

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 18, 2025

WANDA PALO,	:	DISCRIMINATION PROCEEDING
Complainant,	:	
	:	Docket No. LAKE 2023-0202-DM
	:	MSHA No. NC MD-2023-02
v.	:	
	:	
	:	
UNITED STATES STEEL CORPORATION,	:	Mine: Minntac Mine
Respondent,	:	Mine ID: 21-00282

DECISION

Appearances: Daniel Gray Leland, Esq., Leland Connors PLC, Minneapolis, MN; for Wanda Palo, Complainant.
Michael P. Duff, Esq., United States Steel Corporation, Pittsburgh, PA; for United States Steel Corporation, Respondent.

Before: Judge Paez

This discrimination proceeding is before me pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, (“Mine Act”), 30 U.S.C. § 815(c)(3). Complainant Wanda Palo (“Complainant” or “Palo”) filed her discrimination complaint with the Federal Mine Safety and Health Review Commission (“Commission”) against Respondent United States Steel Corporation (“Respondent” or “USSC”) on June 16, 2023, after the Mine Safety and Health Administration (“MSHA”) investigated Palo’s claims, and the Secretary of Labor (“Secretary”) declined to take action under section 105(c)(2) of the Mine Act.¹

This case revolves around Palo being reprimanded and ultimately discharged by USSC after she is alleged to have untimely reported an injury she sustained after a coworker hit or shoved Palo with a bag at the end of Palo’s shift. At first blush, firing an employee for reporting a workplace injury late seems extreme. However, Palo was on a Last Chance Agreement (“LCA”) at this time, whereby she agreed and understood that her failure “to follow any plant or

¹ In this decision, volumes one and two of the hearing transcript, the joint exhibit, the Complainant’s exhibits, and Respondent’s exhibits are abbreviated as “I Tr.,” “II Tr.,” “Joint Ex. #,” “Ex. C-#,” and “Ex. R-#,” respectively. The following exhibits were admitted into evidence: Joint Ex. 1, R-1, R-2, R-3, R-4, R-6, R-7, R-8, R-9, R-11, R-12, R-14, R-16, R-17, R-18, R-19, R-20, R-21, R-21A, C-23, C-24, C-25, C-26, C-27, C-30, C-32, C-33, C-35, C-37, C-38, C-39, C-42, C-46, C-68, and C-80.

corporate rules, policies, or procedures” would be a material violation of the agreement and “result in suspension subject to discharge.” Therefore, I need not determine whether USSC had appropriate grounds to discharge Palo, but only whether it had appropriate grounds to discipline her for not timely reporting her workplace injury, which is the crux of this case.

To prevail, Palo must prove by a preponderance of the evidence that (1) she engaged in a protected activity, (2) she suffered an adverse action, and (3) the adverse action was motivated in any part by her protected activity. *Driessen v. Nevada Goldfields, Inc.*, 20 FMSHRC 324, 328 (Apr. 1998); *Sec’y of Labor ex rel. Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786, 2799 (Oct. 1980), *rev’d on other grounds, sub nom. Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir. 1981).

I. STATEMENT OF THE CASE

On July 26, 2023, Chief Administrative Law Judge Glynn Voisin assigned me this matter. Prior to the hearing, I issued an Order of Assignment to Settlement Counsel on September 5, 2023, but the parties were unable to resolve their dispute. On January 23, 2024, Palo retained counsel for this matter. Thereafter, I held a hearing in Duluth, Minnesota, where Palo testified and both Palo and USSC presented testimony from the following witnesses: Mitchell John McDonald, Union Safety Chair; Joseph Bissonnette, Team Leader; James Melvin Aho, Team Leader; Chad Russell Hunt, Shift Manager; Nicole Koski, Company Labor Relations Representative (“Labor Relations Rep.”); Susan Wiirre Lindberg (“Susan Wiirre”), Senior Manager and Employee Relations (“Senior Manager”); and Steven John Bonach, Union President and Grievance Committee Chair (“Union President”). Additionally, the parties submitted documentary evidence. Per my request, Palo and USSC filed post-hearing briefs and reply briefs.

II. ISSUES

Palo argues that she engaged in protected activity on February 26, 2023, when she told her shift manager, Chad Hunt, that a coworker hit her shortly after it occurred. Palo also argues that she engaged in protected activity when she reported the incident and her resulting injury to her union representative, Steven Bonach, on February 27, 2023. Additionally, Palo asserts that she engaged in protected activity when she reported her work-related injury to Labor Relations Rep. Nicole Koski on March 2, 2023. Palo alleges that, in response to her protected activities, USSC retaliated against her by disciplining and ultimately discharging her on March 13, 2023.

USSC, in turn, argues that Palo did not timely report the “work-related” injury she sustained on February 26, 2023, because she did not officially report it until her meeting with Labor Relations Rep. Koski on March 2, 2023. USSC asserts that this untimely report of her

workplace injury is a violation of USSC Safety Rules 1.7² and 1.8.³ Additionally, because Palo was on a Last Chance Agreement with USSC at this time, USSC asserts that Palo's violation of Safety Rules 1.7 and 1.8 was also a violation of her Last Chance Agreement. Accordingly, USSC claims it issued two discipline slips to Palo on March 7, 2023, and later discharged her on March 13, 2023, based on her failure to comply with Safety Rules 1.7 and 1.8. and, thus, her Last Chance Agreement. USSC further argues that even if Palo engaged in protected activity, its subsequent discipline of Palo was in no way motivated by her protected activity but rather was solely to address Palo's failure to comply with Safety Rules 1.7 and 1.8 and the resulting violation of her Last Chance Agreement.

