Evans interjected “four hours” into the exchange.

<sup>23</sup> Koslop provided further testimony as to why the room containing the belt in question could not have looked the way it did in the picture on Bowling’s phone. *See* Tr. at 67:16 – 69:4; 68:19 (“I had that place spotless”); 69:1-4 (“And that’s why when he showed me a picture . . . I’m thinking, Dude, I made a hammer. I had it cleaned up there. It wasn’t that way.”) Koslop also questioned when the picture shown to him on Bowling’s phone had been taken. *E.g., id.* at 65:8-10 (“it was the belt, but I . . . I didn’t even know if the picture was taken that day or it was an old picture.”); 84:9-19 (questioning a fire extinguisher he saw in the picture).

responded “Yes, you did,” and Koslop again insisted “No, I didn’t.” *Id.* at 64:10-12; 78:21-25. At some point, Bowling said “we’re going to have to agree to disagree,” called Koslop’s conduct “dereliction of duties,” and informed Koslop “this conversation’s over. You’re fired.” *Id.* at 64:13-15; 65:13-14, 18-19; 79:1-9. Koslop insisted that he *had* been up to clean the belt and repeatedly asked Bowling to “look at your cameras” to verify his presence. *Id.* at 61:2-4; 62:1-5 (“I said, ‘Look at your cameras. I was up there.’”); 64:16-21 (“I tried arguing. I said . . . Check your cameras. I was trained to go up there every three hours. I went up there every two hours. I went up there at 12:30 [a.m.]. There’s a camera right there.”); 65:15-17; 70:6-12 (“I said ‘I was up there at 12, 12:30’ . . . ‘Look at the camera. They’ll tell you what time I was there.’ But he would not look at any cameras.”); 81:12-13; 87:14-17.

At some point during the meeting in Bowling’s office, Koslop asked Engle what time he (Koslop) had been in the “flock room” during the prior shift. Tr. at 70:21- 71:4. Koslop had been assigned an extra duty during the shift in question such that he was “doing the flock room and four belts” on the night he was responsible for the belt in the picture. *Id.* at 61:4-21.<sup>24</sup> Koslop testified,

I looked at Eddie Engle. I said, ‘Eddie, what time was I in the flock room with you?’ And he said 12:00 [midnight]. And Eddie is like, ‘Well, wait. Let me come up with a timeline.’ But then Mike Bowling and John Evans both talked over Eddie, and John Evans gave Mike Bowling, ‘Oh, it would take four hours for the belt to get that way.’ And there’s no way possible. The belt would be that way in a matter of five minutes with the plant running.

*Id.* at 62:5-16.<sup>25</sup> See also *id.* at 70:21-71:10 (reiterating his exchange with Engle); *id.* at 71:11-14 (“And then John Evans said, ‘No. That belt . . . it would take four and half hours leaving the belt that way to get that bad.”); *id.* at 81:16-18 (same); *id.* at 69:16-17 (“Eddie [Engle] was trying to speak up for me and say something, [but] they both talked over him.”); *id.* at 86:1-18 (“John Evans talked over Eddie . . . Eddie didn’t get a chance to say anything”); *id.* at 71:15-20 (Koslop explaining his belief it would take “a half hour for something [as bad as what was depicted] to happen”); *id.* at 69:21-23 (“Four hours, it would knock the headhouse down”). Koslop insisted it was not part of his duty to check the belt again before it was shut down at the end of the second shift. *Id.* at 87:10-14.

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<sup>24</sup> Engle had assigned Koslop to “mix[] the flock because we were short.” Tr. 61:6-8. Asked to explain what he meant by “flock room,” Koslop described “flock” as a sticky substance mixed with coal to allow the coal to float above water and “flock room” as a room containing “two big vats” in which the flock was mixed. *Id.* at 114:20 – 115:13. See also *id.* at 80:22-24 (“The flock I had to put down there every hour depending on how fast the plant was running . . . [Engle would] go in there with me.”)

<sup>25</sup> The point of a timeline, Koslop explained, would be to trace Koslop’s activity during the shift in question. Tr. at 80:19-21 (“because everything is, like, two- to three-hour increments”); *id.* at 80:16 – 81:15 (recounting his activity and testifying: “And Eddie agreed. He wanted to come up with a timeline to see that [activity].”)

Sometime before leaving Bowling's office, Koslop protested he had not received a verbal or a written warning related to the condition of the belt before termination. Tr. at 79:13-22; 82:4-6 ("I said, 'What do you mean, I'm fired?' I said, . . . 'I didn't get a written warning, I didn't get anything.'").<sup>26</sup> The manlift incident was not mentioned during the meeting and Koslop did not know if Bowling knew of the incident.<sup>27</sup> As Koslop was leaving Bowling's office, Evans said "I'll escort you off the property." *Id.* at 82:7-9. Koslop was terminated "a week before we were supposed to go back over to Hazelton Shaft [Mine]." *Id.* at 49:1-2.

*f. Subsequent Call with Engle and The Run-graph*

After Koslop left Bowling's office, he got in his truck, drove across the street to Hazelton Shaft Mine to retrieve his toolbox, and drove home. Tr. at 82:10-17. Soon after he left, Koslop spoke with Engle on the phone.<sup>28</sup> *Id.* at 69:5-6; 83:6-7, 22-25. Koslop testified Engle said "That was bullshit," *id.* at 84:25, and "Dude, they're trying to railroad you." *Id.* at 83:5-7. Engle also told Koslop that Bowling wanted Engle to fire him, but Engle had refused. *Id.* at 83:9-13.

