FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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February 25, 2025

SECRETARY OF LABOR, on behalf of SHAUN CHAPMAN, Complainant, v. BUCHANAN MINERALS LLC, Respondent.	TEMPORARY REINSTATEMENT Docket No. VA 2025-0026 MSHA No. NORT CD 2025-02 Mine: Buchanan Mine Mine ID: 44-04856

DECISION AND ORDER GRANTING TEMPORARY REINSTATEMENT OF SHAUN CHAPMAN

Before: Judge Simonton

I. INTRODUCTION

This case is before me on application for temporary reinstatement filed by the Secretary of Labor, acting through the Mine Safety and Health Administration ("MSHA"), against Buchanan Minerals LLC, pursuant to section 105(c) (2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c) (2) ("Act" or "Mine Act"). On February 9, 2025, pursuant to 29 C.F.R. § 2700.45(c), Respondent requested a hearing on these matters. A virtual hearing was conducted on February 19, 2025, via the Zoom platform.

II. STIPULATIONS OF FACT

At hearing, the parties agreed to the following stipulations:

1. The operations of Respondent are subject to the jurisdiction of the Federal Mine Safety and Health Review Commission.

2. Complainant Shaun Chapman is a "miner" within the meaning of the Federal Mine Safety and Health Act.

3. Buchanan Mine is a mine within the meaning of the Federal Mine Safety and Health Act.

4. Complainant Shaun Chapman was terminated from employment at Buchanan Mine on or about December 2, 2024.

5. Complainant Shaun Chapman filed a complaint with MSHA on or about December 4, 2024.

Tr. 6.

III. ANALYSIS AND FINDINGS

Shaun Chapman was terminated from his position as a roof bolter at Buchanan Minerals on December 2, 2024. Tr. 9. He has worked as a roof bolter, also known as a pinnerman, for 23 of his 25-year long mining career. Tr. 9-10, 32. As a roof bolter, he was responsible for ensuring that the ribs and top of the mine are secure and that the area is safe to progress forward with coal mining. Tr. 10, 32. His job duties involved examining areas for loose rock and installing metal rods into holes using glue in order to connect rocks together to keep them from falling. Tr. 10, 13. If a roof bolter is rushed during the installation process, rock falls can occur from improperly set glue. Tr. 11. Roof bolters work on shift with one partner. Tr. 11.

Chapman began his employment with Buchanan Minerals on August 10, 2021. Tr. 11. Beginning in January 2024, TJ Dotson became his supervisor. Tr. 12. Chapman testified that Dotson's management style was very "rushy" and that he wanted employees to finish bolting quickly in order to move onto cutting coal. Tr. 12. This interfered with Chapman's work because bolting takes time to do properly and rushing through the bolting process can create an unsafe environment. Tr. 13. Under Dotson, Chapman felt pressured to prioritize working quickly at the expense of safety. Tr. 18.

In August 2024, Chapman witnessed a tense conversation between Dotson and Chapman's roof bolting partner, Gary Ramey. Tr. 16. While Chapman and Ramey were bolting a rib that was over nine feet high and that they believed could be a citable violation, Dotson approached them to tell them that the rib did not need to be bolted. Tr. 16-17, 18. Chapman testified that Dotson told them to "stop cutting into [his] coal run time." Tr. 17. Chapman responded by asking Dotson what was more important, coal run time or safety, and that the rib needed to be bolted. Tr. 17. After this argument, Chapman felt that he and Ramey had targets on their backs because Dotson was angry with them. Tr. 17-18. This caused Chapman to fear for his job security. Tr. 18.

Shortly after this incident, Dotson and Ramey had another argument that led to the termination of Ramey's job. Tr. 19. Chapman testified that Dotson had instructed them to run a different bolter, but Ramey refused because he believed he could not run it. Tr. 19-20. Ramey and Dotson then had an argument, and Ramey left the mine in order to meet with HR. Tr. 20. Chapman participated in HR's investigation into this incident, informing them that he felt that Dotson had been smothering them, that this argument had been built-up, and that Ramey did not deserve to get fired. Tr. 21-22. He also informed HR that he felt like he had a bullseye on his back due to his poor relationship with Dotson. Tr. 23. Ramey was terminated as a result of the investigation for not following orders. Tr. 22. Chapman testified that he was concerned for his own job following Ramey's termination. Tr. 22

In November 2024, a dispute occurred between Dotson and Chapman. Tr. 23. Dotson told a group of miners, including Chapman, to take ventilation tubing through the return to prepare for a cut-through. Tr. 23. One miner was still cutting, which caused dust to go down the intake. Tr. 23. When Dotson saw the dust, he told the group that "it's got to be done." Tr. 24. Chapman further testified that when they cut through the breakthrough, a right-handed break, the ventilation would come over the top of the miner man and the buggy man, causing all the dust to come over the top of them. Tr. 24. When the dust came, Chapman stated that he told Dotson that he didn't know how Dotson slept at night after putting his men into that kind of dust, to which Dotson responded that he was the boss, and he would run it how he wanted. Tr. 24. In spite of the dust, which was too much for the area, Chapman still entered the return to get the ventilation dust because failing to do so would be considered not following an order and could result in his termination. Tr. 24-25.