Accordingly, I determine the following issues are before me: (1) whether Palo has established by a preponderance of the evidence that USSC discriminated against her in violation of section 105(c) of the Mine Act; and (2) if so, what are the appropriate remedies.

III. FINDINGS OF FACT

A. Parties' Stipulations

At the hearing the parties stipulated in a joint exhibit to the following items, verbatim:

1. Respondent is an "operator" as defined in § 3(d) of the Federal Safety and Health Act of 1977, as amended (hereinafter "the Act"), 30 U.S.C. § 802(d).
2. Minntac Mine is a "mine" as defined in § 3(h) of the Act, 30 U.S.C. § 802(h).
3. Minntac Mine is operated by the Respondent.
4. Operations at Respondent's Minntac Mine (Mine ID 2100282) (hereinafter "Minntac") are subject to the jurisdiction of the Act.
5. This proceeding is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission and its designated Administrative Law Judges pursuant to Sections 105 and 113 of the Act.
6. The Complainant, Wanda Palo (hereinafter, "Complainant"), was a "miner" at all times relevant to this matter.
7. Complainant engaged in a protected activity when she reported to Respondent's management on March 2, 2023[,] that she had been injured four days earlier on February 26.

(Joint Ex. 1.)

² Safety Rule 1.7 states: "Report to your supervisor, as soon as possible, all incidents with or without injury." (Ex. R-7.)

³ Safety Rule 1.8 states: "Report all injuries or hazardous exposures, however slight, to your supervisor as soon as possible. If you are injured, no matter how slightly, obtain first aid treatment promptly. Neglecting minor scratches or cuts may result in serious infections." (Ex. R-7.)

B. Background

Wanda Palo began her employment with USSC on August 9, 2012. (I Tr. 24:5–9.) Palo was an Operating Technician at the Minntac Surface Mine, located in Mountain Iron, Minnesota, and worked in various positions, including mobile equipment operator and truck driver. (I Tr. 26:6–30:13.) During her employment, Palo experienced multiple serious workplace injuries, including a neck injury, a meniscus tear in her knee requiring surgery, and a hip injury requiring surgery. (I Tr. 31:21–33:9, 36:18–47:25.) Specifically, in or around the summer of 2020, Palo tore her meniscus while pushing the decelerator pedal on the CAT bulldozer during a night shift and needed surgery to repair it. (I Tr. 38:11–39:20, 40:13–16, 259:7–11.)

Palo’s hip injury developed over time from repeatedly pushing the decelerator pedal on the CAT bulldozer. (I Tr. 37:12–38:11.) Eventually, Palo’s sacroiliitis joint separated while at work in May of 2021 and she had to be taken to the hospital in an ambulance. (I Tr. 40:17–19, 42:11–43:24, 46:4–7.) In June of 2021, USSC ordered Palo to return to work, but her hip continued to flare up, so she only worked a few days in June and July despite USSC’s repeated demands that she return to work; in August her doctor ordered her not to work at all until her surgery. (I Tr. 44:25–45:13, 46:8–49:17.) In February 2022, Palo underwent surgery for her hip in which pins were placed through her sacroiliitis joint to stabilize it. (I Tr. 36:22–37:11, 43:14–20, 44:15–21.) Palo continued to experience soreness in her hip after the surgery, especially after performing manual labor at work. (I Tr. 87:3–88:12.)

On January 27, 2022, Palo and her union representatives entered into a Last Chance Agreement with USSC, which modified Palo’s discharge on April 28, 2020, for unsatisfactory work performance⁴ to a ten-day suspension. (Ex. R–1.) The Last Chance Agreement was to remain in effect for 36 months during which she was in active employment. (I Tr. 55:6–16; II Tr. 75:6–76:6; Ex. R–1.) The section of Palo’s Last Chance Agreement titled “Work Conduct” provides, in relevant part: “Employee understands that failure to abide by any of the conditions of this agreement or failure by employee to follow any plant or corporate rules, policies, or procedures shall be considered a material violation of this Agreement.” (Ex. R–1 (emphasis omitted).) Palo’s Last Chance Agreement further provides, in relevant part: “Failure by Employee to abide by ANY of the terms or conditions of this Agreement shall be considered to

⁴ While operating a CAT bulldozer during a night shift in April of 2020, the dump sloughed off, which Palo reported on the radio and then she took a break. (I Tr. 56:6–7.) Afterwards, Shift Manager Hunt talked to Palo and told her the control room operator was watching her go to the bathroom. (I Tr. 57:7–10.) In response, Palo testified that she asked for union representation. (I Tr. 57:10–14.) Palo stated that she also pulled a stop card, which USSC employees use to stop performing work they feel is unsafe. (I Tr. 57:15–57:17.) However, Palo testified that Hunt overrode her stop card and told her that he was not going to call union representation at night for her. (I Tr. 57:18–21.) Instead, Hunt ordered Palo to return to work. (I Tr. 60:12–14.) Hunt spoke with Palo again later that night and accused her of sleeping on the job, which Palo denies, but this accusation was the basis for her “April 28, 2020, discharge,” although Palo’s employment with USSC was never actually terminated due to the grievances her union filed on her behalf. (I Tr. 57:22–58:6, 60:20–25, 62:2–11, 153:23–154:20.)

be a material violation of this Agreement and shall result in suspension subject to discharge.” (Ex. R-1 (emphasis omitted).)