At Koslop's request, Engle subsequently sent him a picture of a "run graph" showing that the belt depicted in the picture on Bowling's phone had run from 6:45 a.m. to 8:00 a.m. on the morning of September 24, 2024.<sup>29</sup> Tr. at 69:5-12; 71:21-23 ("when I got the run diagram, it said they ran an hour and 15 minutes on John Evans' shift, first shift"); 85:1-7. Koslop testified "There's no way they could have started that plant up in the morning and ran with that belt broken . . . That means that the belt had a break on first shift." *Id.* at 85:9-11, 13-14. *See also id.* at 86:23-87:2 ("it ran in the morning and there's no way possible if that belt was in the shape it was in.")

*g. Prior Discipline*

Koslop recalled being involved in two prior disciplinary incidents. One incident, involving a hard hat, occurred "back when [he] first started" and he signed a related "write-up." Tr. at 72:15-20. The second incident occurred during his time at Stockton Plant and he signed a write-up for that incident also. *Id.* at 72:21-24. The second incident involved a broken belt, which Koslop testified had been caused by Engle's failure to appreciate that shutting off a belt did not halt vibration. *Id.* at 73:12-22. Koslop was not part of the laborer crew shoveling under

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<sup>26</sup> Koslop described company policy as requiring a verbal warning, a written warning, and then, for a "third strike," termination at the company's discretion. Tr. at 79:13-22.

<sup>27</sup> On redirect examination, Koslop testified John Evans knew of the manlift incident. *See infra.*

<sup>28</sup> Koslop was uncertain if he called Engle or vice versa, *see* Tr. at 65:21-22; 69:6; 84:22-23, 86:19-21, and he recalled the conversation occurring sometime between 20 minutes to an hour after he was terminated. *Id.* at 84:18-23.

<sup>29</sup> In his Statement, Koslop indicated "an anonymous person" had sent him a picture of the run graph for the morning of September 24, 2024, at 7:16 p.m. on September 24, 2024. Statement at 4. At the hearing, he identified Engle as the source. Tr. at 69:10-12; 85:1-4.



belts when the second incident occurred; rather, he was with Engle in the crusher room booth learning the booth. *Id.* at 72:25 – 73:11. After a problem in the plant, Engle had shut down the problematic belt, but the machine continued to vibrate, causing material to fall from the shutdown belt onto a different belt which then broke from the accumulation. *Id.* at 73:12 – 74:5. Koslop testified that after the belt broke, Engle “was flipping out on all the laborers . . . screaming and yelling” and that every laborer except Koslop refused to sign the write-ups Engle then issued to “all the laborers.” *Id.* at 74:6-10; 75:13. Koslop, whose job title was laborer, signed the write-up: “I said, ‘Give me it.’ I signed the paper. I signed the write-up. I said ‘I’ll take the heat on that one, Eddie. This way you won’t hear shit, I guess.’” *Id.* at 74:11-15. Koslop received no further discipline on the basis of this write-up and had never been suspended. *Id.* at 74:25 – 75:3, 16-19.

#### *h. Other*

Koslop testified he was motivated to become a miners’ representative out of concern for safety. Tr. at 33:21-23 (“I was really for safety . . . [M]y friend died. That’s what I want to come of this.”)

Koslop testified repeatedly to his perception that he was a “marked man” with mine management after reporting safety concerns to MSHA investigators/inspectors following the fatal accident and for vocalizing his interest in becoming a miners’ representative. *See* Tr. at 31:2-5 (“and then that’s when my life went to total shit because, like it was – I was ganged up on by – that’s from that day forward, after I made those reports and they shut that down”); *id.* at 43:14-15 (“like I said, they didn’t want a miner’s rep there. That was the vibe I got”); *id.* at 45:23-23 (“And when they transferred me across the street, I started to begin to worry about my job.”); *id.* at 46:3-4 (“I had this feeling that I was going to get fired”); 75:22 – 76:22 (explaining how after he pointed out “stuff” and “violations” to MSHA, he was moved “across the street” and “then we get called into [ ] Bowling’s office”); *see also id.* at 52:19-20 (testifying, in conjunction with the manlift incident, “I was worried about my job at the time”); *id.* at 55:12-18 (testifying, in conjunction with his call to Engle after the manlift incident, “Eddie, I’m worried they’re going to get rid of me.”)

#### 2. Complainant’s Testimony on Cross-Examination

On cross-examination, Koslop acknowledged that portions of Hazelton Shaft Mine (i.e., “certain equipment”) were still red-tagged when he was moved to Stockton Plant, that Stockton Plant (which had a separate MSHA mine ID from Hazelton Shaft Mine) was operational at that time, and that the laborer crew (i.e., “we”) had been told that the move would allow Stockton Plant operation to continue. Tr. at 89:22-25; 90:5-17.

Koslop acknowledged he attended meetings with other members of his laborer crew (“four or five guys”) at Stockton Plant. Tr. at 90:24 – 91:6; 92:25 – 93:13. He identified one such meeting as the meeting during which the crew had been given specific assignments, which meeting had occurred after “the first belt” Koslop had identified as having been broken by

Engle's behavior,<sup>30</sup> and acknowledged that, during that particular meeting, Bowling said management was not happy with how the crew was performing, *id.* at 93:14-20, had assigned the laborers specific areas of responsibility, *id.* at 94:2-5, and told the laborers that if there were any further "problem[s], people could get terminated." *Id.* at 94:6-9. Koslop acknowledged this meeting occurred two weeks before his termination. *Id.* at 94:10-12; *but see id.* at 90:20-24.