Chapman was ultimately called into a meeting on November 26, 2024, with Michael Adams, Brian Richardson, Jordan Smith, and Josh Honaker, members of mine management, concerning Chapman's alleged misuse of a personal dust monitor ("PDM"). Tr. 25-27. The PDM measures dust while work is being conducted. Tr. 13. It was not required every shift and would be shared between the two roof bolters, depending on where the ventilation was routed. Tr. 13-14, 41. Chapman testified that instructions on how to use the PDM differed by shift, and that sometimes it was to be located on his person and other times it would be left on the bolter. Tr. 14-15, 43. Chapman did not know how these decisions were made, but depending on the day's specific instructions, he would always try to follow them. Tr. 15, 44.

During the meeting, it was alleged that Chapman had placed the PDM in his work bag to keep it from accessing dust. Tr. 27. Chapman was surprised by the allegation, and he contended that he had placed it in his work bag near the end of his shift so that he would not forget it when leaving at the end of his shift. Tr. 27-28. He is the one who brings it in ninety percent of the time at the end of a shift. Tr. 28. Chapman testified he told Dotson he had the PDM. Tr. 28. The date this incident allegedly occurred was not provided to Chapman. Tr. 27. At the conclusion of the meeting, Chapman was suspended for misuse of the PDM. Tr. 29.

Chapman was terminated via phone call on December 2, 2024. Tr. 29. He had no prior disciplinary infractions or written warnings prior to his termination. Tr. 30. Chapman believed that Dotson was a factor in the decision to terminate his position, because Dotson and Jordan Smith, who was present at the November 26, 2024, meeting, are good friends. Tr. 30. Chapman filed a complaint with MSHA shortly after his termination to try and get his job back. Tr. 31. He filed an amended complaint, which was signed electronically, on December 9, 2024. Tr. 35-36. MSHA composed the narrative in both the complaint and the amended complaint based on information provided by Chapman. Tr. 39-40.

Michael Adams, the human resource manager at the mine, testified for the Respondent. Tr. 49. As HR manager, he is responsible for hiring employees, disciplinary actions, and the termination of employees. Tr. 49-50. Adams was familiar with the circumstances surrounding Chapman's termination but refreshed his recollection of the incident prior to giving testimony by reviewing Chapman's personnel file. Tr. 51, 59-60. On November 20, 2024, Chapman had been assigned to wear a PDM while operating the roof bolter. Tr. 51. The machine he had been assigned required

maintenance, so Dotson initially instructed Chapman to place the PDM on a toolbox to prevent it from being damaged. Tr. 52. While preparing to crop dust in the area, Dotson then instructed Chapman to get the PDM and wear it. Tr. 53. Later on, Dotson noticed that Chapman did not have the PDM and asked him where it was. Chapman responded that it was in his dust bag down at the end of the track. Dotson then asked what it was doing in the backpack and Chapman responded, "Well, it's dusty what did you want me to do with it?" Tr.53.

As part of the investigation, Adams gathered facts, conducted interviews with individuals that had been involved, and submitted recommendations to the vice presidents of HR and operations to make the final decision. Tr. 69. In an environment where crop dusting was ongoing, Adams would expect the readings to be very high, which was not reflected in the report from Chapman's monitor. Tr. 61. He did not personally examine the dust monitor and did not know who in the three-person department examined it. Tr. 60. Adams testified he believed that because Chapman knew the rules surrounding PDM usage, he left the PDM in his bag deliberately despite orders from Dotson. Tr. 64.

Adams further testified that mine management learned about this incident from Dotson. Tr. 62. During the investigation of the incident, Dotson informed Adams that Chapman had confessed that he had put the PDM in his bag. Tr. 54. Dotson then witnessed Chapman removing the PDM from his bag. Tr. 54. This was corroborated by another miner who overheard Chapman tell Dotson the PDM was in his bag and observed Chapman remove it from the bag. Tr. 54. Adams testified that Dotson was not involved in the decision to terminate Chapman and did not offer any input, suggestions, or recommendations. Tr. 54-55. He also testified that during the investigation into Ramey, Chapman did not express any concern about Dotson and that Chapman just confirmed that Dotson asked Chapman and Ramey to switch sides and Ramey refused to do so. Tr. 55-56. In fact, Chapman had never raised any concerns about Dotson's attitude prior to his own termination. Tr. 56.