C. “The Incident” – Sunday, February 26, 2023

Palo and her co-worker Michelle Mesich had a well-known history of animosity and turmoil, such that USSC management told Palo and Mesich not to interact or travel together in vehicles. (I Tr. 184:20–185:5, 233:14–19.) When Palo first started working with Mesich, Mesich obsessively asked Palo to hang out, so much so that it made Palo uncomfortable. (I Tr. 79:5–18.) Palo reported Mesich’s behavior to Labor Relations Rep. Koski and subsequently had a meeting about it with Koski, Supervisor Todd Plackner, and Team Leader Thad Sweeney. (I Tr. 79:5–20.) Koski told Palo that she and Mesich “needed to be professional and they may encounter each other over the course of business, but that they did not have to be friends. And if there were any future things that happened, that we needed to know about it, that they needed to be reported.” (II Tr. 32:9–19.)

However, Palo’s troubles with Mesich persisted as Palo claims Mesich began hitting Palo with her gym bag filled with heavy tools. (I Tr. 72:22–74:10; II Tr. 143:18–23.) Palo estimates this occurred nearly a half dozen times. (I Tr. 72:22–73:2.) Palo told Shift Manager Hunt and Labor Relations Rep. Koski about these incidents and even went so far as to report Mesich’s behavior to the USSC ethics hotline. (I Tr. 72:22–73:2, 74:6–76:21, 78:18–79:4; II Tr. 143:21–23.) However, when Palo told Hunt about these incidents, she testified that he seemed indifferent and that he thought the situation was funny, with Hunt on at least one occasion saying, “What do you want me to do?” (I Tr. 75:17–76:7.) Similarly, Palo stated that Koski also failed to take any action to address Palo’s safety concerns. (I Tr. 75:9–75:16.)

On Sunday, February 26, 2023, at approximately 5:30 p.m., Palo finished her twelve-hour shift and prepared to go home. (I Tr. 24:5–13, 26:6–27:8, 28:23–29:1, 30:3–31:6, 70:9–72:9, 95:11–14.) As Palo was exiting the Minntac Mine Annex, she noticed Mesich coming down the hallway from the opposite direction, so Palo turned to the side to let Mesich pass. (I Tr. 70:9–72:16.) However, as Mesich passed her, Palo felt a “heavy” and “hard” blow from Mesich’s bag⁵ hitting her across her left shoulder and neck. (I Tr. 72:7–9, 138:8–10; Exs. R-16, C-80.) The blow was forceful enough to cause Palo to collide with the wall behind her and the pins in her hip to twist, which resulted in pain. (I Tr. 72:10–12, 139:6–139:7; Exs. R-16, C-80.)

Reeling from Mesich hitting her, Palo turned around and saw Mesich continue to walk away from her down the hallway. (I Tr. 72:10–16.) Palo turned around and went to the nearby entrance of the shift manager’s office, where Hunt, the shift manager for the oncoming shift, and Team Leaders James Aho and Thad Sweeney were present. (I Tr. 72:14–16, 79:21–80:2; Exs. R-16, C-38, C-46, C-80.) Palo said, “Did anybody just see that? She just hit me . . . I’m tired of getting hit with the bag.” (I Tr. 80:2–5; Exs. R-16, C-38, C-46, C-80.) While Aho and Sweeney heard Palo say that she was “hit” or “shoved,” Hunt only heard Palo say “Did you see

⁵ Palo estimates that Mesich’s bag weighted roughly fifteen pounds as Mesich previously told her that her bag was filled with tools like crescent wrenches, hammers, and pliers, as well as duct tape and a thermos. (I Tr. 73:3–23.)

that? [and] something about, ‘a push’ and ‘a bag.’” (I Tr. 219:2–6, 229:21–230:25; Exs. R–2, R–3, R–4.) Before anyone could respond, Palo left the building to drop off her work clothes and go home. (I Tr. 86:13–23, 135:22–136:6, 223:10–22, 255:25–256:10; Exs. R–2, R–3, R–4.)

Palo did not say anything about an injury to Shift Manager Hunt, Team Leader Aho, or Team Leader Sweeney because her “adrenaline was pumping” at the time and she was focused on alerting them to the incident that just occurred. (I Tr. 135:1–14.) Palo also acknowledged that while she may have felt some pain or discomfort, she had “just got off [her] shift and it’s not uncommon to feel sore when you are done with your shift.” (I Tr. 135:15–21.) Indeed, Union President Bonach knew of multiple instances where miners were injured and “didn’t feel it right away.” (II Tr. 150:3–5.) Instead, the miners “work through it.” (II Tr. 150:6–9.)

By the time Palo reached her vehicle to drive home her right foot was numb, however, she was unsure what caused the numbness. (I Tr. 103:17–25, 135:22–136:6; 136:18–21, 137:9–140:23, Exs. R–16, C–38, C–46.) Palo explained that she did not return to Shift Manager Hunt to report this numbness, because she hurts every night after finishing a twelve-hour shift and had experienced numbness before. (I 140:9–23.) Indeed, Union Safety Chair Mitchell McDonald referred to miners as “industrial athletes” because they perform “hard, physical work” and work long hours. (I 162:14–163:12.) McDonald explained that miners are therefore often sore and do not always formally report typical aches and pains. (I 163:13–164:11, 193:11–18.)

When Palo arrived home, she was experiencing general soreness and pain in her hip, which she frequently experienced after strenuous work, so she took her usual steps to relieve the discomfort by taking pain medication, icing her hip, and doing physical therapy exercises. (I Tr. 86:22–88:12, 143:8–14; Exs. C–46, R–16.)