On cross-examination, Koslop confirmed the area in the picture shown to him on Bowling's phone on September 24, 2024, was the area he was responsible for. Tr. at 94:13-17. He also testified that other hourly miners ("everyone involved" in the accident) interviewed with MSHA investigators after the fatal accident (although he did not know how many miners were interviewed or when their interviews occurred). *Id.* at 95:10 – 96:1. He confirmed no member of mine management attended his interview. *Id.* at 96:2-7.<sup>31</sup>

Koslop also confirmed (in conjunction with RX-D) that his hourly rate at the time he was terminated was \$24.71/hour, Tr. at 96:25 – 97:21, that his work week (consisting of 10-hour days Monday through Friday, and 10 hours every other Saturday) averaged to 40 hours of regular time and 15 hours of overtime every week, *id.* at 97:24 – 99:6, and that he was not currently employed. *Id.* at 99:7-9.

On cross-examination, Koslop testified he did not know the date he applied to be a miners' representative, Tr. at 99: 12-17, and that the application was submitted on John's phone at the same time as John's application. *Id.* at 99:19-22, 100:7-19 ("We applied together"). Koslop also acknowledged that the manlift incident was not involved in the meeting at which he was terminated, nor did Bowling or Evans raise it during that meeting. *Id.* at 102:2 – 103:16. Rather, Koslop "brought it up," having said during that meeting that the manlift incident was "what I thought I was there for." *Id.* at 103:9-13.

Asked if the last time he cleaned the belt depicted in the picture on Bowling's phone was at midnight on September 23, 2024, Koslop testified he was "trying to come up" with the timeline of events, and that "it was after midnight because [he] always made it sometime after midnight because it took a three-and-a-half-hour time period before it was up where it had to be hosed[.]" *Id.* at 103:21 – 104:17. Koslop acknowledged he did not know the condition of the belt in the picture on Bowling's phone at the end of his shift on September 23, 2024, adding "I wasn't trained to go back up there to check that." *Id.* at 104:23 – 105:2.

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<sup>30</sup> Koslop testified about this meeting and about the broken belt attributable to Engle's behavior during direct examination. Tr. at 50:4 – 8; 72:21 – 75:15; *see also supra* D.1.d & D.1.g.

<sup>31</sup> The question posed by Respondent's counsel was broadly phrased to ask about interviews conducted with other miners—"when hourly miners were being interviewed, such as yourself and the others"—and Koslop responded with a reference to "us," but seemed to be referring only to his own interview; indeed, counsel's follow-up question appears to acknowledge that Koslop was referring only to his own interview. *See* Tr. at 96:2-15.

### 3. Redirect Examination

On redirect examination, Koslop testified he had “no idea” how Bowling knew about the manlift incident; that it had been Engle who told Koslop that he needed to “go into Mike Bowling’s office about the . . . incident with the manlift.” Tr. at 105:19 – 106:7. Koslop also testified that Evans had been present in Engle’s office on September 23, 2024, when Koslop told Engle he was not “certified” on the manlift at Stockton Plant. *Id.* at 106:15-18.<sup>32</sup> Koslop recalled that Evans “mumbled something and he was real mad” and how, as Koslop was leaving Engle’s office, he heard Evans say something like “This is bullshit, they’re all doing this” and perceived Evans was “aggravated.” *Id.* at 106:18-25.

Koslop also reviewed the phone call with Engle after he was fired and how Engle had sent him a “screenshot” of the run graph, Tr. at 107:13-25, reiterated it was not part of his duties to check the belt in the picture on Bowling’s phone after he had cleaned it and before Stockton Plant shut down for the night, *id.* at 108:1-5, reiterated he had been cleaning that belt for two weeks and doing the “the same thing every night,” *id.* at 108:7-14, reiterated that four hours of operation “would back that belt up to the top,” *id.* at 108:22-25, and reviewed his reasons for questioning when the picture of the belt he had been shown on Bowling’s phone had been taken. *Id.* at 109:1-13 (referring to the red fire extinguisher). Koslop was never able to confirm if the belt had actually been in the condition depicted in the picture on Bowling’s phone on the morning of September 23, 2024. *Id.* at 109:14-17.<sup>33</sup>

Finally, Koslop confirmed he had made a complaint to MSHA after his termination, Tr. at 111:5-8, and authenticated CX-C as the Statement he provided to MSHA in conjunction with his Discrimination Complaint. *Id.* at 111:13 – 112:20.

### 4. Direct Testimony of Respondent’s Witness

Michael Basile, Respondent’s General Manager for both Hazelton Shaft Mine and Stockton Plant, testified for Respondent. Tr. at 118:18-119:2. Specifically, Basile testified he knew Koslop, *id.* at 119:3-5, and that Koslop’s rate of pay at the time he was terminated was \$24.71/hour, whereas at the time of the hearing and due to a 2% increase, the laborer rate was currently \$25.20. *Id.* at 119:6-12.<sup>34</sup> Basile also testified Koslop’s work schedule had consisted of five 10-hour days per week, plus every other Saturday, with the first 40 hours per week paid at the regular rate, and the additional hours paid at a rate of time and a half. *Id.* at 119:17-120:4. However, since Koslop’s termination, the work schedule for a laborer had changed and now consisted of five 10-hour days per week with only one Saturday scheduled per month; in other words, the “plus every other Saturday” that Koslop had worked is no longer part of the laborer

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<sup>32</sup> Koslop did not specify at what point during the manlift incident Evans was present in Engle’s office—specifically, whether that was before or after Engle unjammed the belt.

<sup>33</sup> Koslop testified he learned the belt had done the “exact same thing” 5-10 days after he was terminated due to “electrical problems.” Tr. at 109:17-25. He did not say how he learned this.

<sup>34</sup> Respondent’s counsel asked me to take judicial notice that a 2% increase of \$24.71 is \$25.20. Tr. at 119:13-15. It is so noticed.

work schedule at Hazelton Shaft Mine/Stockton Plant and no Saturdays have been scheduled beyond one scheduled in March 2025. *Id.* at 120:5-18.