Adams maintains that Chapman was suspended on November 26, 2024, and terminated on December 2, 2024, solely for his misuse of the dust monitor. Tr. 56-57. Adams was not aware of any alleged incidents of protected activity or any incidents between Chapman and Dotson. Tr. 57. There were no prior disciplinary actions or warnings in Chapman's personnel file. Tr. 63. This incident is the first time Adams was aware of a miner being terminated for misusing a dust pump. Tr. 67. While unusual, a miner may be terminated without prior warning, particularly for a safety issue. Tr. 63.

IV. DISPOSITION

Section 105(c)(1) of the Mine Act provides that no person shall discharge or otherwise discriminate against a miner for exercising rights under the Act. It states, in pertinent part, "[n]o person shall discharge or in any manner discriminate against … or otherwise interfere with the exercise of the statutory rights of any miner … because such miner … has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent … of an alleged danger or safety or health violation in a coal or other mine." 30 U.S.C. § 815(c)(1)(Emphasis provided by the *Commission in Moses v. Whitley Development Corp.*, 4 FMSHRC 1475, 1478 (Aug. 1982)).

Pursuant to 105(c)(1), if the Secretary finds that [a discrimination] complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the reinstatement of the miner pending final order on the complaint. 30 U.S.C. § 815(c)(1). The Commission has noted that the parameters of a temporary reinstatement hearing are narrow, being limited to a determination with respect to whether a miner's discrimination complaint has been frivolously brought. *See Sec'y of Labor o/b/o Price v. Jim Walter Res., Inc.*, 9 FMSHRC 1305, 1306 (Aug. 1987), *aff'd.*, 920 F. 2d 738 (11th Cir. 1990). Accordingly, it is only necessary to determine whether the Applicants' complaints *appear* to have merit. (Emphasis added). *See* S. Rep. No. 181, at 36 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, 94th Cong., 2d Sess., at 624 (1978). In *Jim Walter Resources, Inc. v. FMSHRC*, the Eleventh Circuit found the "not frivolously brought" standard comparable to a "reasonable cause to believe" standard. *Jim Walter Res., Inc. v. FMSHRC*, 920 F.2d 738 (11th Cir. 1990). The Eleventh Circuit concluded that the low burden imposed by the "not frivolously brought" standard reflects clear Congressional intent to make temporary reinstatement relatively easy to obtain. *Id*. at 748.

The Commission has consistently and historically found that Congress intended section 105(c) to be broadly construed to afford maximum protection for miners exercising their rights under the Act. *See Sec'y of Labor o/b/o Charles H. Dixon et. al. v. Pontiki Coal Corp.*, 19 FMSHRC 1009, 1017 (June 1997) *citing Swift v. Consolidation Coal Co.*, 16 FMSHRC 201, 212 (Feb. 1994) ("the anti-discrimination section should be construed 'expansively to assure that miners will not be inhibited *in any way* in exercising any rights afforded by the legislation."')(quoting S. Rep. No. 181, at 36 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, 94th Cong., 2d Sess., at 624 (1978) (emphasis added)).

Although the Secretary is not required to present a prima facie case in a temporary reinstatement proceeding the Commission has determined it 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. *Sec'y of Labor o/b/o Williamson v. CAM Mining, LLC*, 31 FMSHRC 1085 (Oct. 2009). In order to establish a prima facie case under Section 105(c), a miner must show: (1) that he engaged in a protected activity; and (2) that his termination was motivated, at least in part, by the protected activity. *See Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786, 2799 (Oct. 1980).

The Commission has held that evidence of motivation may be shown by circumstantial evidence. *See, e.g., Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510-11 (Nov. 1981), rev'd on other grounds sub nom., *Donovan v. Phelps Dodge Corp.*, 709 F.2d 86 (D.C. Cir. 1983) (holding that illegal motive may be established if the facts support a reasonable inference of discriminatory intent); *Schulte v. Lizza Industries, Inc.*, 6 FMSHRC 8 (Jan. 1984). Circumstantial indicia of discriminatory intent by a mine operator against a complaining miner include: (1) knowledge by the operator of the protected activity, (2) hostility toward the miner because of his protected activity, (3) coincidence in time between the protected activity and the adverse action, and (4) disparate treatment of the complaining miner. *Jungers v. Borax*, 15 FMSHRC 300, 308 (Feb. 1993).