D. Events Following the Incident

1. One Day After the Incident: Palo Informs Bonach

Throughout the evening of Sunday, February 26, 2023, Palo’s hip pain worsened, with her pain peaking at approximately 2:00 a.m. or 3:00 a.m. on Monday, February 27, 2023. (I Tr. 143:8–21.) Palo was not scheduled to work on Monday, February 27, 2023; however, via text at 10:09 a.m. she notified Union President Bonach of the incident with Mesich. (I Tr. 88:13–16, 97:11–98:6; Ex. C–80.) Specifically, Palo texted Bonach—

Hi. I [k]no[w] this isn’t your thing. But I just want to make a note. I did speak up to Chad [Hunt,] Thad [Sweeney,] and [Jim] Aho [who] were in the office. Yesterday when leaving I got shoved again by Michelle [Mesich]. See if they do anything. Or better yet ignore it. What I said [was] “Did anyone see that? I’m tired of getting hit or pushed every time I walk by her.” They just looked at me and said nothing. Also this time she caught me off guard and it twisted the pins in my hip as I [b]umped [into] the wall. [I]t was a bit painful. I had to c[o]me home and ice[] it. . . . I understand she might be retiring, but to let her go with a clean record is a[n] insult. All the other garbage I have continued to just walk away from. But this is just wrong.

(Ex. C–80.)

Union President Bonach responded by text, saying, “I agree with you on that nobody should ever be touched in any way!! You told a manager[,] and he should react on it, you should make a call to Sue [Wiirre] or Nicole [Koski] or if you want me to talk to them, [I can].” (Ex. C–80.) In response, Palo texted, “I’ll leave it up to you. I guess my only concern is that it would escalate, if she is thinking to get one good hit in before she leaves or something.” (Ex. C–80.) Bonach then responded with the text, “I’ll deal with it.” (C–80.)

2. Two Days After the Incident: Bonach Informs Koski of the Incident & Palo’s First Shift Following the Incident

On Tuesday, February 28, 2023, at approximately 2:30 p.m.,⁶ Union President Bonach informed Labor Relations Rep. Koski that Mesich hit Palo with her bag on February 26 by showing Koski the text messages that Palo had sent him the previous day. (II Tr. 20:23–21:15, 22:9–23:2, 23:25–25:25, 83:11–25, 143:24–144:22; Ex. C–80.) Bonach asked Koski if she wanted him to take any action, to which Koski responded that she was unsure at the moment, prompting Bonach to tell her to “make a call, or [he] would deal with it.” (II Tr. 143:24–145:12.)

Palo’s first scheduled shift following the incident began later that evening at 5:30 p.m. on Tuesday, February 28, 2023, and was to last until 5:30 a.m. on Wednesday, March 1, 2023. (I Tr. 97:11–98:6; II Tr 47:16–17, 49:22–50:1.) Senior Manager Susan Wiirre confirmed that on February 28, 2023, she was aware of the incident between Palo and Mesich, yet she did “not have [a] discussion with Wanda [Palo] that day,” despite typically working until 9:00 p.m. or 10:00 p.m. (II Tr. 120:8–122:2.) Upon reflection, Wiirre admitted that USSC management “should have talked to Wanda [Palo] sooner.” (II Tr. 118:25–119:6.)

Upon arriving for her night shift, Palo informed her Team Leader, Joseph Bissonnette, and Shift Manager, Eric Meese, that she was sore, but she did not specify why. (I Tr. 81:24–82:6, 98:21–99:10, 146:16–147:3, 205:1–14; Exs. C–38, C–46, C–80.) Palo testified that she asked Bissonnette and Meese to check their computer to see if there were any supervisor notes about her, but did not specify what the notes would be about. (I Tr. 82:14–24, 98:21–99:10, 144:17–145:2, 146:19–147:3, 147:22–148:6; Ex. C–46.) In response, Bissonnette allegedly told Palo that there were no notes about her in the system, though Bissonnette denies that Palo asked him to check the system for notes about her. (I Tr. 82:14–24, 98:21–99, 144:17–145:2, 205:15–21, 206:4–10; Ex. C–46.)

Palo then started her shift, but a few hours later she radioed the control room operator that she needed to step down. (I Tr. 99:12–100:4; Exs. C–38, C–46, C–80.) Palo testified that

⁶ Counsel for USSC admitted in his opening statement that Bonach informed Koski of the incident between Palo and Mesich at approximately 2:30 p.m. on February 28, 2023. (I Tr. 16:15–23.) While no witness at hearing testified to this statement, it is not disputed in any of the parties’ post-hearing briefs.

shortly after, she said she was not feeling well over the radio and in response Team Leader Bissonnette asked her if she wanted to go home, prompting Palo to respond, “that’s probably for the best,” as she had a muscle spasm in her leg and did not want to risk hurting anyone if her leg locked up while operating a machine. (I Tr. 98:21–100:4, 148:7–19; Exs. C–38, C–46, C–8.) However, Bissonnette testified that Palo only said, “I’m going home,” over the radio, to which he replied “okay,” and he then had another MEO equipment operator go relieve her. (I Tr. 206:11–207:1, 207:20–208:1; C–38.)

3. Three Days After the Incident: Koski Begins Investigation & Palo’s Second Shift Following the Incident

Labor Relations Rep. Koski began her investigation of the February 26, 2023, incident between Palo and Mesich on Wednesday, March 1, 2023, during her normal working hours of 7:30 a.m. to 4:00 p.m. (II Tr. 38:18–39:25, 49:16–19.) Koski gathered the swipe times of Palo and Mesich to determine when they were at work and contacted the area manager of the mine. (II Tr. 38:20–25.) Koski learned that Palo was scheduled to start a night shift that evening at 5:30 p.m., but she chose not to stay late to speak with Palo, preferring instead to arrive early the next morning on March 2 to meet with Palo at the end of Palo’s night shift. (I Tr. 100:13–15; II Tr. 39:8–19, 40:4–13, 49:22–50:1.) Koski also reached out to Shift Manager Hunt to inform him of the text messages that Union President Bonach showed her the previous day and asked about his recollection of what Palo said to him. (II Tr. 38:20–39:7.)