### **GOVERNING STANDARDS FOR TEMPORARY REINSTATEMENT**

Section 105(c) of the Mine Act, 30 U.S.C. § 815(c), prohibits discrimination against a miner for exercising any right protected by the Mine Act and provides that a miner may file a complaint with the Secretary alleging discrimination. The Mine Act also provides that “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) (emphasis added). “The purpose of this protection is to encourage miners ‘to play an active part in the enforcement of the Act,’ in recognition of the fact that ‘if miners are to be encouraged to be active in matters of safety and health[,] they must be protected against . . . discrimination which they might suffer as a result of their participation.’” *Sec’y of Labor on behalf of Collins v. Crimson Oak Grove Res., LLC*, 45 FMSHRC 866, 869 (Oct. 2023) (quoting S. Rep. No. 95-181, 95th Cong. 1st Sess. 35 (1977), reprinted in Senate Subcomm. on Labor, Comm. on Human Res., 95th Cong. 2nd Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977*, 623 (1978)), *pet. for rev. filed*, No. 23-13665 (11th Cir., Nov. 3, 2023). Congress created temporary reinstatement as “an essential protection for complaining miners who may not be in the financial position to suffer even a short period of unemployment or reduced income pending the resolution of the discrimination complaint.” *Crimson Oak Grove*, 45 FMSHRC at 869 (quoting *Legislative History*, at 624-25).

The Commission has held that the scope of a temporary reinstatement proceeding is “narrow, being limited to a determination by the judge as to whether a miner's discrimination complaint is frivolously brought.” *Sec’y of Labor on behalf of Price v. Jim Walter Res., Inc.*, 9 FMSHRC 1305, 1306 (Aug. 1987), *aff’d*, 920 F.2d 738 (11th Cir. 1990)). *See also Crimson Oak Grove*, 45 FMSHRC at 869. This narrow standard reflects Congress’ intent that “employers bear a proportionately greater burden of risk of an erroneous decision in a temporary reinstatement proceeding.” *Crimson Oak Grove*, 45 FMSHRC at 869 (citing *Jim Walter Res.*, 920 F.2d at 748, n.11).

In adopting section 105(c), Congress indicated that a complaint is not frivolously brought if it “appears to have merit.” *Legislative History*, at 624-25. In addition to Congress’ “appears to have merit” standard, the Commission and the courts have also equated “not frivolously brought” with “reasonable cause to believe” and “not insubstantial.”” *Jim Walter Res.*, 920 F.2d at 747, n.9. “Courts have recognized that establishing ‘reasonable cause to believe’ that a violation of the statute has occurred is a ‘relatively insubstantial’ burden.” *Sec’y of Labor on behalf of Ward v. Argus Energy WV, LLC*, 34 FMSHRC 1875, 1878 (Aug. 2012) (citing *Schaub v. West Michigan Plumbing & Heating, Inc.*, 250 F.3d 962, 969 (6th Cir. 2001)).

In applying this narrow standard, it is my role to “determine ‘whether the evidence mustered by the miner[] to date established that [his or her] complaint[] [is] nonfrivolous, not whether there is sufficient evidence of discrimination to justify permanent reinstatement.’” *Crimson Oak Grove*, 45 FMSHRC at 869 (citing *Jim Walter Res.*, 920 F.2d at 744). *See also*

*Sec’y on behalf of Williamson v. Cam Mining, LLC*, 31 FMSHRC 1085, 1089 (Oct. 2009) (hearing judge’s only task is to determine whether the complaint “appear[s] to have merit”). A temporary reinstatement hearing is considered to be a preliminary proceeding and, as such, “[i]t [is] not the Judge’s duty, nor is it the Commission’s, to resolve . . . conflict[s] in testimony at this preliminary stage of the proceedings.” *Crimson Oak Grove*, 45 FMSHRC at 869 (quoting *Sec’y of Labor on behalf of Albu v. Chicopee Coal Co.*, 21 FMSHRC 717, 719 (July 1999)) (brackets original). See also *Cam Mining*, 31 FMSHRC at 1088 (in assessing evidence at temporary reinstatement hearing, Judge must not resolve credibility issues, address conflicts in testimony, or weigh the operator’s evidence against that of the Secretary).

The Commission has further stated that “[w]hile an applicant for temporary reinstatement need not prove a *prima facie* case of discrimination, it is useful to review the elements of a discrimination claim in order to assess whether the evidence at this stage of the proceedings meets the non-frivolous test.” *Crimson Oak Grove*, 45 FMSHRC at 869 (quoting *Cam Mining*, 31 FMSHRC at 1088). Those elements are: (1) that the miner engaged in protected activity, and (2) the adverse action complained of was motivated in any part by that activity. *Id.* (citing *Cam Mining*, 31 FMSHRC at 1088). Discriminatory motive may be shown by indirect evidence establishing a motivational nexus, and the Commission has held that “discriminatory motive can be established by circumstantial evidence of: “(1) knowledge of the protected activity, (2) hostility or animus towards the miner regarding the protected activity, (3) temporal proximity, i.e. coincidence in time between the protected activity and the adverse action, and (4) disparate treatment of the complainant.” *Sec’y of Labor on behalf of Hoover v. Moseneca Mfr. LLC d/b/a American Tripoli*, 46 FMSHRC 1, 3-4 (Jan. 2024) (citing *Sec’y of Labor on behalf of Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510-11 (Nov. 1981), *rev’d on other grounds sub nom.*, *Sec’y on behalf of Donovan v. Phelps Dodge Corp.*, 709 F.2d 86 (D.C. Cir. 1983)). In applying this narrow standard, I note that a temporary reinstatement proceeding is so preliminary there has usually been little to no discovery or exchange of information or evidence.