The Secretary has sufficiently demonstrated that the Application for Temporary Reinstatement was not frivolously brought. As stated above, a miner must raise a nonfrivolous claim that he engaged in a protected activity that has an arguable connection to an adverse employment action. The facts presented by the Secretary in this matter are sufficient to establish that there was reasonable cause to believe that there was such a causal nexus.

I find that the Secretary has sufficiently demonstrated that the Complainant engaged in a protected activity. It is clear from Chapman's testimony that before his suspension and subsequent termination, he raised safety concerns regarding dust levels with his supervisor, TJ Dotson. Even despite continuing to work through dangerous conditions, raising safety concerns constitutes a protected activity.

I also find that the Secretary has sufficiently demonstrated that the Complainant suffered an adverse employment action when he was terminated. It is well established precedent that termination is an adverse employment action. Chapman's termination came approximately two weeks after the protected activity occurred. As such, the Complainant has suffered an adverse employment action.

Although Respondent claims that the decisionmaker who chose to terminate Chapman had no knowledge of any alleged protected activity when the decision to terminate was made, the Secretary does not need to prove that the operator has actual knowledge of a complainant's protected activity in a temporary reinstatement proceeding, only that there is a nonfrivolous issue as to knowledge. *Sec'y of Labor obo Albu v. Chicopee Coal Co.*, 21 FMSHRC 717, 718 (July 1999). There is conflicting testimony about whether HR was aware of Chapman's poor relationship with Dotson. Additionally, while Adams testified that the decision to terminate Chapman was based solely on the misuse of the PDM and that Dotson did not play a role in the termination, some members of management are friends with Dotson and they learned about the incident from him. At this preliminary stage, it is not my duty to resolve conflicts in the testimony and I find that there is a nonfrivolous issue with regards to knowledge.

The temporal proximity between the protected activity and the adverse employment action supports the causal nexus. It is undisputed that the Complainant engaged in the protected activity approximately a week prior to his suspension on November 26, 2024, and was then terminated on December 2, 2024. This is a short period of time, which meets the threshold to establish that the timing is sufficient to support the nexus.

"Hostility 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." *Sec'y of Labor on behalf of Chacon v. Phelps Dodge Corporation*, 3 FMSHRC 2508, 2511 (Nov. 1981) (citations omitted). In his testimony, Chapman described how Dotson prioritized coal cutting over safety and described several disputes between Dotson and either himself or other employees concerning safety concerns. Further, prior to his own termination, Chapman observed the termination of his partner Gary Ramey after an argument with Dotson. The two terminations follow very similar timelines, beginning first with an argument with

Dotson over safety, shortly followed by an HR investigation, and finally culminating in a termination. These facts are sufficient to establish potential animus.

A temporary reinstatement hearing must be a full evidentiary process that permits all relevant evidence relating to the adverse employment action. *Sec'y of Labor o/b/o Cook v. Rockwell Mining, LLC*, 43 FMSHRC 157 165-66 (Apr. 2021). The Respondent claims that Chapman was terminated for reasons solely related to misuse of the PDM. Accordingly, the Respondent was permitted to present evidence and testimony throughout the hearing in support of this position. "[R]esolving conflicts in the testimony, and ma[king] credibility determinations in evaluating the Secretary's prima facie case" are simply not appropriate during a temporary reinstatement proceeding. *Sec'y of Labor on behalf of Williamson v. Cam Mining, LLC*, 31 FMSHRC 1085, 1089 (Oct. 2009) (citing *Chicopee Coal Co.* at 719). While the Respondent's evidence may be relevant or dispositive in a later discrimination proceeding, the only purpose it serves in this proceeding is as an alternative theory as to why the Respondent discharged the Complainant. *See Sec'y of Labor o/b/o Billings v. Proppant Specialists, LLC*, 33 FMSHRC 2383, 2385 (Oct. 2011). There is no obligation to adopt this theory and it does not demonstrate that the Complainant brought forth a frivolous complaint.

III. DECISION AND ORDER

For all of the reasons articulated above I find that the Complainant presented sufficient evidence at hearing to render his discrimination complaints non-frivolous. Accordingly, **IT IS ORDERED** that Respondent Buchanan Minerals LLC immediately reinstate Complainant Shaun Chapman no later than **February 27, 2025**, to the position he held immediately prior to the December 2, 2024 termination or to a similar position at the same rate of pay and benefits and with the same or equivalent duties assigned.

David P. Simonton
Administrative Law Judge

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