On Wednesday, March 1, 2023, Palo was worried that the pins in her hip had moved, so she scheduled an appointment with her doctor. (I Tr. 96:13–97:2.) After scheduling the appointment, Palo asked Union President Bonach over text whether “this [is] a new incident or does it fall under the old injury[]? I guess I’m thinking it’s part of the old. But they might view it as new. Any idea[?]” (I Tr. 96:2–12; II Tr. 150:12–151:2; Ex. C–80.) Bonach responded via text saying, “Your injury would have to be considered a previous injury unless you filed a recent injury report.” (II Tr. 150:21–151:2; Ex. C–80.) Bonach also notified Palo that she needed to attend a meeting at the end of her night shift the following morning that potentially concerned why she left work early the previous night. (I Tr. 100:13–101:4; Ex. C–80.)

Thereupon arriving for duty on the night shift beginning March 1, Team Leader Bissonnette also informed Palo that she needed to attend a meeting at the end of her shift on the morning of March 2. (I Tr. 100:13–24, 208:21–209:2.) Palo testified that she told Bissonnette she was still experiencing pain and asked whether there were any supervisor notes about her in the system, to which Bissonnette responded that there were none. (I Tr. 82:14–24; Ex. C–46.) However, Bissonnette denies that Palo asked him whether there were any notes about her in the system or told him that she was in pain. (I Tr. 205:15–21, 208:210.) Ultimately, Palo went to work, and the night was otherwise unremarkable. (I Tr. 100:16–101:25, 208:21–209:8.)

4. Four Days After the Incident: Palo’s First Meeting with Koski

Shortly after Palo finished her night shift at 5:30 a.m. on Thursday, March 2, 2023, she met with Labor Relations Rep. Koski, Union President Bonach, Union Safety Chair McDonald, and two other individuals. (I Tr. Vol. 102:1–22, 168:2–24.) Koski began the meeting by asking

Palo why she left work early the evening of February 28, 2023. (I Tr. 102:23–103:13; II Tr. 84:1–18; Ex. C–38.) In response, Palo explained that she left work early on February 28, because of the pain she was experiencing after Mesich hit her and then described to Koski what occurred on February 26. (I Tr. 103:10–104:17; II Tr. 26:1–23, 81:14–21, 84:12–85:2; Ex. C–38.) Furthermore, Palo explained that she told Shift Manager Hunt about the incident shortly after it occurred and added that she noticed numbness in her foot upon reaching her vehicle after the incident. (I Tr. 103:17–104:17; II Tr. 26:1–23, 81:14–21, 85:3–13; Ex. C–38.) Koski asked Palo why she did not go back inside to report the numbness in her foot to Hunt, prompting Palo to respond that “[she had] just talked to [Hunt]” and then noted that Koski’s question did not make sense to her because Hunt does not take reports. (I Tr. 104:1–104:5; II Tr. 85:3–13; Ex. C–38.) Palo also noted that this was not the first incident with Mesich, as Mesich had previously hit Palo with her bag several times before. (II Tr. 34:3–7.)

Labor Relations Rep. Koski asked Palo why she did not call a member of USSC management to report what had happened and the pain she was feeling when she got home. (I Tr. 104:6–13.) Palo testified that she responded by saying she “wasn’t going to call anybody at 2:00 in the morning.” (I Tr. 104:6–13, 143:14–21.) Koski told Palo that she “could have said something the next day,” to which Palo replied “I did [report it] to Steve [Bonach].” (I Tr. 104:14–17.) However, Koski testified that she asked Palo at least two times why she did not report her workplace injury to USSC sooner to which Palo had no response, and instead looked to Bonach, who stated that “a while back” he and Palo raised other issues she had to Shift Manager Hunt. (II Tr. 85:3–13; C–38.)

Labor Relations Rep. Koski eventually told Palo that she needed to go to the Plant Medical Dispensary,⁷ because Palo said she had been injured at work on February 26, 2023. (II Tr. 26:1–23.) In response, Union President Bonach told Koski that Palo needed to complete an incident report form and a safety investigation needed to occur. (I Tr. 166:14–168:24; II Tr. 26:20–27:12, 147:13–148:9, 151:3–13; Ex. C–38.) Although Koski testified that no argument occurred regarding whether Palo should fill out an incident report form and that she did not resist providing an incident report form to Palo, Palo testified that a heated discussion occurred between Koski, Bonach, and Union Safety Chair McDonald. (I Tr. 104:18–106:7, 166:14–169:19; II Tr. 26:1–23, 26:6–27:20, 85:14–22, 146:23–148:9, 151:3–9, 151:15–152:1.) In response to the union representatives’ request, Koski gave Palo an incident report form which Palo promptly filled out, detailing the events of February 26, 2023. (I Tr. 105:5–106:23; II Tr. 151:3–6; Exs. R–16, C–24, C–25.) Additionally, McDonald told Koski during this meeting that Palo would file a section 105(c) complaint against USSC, although Koski denies this. (I Tr. 107:5–13, 190:9–193:2; II Tr. 86:3–17, 154:12–155:12, 159:24–160:4.)