## **DISPOSITION**

I conclude the Secretary has provided sufficient evidence to show that Koslop’s Complaint was “not frivolously brought” within the meaning of Section 105(c)(2). The facts provided by the Secretary, if true, would establish that Koslop engaged in protected activity and suffered an adverse action (i.e., termination) close in time to the protected activity under circumstances providing reasonable cause to believe there was a causal nexus between the protected activity and the subsequent adverse action.

### **A. Protected Activity**

The Secretary has sufficiently demonstrated that Koslop engaged in protected activity, such that his Discrimination Complaint is not frivolously brought. Under the Mine Act, protected activity includes speaking with an MSHA inspector during a fatality investigation, *e.g.*, *Bewak v. Alaska Mechanical, Inc.*, 2010 WL 8607470, at \*5 (Aug. 31, 2010) (ALJ); *UMWA on behalf of Roybal v. Wyoming Fuel Co.*, 12 FMSHRC 2443, 2456 (Nov. 16, 1990) (ALJ) (operator conceding such); making complaints about unsafe equipment and other safety concerns to mine management and/or MSHA investigators and inspectors, *e.g.*, *Sec’y on behalf of Davis v. Smasal*

*Aggregates & Asphalt, LLC*, 28 FMSHRC 172, 175 (March 21, 2006) (ALJ) (complaints made of danger or safety violations are specifically described as protected activity in section 105(c)(1)); expressing interest in and/or taking steps toward becoming a miners’ representative, e.g., *Sec’y on behalf of Ramsey v. Vulcan Constr. Materials*, 39 FMSHRC 1033 (May 5, 2017) (ALJ), and refusing a work assignment due to reasonable safety concerns. E.g., *Sec’y on behalf of Barnes, v. Warrior Met Coal Mining, LLC*, 2025 WL 243153, at \*29 (Jan. 10, 2025) (ALJ) (citing, *inter alia*, *Gilbert v. FMSHRC*, 866 F.2d 1433, 1439 (D.C. Cir. 1989)).

The Secretary’s Application identifies four instances of protected activity that Koslop engaged in between July 2024 and his termination on September 24, 2024, and Koslop testified as to all four instances—each one qualifies as protected activity under the Mine Act.<sup>35</sup>

First, the Secretary alleged that “during the month of July of 2024, Complainant engaged in protected activity when he reported safety violations” to mine management: including that “backstops on the belts were missing and/or not working” and “safety concerns with the elevated crusher in the head house.” Application, at ¶ 10. Koslop testified that he made such reports. *See* Tr. at 21:17-23:11 (testifying to lack of backstops on the belt involved in the fatal accident, and stating “I had spoken with other supervisors . . . and it was specifically I spoke with Ed Engle about it”); *id.* at 29:14-30:22 (testifying about an incident with the main feed plant belt four to five weeks before the fatal accident which he reported to Makara, who “mentioned” it to Hampton; “like it was all reported”).

Second, the Secretary alleged in the Application that “following the fatal accident at the mine on July 25, 2024, Complainant provided an interview and . . . identified various safety violations.” Application, at ¶ 10. Koslop testified he gave such an interview and reported numerous safety violations and concerns to MSHA investigators/inspectors, including his concerns about lack of backstops on the belt involved in the accident and the main feed plant belt. Tr. at 21:17-23:11; 29:14-30:22. He also reported numerous other violations and safety concerns to MSHA investigators/inspectors after the accident. E.g., *id.* at 31:5 – 17 (testifying to cracked beams, cracks in the welds on the headhouse in the crusher; “I brought that up to MSHA”); *id.* at 34:20 – 36:10 (testifying about holes in the conduit, the crusher, cracks underneath all the welds; “I mentioned that to them . . . I pointed all that out to MSHA inspectors . . . This was after the interview.”)

Third, the Secretary alleged in the Application that “between July 25, 2024[,] and the date of his termination [on September 24, 2024], Complainant vocalized to mine management his desire to become an MSHA Miners’ Representative to make ‘the [mine] safe.’” Application, at ¶ 10. Koslop testified he took steps during this timeframe to become a miners’ representative, Tr. at 42:17 – 43:25; *id.* at 99:12-17, and had vocalized his desire to become a miners’ representative directly to members of mine management, including to his acting supervisor Makara, *id.* at 40:19 – 41:8, acting mine superintendent Hampton, *id.* at 32:12-23, Stockton Plant

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<sup>35</sup> Respondent contended in its Request for Hearing that Koslop’s Complaint “does not refer to any specific instance of protected activity,” Request for Hrg. at ¶ 2, and “is nonspecific as to any alleged protected activity,” *id.* at ¶ 6. After reviewing the Application and Koslop’s testimony, I reject this characterization.

first shift supervisor Evans, *id.* at 33:13-18, and mine operator Bowling, *id.* at 39:21 – 40:15. Koslop’s testimony can be read to suggest Bowling may have already known of Koslop’s interest in becoming a miners’ representative before Koslop spoke with him about it. *See id.* at 39:22-25 (“because at that same meeting [when Bowling apologized for Hampton’s reference to Koslop’s emotions] . . . [Bowling] shook my hand and he told me that he was glad[,] he was all for me going for the MSHA rep and this and that . . .”). *See also id.* at 42:19 – 43:8 (explaining John from the first shift put materials pertaining to their miners’ representative applications on the desk of acting mine superintendent Hampton).

Fourth, the Secretary alleged in the Application that “on September 23, 2024, Complainant refused a work assignment from his immediate supervisor when he was tasked to operate a manlift, a piece of equipment with which he was not trained to unjam the Picking Room table.” Application, at ¶ 10. Koslop testified extensively about the manlift incident, Tr. at 52:6-55:23; 56:14-60:17, as well as the safety concerns that drove his refusal to perform the assigned task. *See e.g., id.* at 52:24 – 53:1 (“I wasn’t task-trained on that type of manlift across the street”); 53:10 (testifying he told Engle “There isn’t a harness in it”); 55:16-17 (testifying he told Engle “I wasn’t signed off in it. It wasn’t safe”); 57:17-21 (“And over where you’re at on that side, the ground is so unlevel and you have to use levelers and all that. You’re in a bucket hanging over to unjam stuff. It’s not – it wasn’t something I felt safe doing”); *id.* at 58:15-22 (“you’ll be able to reach out and unjam the rocks of whatever is there because sometimes it’s pretty big rocks”); *id.* at 59:3-4 (“you’re up about 20 feet of the ground, 15 to 20 feet”). He also testified about his refusal to sign a task training slip for the manlift because he had not actually received any training. *Id.* at 54:18 –55:1; 56:14 –57:12; 59:15-16.

In closing argument, Respondent’s counsel characterized the fourth instance of protected activity—i.e., the refusal to perform a work assignment for safety reasons—as a “red herring” because (1) Engle, Koslop’s immediate supervisor, “ended up not having a problem” with the refusal and expressed “no animus with it at the end of the day,” *id.* at 129: 5-9, and (2) Koslop did not establish that Bowling, who conducted the termination, knew of alleged work refusal, and Bowling, moreover, “didn’t use it as a basis” for the termination.” *Id.* at 129:10-12, 15-16. These contentions pertain to causal nexus and are addressed below; they do not undermine the Secretary’s non-frivolous showing that Koslop engaged in protected activity when he refused a work assignment for reasonable safety concerns.

## **B. Adverse Employment Action**

The Secretary has sufficiently demonstrated that Koslop suffered an adverse employment action when Respondent terminated his employment on September 24, 2024, such that his Discrimination Complaint is not frivolously brought.

Under the plain language of the Mine Act and well-settled precedent of the Commission, suffering a discharge or termination is an adverse employment action. 30 U.S.C. § 815(c)(1); *Moses v. Whitley Dev. Corp.*, 4 FMSHRC 1475, 1478 (Aug. 1982). *See also Moseneca Mfr.*, 46 FMSHRC at 4 (finding substantial evidence for ALJ’s determination that terminated miner suffered adverse employment action). Koslop testified repeatedly that his employment was

terminated on September 24, 2024, Tr. at 62:25 – 63:2; 64:14; 79:7-8, and Respondent acknowledged such in its Request for Hearing ¶ 5.

### C. Causal Nexus

Third, the Secretary has sufficiently demonstrated the existence of a causal nexus between Koslop’s protected activity and his subsequent termination, such that his Discrimination Complaint is not frivolously brought. To reach this conclusion, I address all four of the circumstantial indicia of discriminatory intent used by the Commission, and conclude that the Secretary has created a non-frivolous issue as to each one.

#### *i. Knowledge of the Protected Activity*

The Secretary provided circumstantial evidence of knowledge sufficient to create a non-frivolous issue as to Respondent’s knowledge of Koslop’s protected activity in relation to his termination. The Secretary need not prove that an operator had actual knowledge of the miner’s protected activity, only that there is a non-frivolous issue as to such. *Chicopee Coal Co.*, 21 FMSHRC at 718.

Koslop’s testimony suggests mine management was fully aware he had engaged in the protected activity of providing an interview with MSHA investigators after the fatal accident. Tr. at 18:17 – 19:16. He sat for the interview in a conference room at Hazelton Shaft Mine, *id.* at 19:20-24, and testified that acting mine superintendent Hampton walked by the open door of the conference room. *Id.* at 20:9-12. The implication is that Hampton may have heard at least Koslop’s statement to “the MSHA guy” who got up to close the door that he (Koslop) was “not hiding” what he had to say. *Id.* at 20:11-20. Moreover, other miners gave interviews as well, *id.* at 95:10 – 96:7, thus increasing the likelihood mine management knew of the interviews and who provided them. Mine management was obviously aware that equipment was “red-tagged” at Hazelton Shaft Mine after Koslop’s interview and the subsequent inspection. *Id.* at 30:23-31:17; 33:24 – 34:19; 36:14-16. Koslop testified he had informed mine management, including Makara and Hampton, of unsafe conditions at the mine. Tr. at 29:14 – 30:18; 47:13-16. Additionally, Koslop was a friend and neighbor of the miner who died in the accident as well as a first responder on the scene. *Id.* at 16:25; 21:21-22, 27:4 –29:9. It appears both Hampton and Bowling were aware of Koslop’s close tie to the deceased miner given the three-way exchange over Koslop’s ability to handle his emotions after the accident. *Id.* at 32:12 – 33:12.

Koslop told members of mine management directly about his interest in becoming a miners’ representative. Tr. at 40:19 – 41:8 (Makara); *id.* at 32:12-23 (Hampton), *id.* at 33:13-18 (Evans). He spoke also with mine operator Bowling about this interest, *id.* at 39:21 – 40:15, and his testimony suggests that Bowling raised the issue of miners’ representative with him, not vice-versa. Additionally, Koslop testified materials pertinent to his application to become a miners’ representative were left on Hampton’s desk. *Id.* at 42:21 – 43:8. *See also* 30 C.F.R. §§ 40.2(a) (requiring copy of filing to be provided to operator), 40.3(6) (requiring a statement that copy was provided to operator), 40.4 (requiring posting to mine bulletin board).