5. Five Days After the Incident: Palo Visits her Doctor

Palo saw her doctor on Friday, March 3, 2023, and after having an X-ray done, she learned that the pins in her hip were in place. (I Tr. 97:3–10, 112:16–25.) Palo’s doctor wrote in

⁷ The Plant Medical Dispensary is a USSC facility in which injured USSC employees are evaluated and connected with a telemedicine health care provider. (I Tr. 108:11–25.)

his report that Palo most likely strained a muscle and could return to work with no limitations that same day. (Ex. C-23; I Tr. 112:3-113:9.)

6. Nine Days After the Incident: USSC Issues Discipline Slips to Palo

On Tuesday, March 7, 2023, Palo was issued two discipline slips by Labor Relations Rep. Koski who had determined the day before on Monday, March 6, 2023, that Palo violated USSC Safety Rules 1.7 and 1.8.⁸ (I Tr. 115:9-22; II Tr. 10:2-12, 86:18-87:2; Exs. R-17, R-18, R-19, C-27.) Palo received one discipline slip for “[f]ail[ing] to timely report an injury” and the other slip was for a “Violation of Last Chance Agreement.”⁹ (I Tr. 115:9-116:22; II Tr. 8:9-14, 10:21-11:16; Exs. R-17, R-18, R-19.) The discipline slips stated that Palo was suspended from March 7 to March 11, 2023, and was subject to discharge. (I Tr. 115:9-116:22; II Tr. 8:9-14, 10:21-11:16; Exs. R-17, R-18, R-19.)

7. Ten Days After the Incident: Palo Files Section 105(c) Complaint

Palo had contacted MSHA about filing a section 105(c) complaint, and in a letter dated March 7, 2023, from MSHA Investigator Wilbert Koskiniemi to Palo with copies to Labor Relations Rep. Koski and Shift Manager Hunt, Koskiniemi explained the discrimination complaint forms he was providing Palo. (Compl. at 26.) On March 8, 2023, Palo filed a discrimination complaint with MSHA using the agency’s Form 2000-123 and named USSC as the violator. (Ex. C-46.) MSHA later notified USSC of Palo’s discrimination complaint via letter dated March 16, 2023. (Compl. at 1.)

8. Eleven Days After the Incident: Palo’s 9-B Hearing

On March 9, 2023, USSC held a preliminary hearing (“9-B hearing”)¹⁰ to address Palo’s failure to timely report her workplace injury and the resulting violation of her Last Chance Agreement. (I Tr. 165:1-166:6; II Tr. 70:23-71:11, 89:21-23.) In advance of the 9-B hearing, on or around March 9, 2023, Labor Relations Rep. Koski asked Shift Manager Hunt and Team Leaders Aho and Sweeney to provide written statements describing their recollection of their interaction with Palo on February 26, 2023. (II Tr. 12:14-13:25.) Koski also interviewed Mesich about the incident for the first time on the morning of March 9, 2023, before the 9-B

⁸ USSC’s “Notification of Discipline” is a required step in its discharge and discipline process under the union’s basic labor agreement. (II Tr. 88:9-25; Exs. R-17, R-18.)

⁹ Koski issued the “Violation of Last Chance Agreement” discipline slip because she considered Palo’s “failure to timely report an injury” to be a material violation of the Last Chance Agreement. (II Tr. 87:15-21.)

¹⁰ A 9-B hearing is part of USSC’s discipline and discharge process in accordance with the union’s basic labor agreement that provides employees the opportunity to review and discuss the pertinent facts relating to their suspension, including any explanations or defenses the employees may have. (Resp’t Br. at 10 n.7; II Tr. 8:3-8.) Employees who receive a 5-day suspension subject to discharge have a right to request such a hearing. (II Tr. 7:25-8:8, 88:9-25.)

hearing. (II Tr. 35:18–25, 89:21–90:7.) During her interview, Mesich “denied any kind of contact or touching [Palo].” (II Tr. 90:8–14.)

Palo attended the 9-B hearing along with Union President Bonach, Union Safety Chair McDonald, Labor Relations Rep. Koski, Senior Manager Wiirre, and three other individuals.¹¹ (I Tr. 116:12–117:8, 165:1–166:6; II Tr. 70:23–71:11, 89:21–23.) The hearing began with Palo recalling the incident with Mesich on February 26, 2023, as well as the events that occurred during her next night shift on February 28 through March 1 when she left early. (I Tr. 116:2–117:23; II Tr. 159:24–160:1; Ex. C–38.) Koski asked Palo why she did not report the numbness in her foot to a supervisor to which Palo responded, “[i]t was Chad [Hunt]. He wasn’t going to do anything anyway,” and further explained that it was the end of her shift, and she wanted to go home. (II Tr. 91:1–92:10; Ex. C–38.) Koski then asked Palo if she tried to report the incident to any other supervisor besides Hunt to which Palo responded that she did not. (II Tr. 91:1–92:10; Ex. C–38.)

During the 9-B hearing, Union President Bonach read aloud the text message that Palo sent him on March 1, 2023, saying that she told Team Leader Bissonnette on February 28, 2023, that she was sore. (Exs. C–38, C–80; Resp’t Br. at 11.) Bonach and Union Safety Chair McDonald also presented evidence of various other cases in which USSC employees reported their workplace injuries “two days later, five days later, [ten] days later, and there was no discipline involved.” (II Tr. 158:11–159:12.) Additionally, McDonald brought up the topic of a section 105(c) complaint against USSC. (I Tr. 117:24–119:10; II Tr. 159:24–160:1). However, Labor Relations Rep. Koski denied that any discussion about Palo filing a section 105(c) complaint occurred during the 9-B hearing on March 9. (II Tr. 87:22–88:8, 93:7–12, 94:18–95:6; Ex. C–38.)

9. Fifteen Days After the Incident: Palo is Discharged

Labor Relations Rep. Koski testified that, in her view, Palo did not provide any information during the 9-B hearing to demonstrate that she reported her injury from the incident on February 26, 2023, to a supervisor as soon as possible or that she had not violated her Last Chance Agreement. (II Tr. 92:23–93:24.) As a result, on March 13, 2023, USSC converted Palo’s five-day suspension to a discharge “because it was determined that [Palo’s] failure to timely report her alleged injury was a violation of her Last Chance Agreement, which clearly states that any policy or rules violations . . . shall be subject to discharge.” (II Tr. 10:25–11:16, 93:13–24; Exs. R–19, C–30.)

¹¹ Palo testified that she attended a second meeting with her union representatives to discuss the incident with Mesich, and the discipline slips that she received on March 7, 2023. (I Tr. 116:2–120:9.) Based on the evidence presented and the testimony of Koski, Bonach, and McDonald, it appears that Palo is referring to the 9-B hearing that occurred on March 9, 2023. (I Tr. 116:2–117:23; II Tr. 70:23–71:11, 89:21–23, 159:24–160:1; Exs. C–38, C–80.)

IV. PRINCIPLES OF LAW

Section 105(c)(1) of the Mine Act provides:

No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with 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, or because such miner . . . has instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this chapter.

30 U.S.C. § 815(c)(1).

To establish a prima facie case of section 105(c) discrimination under the traditional *Pasula-Robinette* framework, the Secretary must prove by a preponderance of the evidence (1) that the complainant engaged in a protected activity, (2) the complainant suffered adverse action, and (3) that the adverse action was motivated in any part by the protected activity. *Driessen v. Nevada Goldfields, Inc.*, 20 FMSHRC 324, 328 (Apr. 1998); *Sec'y of Labor ex rel. Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786, 2799 (Oct. 1980), *rev'd on other grounds, sub nom. Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir. 1981); *Sec'y of Labor ex rel. Robinette v. United Castle Coal Co.*, 3 FMSHRC 803, 817–18 (Apr. 1981) (the “*Pasula-Robinette*” analysis).

A mine operator may rebut a prima facie claim of discrimination by showing either that no protected activity occurred or that the adverse action was in no part motivated by the protected activity. *Sec'y of Labor ex rel. Robinette v. United Castle Coal Co.*, 3 FMSHRC 803, 818 n.20 (Apr. 1981). If a mine operator cannot rebut a prima facie case, it nevertheless may defend affirmatively by proving that it was also motivated by the miner's unprotected activities and would have taken the adverse action in any event based on the unprotected activities alone. *Driessen*, 20 FMSHRC at 328–29; *Pasula*, 2 FMSHRC at 2800.

The Commission has recognized that the *Pasula-Robinette* framework no longer governs in the Ninth Circuit. *Sec'y of Labor ex rel. Hargis v. Vulcan Constr. Materials, LLC*, 46 FMSHRC 523, 530 n.8. (Aug. 2024). Nevertheless, the Commission held that it would continue to apply the *Pasula-Robinette* framework in the remaining circuits. The dispute that gave rise to this matter occurred in Minnesota which falls under the jurisdiction of the Eighth Circuit.¹² As

¹² The Eighth Circuit recently evaluated a discrimination claim under the “but for causation” standard because “the Secretary [took] the position that the [C]ommission’s traditional approach indeed requires but-for causation. . . . So we will too.” *See Cont'l Cement Co. v. Sec'y of Lab.*, 94 F.4th 729, 732–33 (8th Cir. 2024). However, in the Secretary’s appeal brief to the Commission in a related matter, the Secretary argued that the Eighth Circuit in

this matter is “not within the Ninth Circuit” and “neither party has contested the application of the *Pasula-Robinette* standard,” I will review Palo’s claim of discrimination under the *Pasula-Robinette* framework. *Hargis*, 46 FMSHRC at 530 n.8.

V. ADDITIONAL FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

USSC does not dispute that Palo’s discharge, not to mention the two discipline slips given to Palo on March 7, 2023, resulting in her five-day suspension, constitutes adverse action. Therefore, I must analyze: (1) whether Palo engaged in protected activity, and (2) whether the adverse action was motivated, at least in part, by Palo’s protected activity, or whether USSC would have taken the adverse action due to Palo’s unprotected activity alone.

A. Protected Activity

To establish a *prima facie* case of discrimination, the Complainant must first demonstrate that she engaged in a protected activity or activities under section 105(c) of the Mine Act. The record before me establishes that Palo engaged in the following potential protected activities.¹³

1. Report of Workplace Injury to USSC

Under the Mine Act, a miner’s complaint about a workplace injury to an operator is protected activity. 30 U.S.C. § 815(c)(1). The parties have stipulated that Palo “engaged in a protected activity when she reported to Respondent’s management on March 2, 2023, that she had been injured four days earlier on February 26.” (Compl’t Br. at 4; Resp’t Br. at 2; Joint Ex. 1.) Accordingly, I determine that Palo engaged in the protected activity of reporting a workplace injury when she reported to USSC management on March 2, 2023, the injuries she suffered as a result of Mesich hitting her on February 26, 2023.

2. Report of a Safety Concern to USSC

Section 105(c)(1) of the Mine Act provides that a miner filing or making a complaint to notify an operator “of an alleged danger or safety or health violation in a coal or other mine” is protected activity. 30 U.S.C. § 815(c)(1). Palo asserts that “[r]eporting hostile, aggressive and intimidating behavior of a colleague is protected activity under the Mine Act.” (Compl’t Br. at 24–25.) Workplace violence is a safety concern for miners, and therefore reporting incidents of workplace violence to a mine operator constitutes protected activity under the Mine Act. *See*

Continental Cement misunderstood the Secretary’s argument regarding “but-for” causation and reaffirmed its position that *Pasula-Robinette* is the correct standard to apply in discrimination cases. *See* Docket No. CENT 2023-0251, Sec’y Resp. Br. at 31-32 (Oct. 28, 2024).