Koslop’s testimony can be read to suggest mine management above his immediate supervisor (Engle) knew or may have known about the manlift incident. Koslop testified that Evans was present at some stage of the manlift incident, Tr. at 106:15-25, and later participated in and verbally supported Bowling during the September 24, 2024, meeting in Bowling’s office at which Koslop was terminated. *Id.* at 69:18-23; 81:16-20. It is not implausible that Evans informed Bowling of that incident. Nor is it implausible that Engle (who told Koslop the meeting would pertain to the manlift incident and then, afterwards, told Koslop that Bowling had asked him (Engle) to fire Koslop and he refused)—informed Bowling of the manlift incident. *Id.* at 63:10-17; 83:8-13.

ii. *Temporal Proximity*

The Secretary provided circumstantial evidence of coincidence in time sufficient to create a non-frivolous issue as to the timing of Koslop’s protected activity in relation to the adverse employment action.

As the Commission recognized in *Chacon*, “adverse action under circumstances of suspicious timing” tends to “cast doubt on the legality of the employer’s motive.” 3 FMSHRC at 2511. There are “no hard and fast criteria [for] determining coincidence in time between protected activity and subsequent adverse action when assessing an illegal motive. Surrounding factors and circumstances may influence the effect to be given to such coincidence in time.” *Sec’y of Labor on behalf of Hargis v. Vulcan Construction Materials, LLC*, 46 FMSHRC 523, 532 (Aug. 2024). Improper motive has been found in cases with varying periods of time between the protected activity and the adverse action, “ranging from a few hours to a few months.” *Id.* (quoting *Sec’y of Labor on behalf of Vega v. Syar Indus., Inc.*, 40 FMSHRC 55, 64 (Jan. 11, 2018) (ALJ) (listing cases with parentheticals capturing range from two hours to 15 months)).

All four instances of protected activity identified in the Application, about which Koslop testified, occurred inside a temporal window a little over 2 ½ months long, i.e., between July 2024 (mainly in the aftermath of the fatal accident on July 25, 2024) and September 24, 2024. The surrounding circumstances—which include the accident, Koslop’s tie to the deceased miner, and Koslop’s increased interest in protecting miner safety following the accident and in becoming a miners’ representative—reinforce the suspiciousness of the timing. Koslop’s testimony suggests that most of his protected activity, especially his interview with MSHA investigators/inspectors, Tr. at 19:15-20:12, and his repeated vocalization of interest in becoming a miners’ representative, *id.* at 32: 15-17; 33:13-39:21– 40:14; 41:6, was visible and known to management, including to Bowling, the mine operator, who delivered the actual termination.

Koslop also testified that Evans, the Stockton Plant first shift supervisor, knew about the work refusal/manlift incident that occurred on September 23 (i.e., the day before Koslop’s termination), Tr. at 106:13-17, displayed anger towards that conduct, *id.* at 18-25, and verbally supported Bowling during the meeting held the very next day in Bowling’s office at which Koslop was confronted with the picture of the broken belt and terminated. *Id.* at 69:18-23; 81:16-20. Additionally, Koslop testified that Engle, who was “talked over” by both Evans and Bowling during the meeting in Bowling’s office, later told Koslop mine management was trying to

“railroad” him, *id.* at 83:7, 107:15, a word that suggests he may have been falsely accused of having done one thing (breaking a belt) as a means of achieving a different goal (perhaps removing a miner who had become a source of unwanted safety complaints). It is at least plausible that the adverse employment action stemmed from Koslop’s protected activity inside this temporal window.

*iii. Hostility or animus towards the protected activity*

The Secretary provided circumstantial evidence of hostility or animus toward the protected activity engaged in by Koslop sufficient to create a non-frivolous issue as to animus.

The Commission has held that “[h]ostility towards protected activity—sometimes referred to as ‘animus’—is another circumstantial factor pointing to discriminatory motivation. The more such animus is specifically directed towards the alleged discriminatee’s protected activity, the more probative weight it carries.” *Chacon*, 3 FMSHRC at 2511 (citations omitted). *See also Hargis*, 4 FMSHRC at 532 (hostility directed toward a miner may indicate animus, but the proper inquiry focuses on animus towards the protected activity because an operator can be outwardly pleasant toward a miner but still ignore that miner’s complaint thereby exhibiting animus toward the protected activity itself).

Koslop identified several instances of seeming animus toward his protected activity. He testified that, prior to the accident, his safety complaint about the main feed plant belt was met with disinterest by Hampton. Tr. at 30:11-18. Two members of mine management, Hampton and Evans, responded to Koslop’s vocalization of interest in becoming a miners’ representative with discouragement, *id.* at 32:12-17; 33:13-18, and Bowling—despite assuring Koslop that he (Bowling) had “no problems” with, and was “all for,” Koslop being a miners’ representative, *id.* at 33:11-12, 39:24:25—discouraged him from contacting MSHA prior to addressing safety issues directly with Bowling. *Id.* at 39:21 – 40:15. *See Sec’y of Labor on behalf of Adkins v. Greenbrier Minerals, LLC*, 46 FMSHRC 329, 337 (May 14, 2024) (ALJ) (citing *Sec’y of Labor on behalf of McGary v. Marshall Co. Coal*, 38 FMSHRC 2006, 2013-15 (Aug. 2016) and finding possible animus in temporary reinstatement where safety supervisor discouraged miners from calling MSHA prior to addressing safety concerns with management). *See also* Tr. 40:19 – 42:4 (describing Bowling’s reaction to Koslop’s recount of Makara’s speech involving the “run, run, run mentality” and Koslop’s expression of support for Makara’s interest in safety after the fatal accident); 43:12-22.

Koslop testified Evans was present and displayed aggravation upon witnessing Koslop’s refusal to operate the manlift as requested by Engle at Stockton Plant on September 23, 2024. Tr. at 106:15-25 (Evans “mumbled something and he was real mad. And then I heard ‘This is bullshit, they’re all doing this,’ when I walked out the door . . . I could tell he was aggravated”). This is potentially significant as Evans participated in and verbally supported Bowling during the meeting at which Koslop was terminated. *E.g., id.* at 69:13-70:5; 71:21-23; 81:16-20; 82:8-9; 83:5-7; 86:14-16. *See Vulcan Constr.*, 46 FMSHRC at 532 (“animus of a supervisor who participates in the termination decision in any way can be imputed to the operator”)

During his opening and closing statements, Respondent's counsel suggested that Respondent's conduct, as identified through Koslop's own testimony, undermined any showing of hostility or animus towards the protected activity he had alleged. Specifically, Respondent's counsel pointed out that: (1) Respondent did not impede Koslop's (or any other miner's) ability to interview with MSHA investigators/inspectors following the fatal accident and to share safety concerns with them; in fact, Respondent provided the conference room in which the interviews were conducted and no member of management attended; Tr. at 117:4, 95:10 – 96:15; 19:15-21:15; (2) there was a miners' representative (John) for the Stockton Plant first shift employed by Respondent (at least through Koslop's termination, if not beyond), *id.* at 117:5-11; 99:19-20; 100:2 – 101:178; (3) Koslop's immediate supervisor Engle did not "have a problem" with Koslop's work refusal during the manlift incident, *id.* at 129:5-9, 14-15; 55:23; and (4) Koslop was transferred and given work at Stockton Plant following his MSHA interview and reporting of safety concerns. *Id.* at 117:21-4; 47:3-12.

The conduct identified by Respondent's counsel could, ultimately, undermine Koslop's ability to show animus and, by extension, causal nexus, but it does not, at this early stage of the proceeding, negate the Secretary's showing of a non-frivolous issue as to animus. Again, there has been little to no discovery or exchange of information and evidence at this early stage, and as such, there is no way to know if the present evidence can truly bear the import placed on it by Respondent's counsel. Evidence may exist to undermine the import of Respondent's conduct vis-à-vis animus,<sup>36</sup> and Koslop has certainly placed in dispute Respondent's contention that he was terminated for conduct related to dereliction of duties on his final shift. Given the standard for temporary reinstatement, I will not weigh the Respondent's counsel's present characterization of the Secretary's evidence against the Secretary.

*iv. Disparate Treatment*

In *Chacon*, the Commission explained that "[t]ypical forms of disparate treatment are encountered where employees guilty of the same, or more serious, offenses than the [Complainant] escape the disciplinary fate which befalls the latter." 3 FMSHRC at 2512. Evidence of disparate treatment is not necessary, however, when other indicia of discriminatory intent are present. *Id.* at 2510-2513.

Koslop testified he did not receive a verbal or a written warning vis-à-vis the condition of the belt shown to him on Bowling's phone on September 24, 2024, for which he was terminated, and understood such to be required by "the company's policy." Tr. at 79:13-22. He also testified repeatedly to his perception that he was a "marked man" with mine management and believed his job was in jeopardy after and seemingly because he identified reported safety concerns to MSHA and expressed his interest in becoming a miners' representative. *E.g., id.* at 31:2-5; 43:14-15; 45:23-24; 46:3-4; 52:18-20; 55:11-18. There is also Engle's statement, recounted by Koslop as, "Dude, they're trying to railroad you," *id.* at 83:7; 107:15, which could suggest Koslop had been treated differently than other miners. At this stage, while there has been no

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<sup>36</sup> Perhaps, for example, John on the first shift has encountered animus towards his protected activity as a miner's representative that Koslop is, at present, unaware of. Or perhaps Engle, even if he did not have a "problem" with Koslop's work refusal, knows someone who did.

identification of specific employees who escaped the disciplinary fate that befell Koslop (i.e., termination), the evidence provided at this stage is sufficient to create a non-frivolous issue as to disparate treatment as well.


### **CONCLUSION**

I find there is reasonable cause to believe that Koslop engaged in four instances of protected activity between July 2024 and September 23, 2024; that, following such, he suffered an adverse employment action; and that there has been a non-frivolous showing that Respondent was aware of Koslop's protected activity, there was a close connection in time between the protected activity and Koslop's termination, members of mine management exhibited animus toward Koslop's protected activity, and Koslop may have been subject to disparate treatment. Therefore, given the arguable nexus shown between Koslop's protected activity and his termination, I conclude the Secretary has carried her burden to prove Koslop's Complaint was "not frivolously brought" under Section 105(c)(2) of the Mine Act.<sup>37</sup>

### **ORDER**

For the reasons set forth above, it is **ORDERED** that the Secretary's Application for Temporary Reinstatement be **GRANTED**, and that **Jamie M. Koslop** be **immediately** **TEMPORARILY REINSTATED** to the position he held on the date of his discharge from Atlantic Carbon Group, Inc., or a comparable position within the same commuting area, at the rate of pay currently applicable to that position, with all of the benefits he was receiving at the time of his termination. To the extent the amount of overtime Koslop was typically able to work prior to his termination is no longer available, he shall be given the same opportunity to work overtime as is currently available to his position.

This Order **SHALL** remain in effect until such time as there is a final determination in this matter by hearing and decision, approval of settlement, or other order of this Court or the Commission. I retain jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4). The Secretary shall provide a report on the status of the underlying Discrimination Complaint as soon as possible.

  
John Kent Lewis  
Administrative Law Judge

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<sup>37</sup> At the close of the hearing, Respondent's counsel stated Respondent's position that, per Koslop's own testimony, "he was terminated as a result of conditions that were shown to him that had nothing to do with any of the asserted protected activity." Tr. at 116:19-24. I will not address the merits of Respondent's defense in this temporary reinstatement proceeding. *See Moseneca Mfr.*, 46 FMSHRC at 4. Moreover, Koslop's testimony placed those "conditions" in dispute.

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