¹³ Palo briefly asserts that she engaged in the protected activity of stating her intent to file a section 105(c) complaint to USSC. (Compl’t Br. at 1.) While filing a discrimination complaint is protected activity under section 105(c)(1) of the Mine Act, I determine that Palo has not presented sufficient evidence to establish that USSC knew of her intent to file such a complaint.

Keim v. Cordero Mining, LLC, 36 FMSHRC 963, 971 n.5 (April 2014) (ALJ) (holding that reporting workplace violence or abuse that implicates concern for safe performance of work tasks may rise to the level of protected activity under section 105(c) of the Mine Act); *cf. Harris v. Duane Thomas Marine Contr., LLC*, No. 2:13-cv-00076-SPC-DNF (M.D. Fla. Feb. 5, 2013) (holding that under section 11(c) of the OSH Act of 1970, internal complaints to owner, or external complaints to OSHA, concerning workplace violence and verbal abuse constitute protected activity related to the OSH Act).

Palo notes that when Mesich hit her on February 26, 2023, she immediately alerted Shift Manager Hunt, Team Leader Aho, and Team Leader Sweeney of the incident. (Compl't Br. at 9–12.) Although USSC disputes that Palo's brief statement to Hunt, Aho, and Sweeney on February 26 constitutes reporting the incident to USSC management, it acknowledges that Palo officially reported the incident to management during the March 2 meeting. (Resp't Br. at 2; Resp't Reply Br. at 1; Joint Ex.1.) Therefore, in either circumstance, both parties acknowledge that Palo reported to USSC that Mesich hit her. Accordingly, I determine that Palo engaged in the protected activity of reporting a workplace safety concern when she reported to USSC that Mesich hit her.

3. Report of Safety Concern to Palo's Union Representative

Section 105(c)(1) of the Mine Act provides that no miner shall be discriminated against because the miner "filed or made a complaint under or related to this Act, including a complaint notifying the . . . the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine." 30 U.S.C. § 815(c)(1). Palo asserts that she engaged in protected activity on February 27, 2023, when she reported to her union representative and president, Bonach, that Mesich hit her the previous day, February 26, 2023, at work. (Compl't Br. at 25; Ex. C–80.) Accordingly, I determine that Palo has established that she engaged in the protected activity of reporting a workplace safety concern to her union representative when she reported to Bonach that Mesich hit her.

B. Motivation/Causal Connection

I now turn to the motivational nexus between the protected activity and the adverse action. As direct evidence of discriminatory intent is rare, the Commission has outlined the following common circumstantial indicia for determining whether a motivational nexus exists: "(1) [the mine operator's] knowledge of the protected activity; (2) [the mine operator's] hostility or 'animus' toward the protected activity; (3) coincidence in time between the protected activity and the adverse action; and (4) [the mine operator's] disparate treatment of complainant." *Sec'y of Labor ex rel. Hargis v. Vulcan Constr. Materials, LLC*, 46 FMSHRC 523, 530 (Aug. 2024) (citing *Sec'y of Labor ex rel. Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510–12 (Nov. 1981), *rev'd on other grounds*, 709 F.2d 86 (D.C. Cir. 1983)).

However, a complainant need not demonstrate all four of these factors to establish a motivational nexus. *See Chacon*, 3 FMSHRC 2508, 2511 (determining that only three factors were sufficient to establish discriminatory motive). Additionally, in evaluating evidence supporting a prima facie case of discrimination, the Commission stated that "circumstantial

evidence [of discriminatory motivation] and reasonable inferences drawn therefrom may be used to sustain a prima facie case.” *Bradley v. Belva Coal Co.*, 4 FMSHRC 982, 992 (June 1982) (citing *Sec’y of Labor ex rel. Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510–12 (Nov. 1981), *rev’d on other grounds*, 709 F.2d 86 (D.C. Cir. 1983)).

1. Operator’s Knowledge of Protected Activity

USSC asserts that Shift Manager Hunt did not understand Palo’s statement to him about the incident on February 26, 2023. (Resp’t Br. at 22.) However, Palo told Bonach, her union representative, about the February 26, 2023, incident with Mesich and her resulting pain via text on February 27, 2023. (Ex. C–80; I Tr. 88:13–15, 95:15–96:1.) On February 28, 2023, Bonach showed Labor Relations Rep. Koski Palo’s text messages to him and Koski “saw that there was something about pain, something about being shoved and Michelle [Mesich].” (Resp’t Br. at 5; II Tr. 20:7–8, 22:9–25:19, 80:8–24, 143:24–144:22.) Additionally, Palo directly informed Koski that Mesich hit her, causing injury, during their meeting on March 2, 2023. (I Tr. 103:17–104:17; II Tr. 26:1–16; Joint Ex. 1; Ex. C–38.)

Therefore, USSC management was aware of Palo’s report of a workplace safety concern and report of a workplace injury, as well as her report of a workplace safety concern to her union representative, when it issued Palo two discipline slips on March 6, 2023, and subsequently discharged her on March 13, 2023. Thus, I determine that USSC had knowledge of Palo’s protected activities.

2. Coincidence in Time

On Sunday, February 26, 2023, Palo told Shift Manager Hunt and Team Leaders Aho and Sweeney that someone hit her immediately after it occurred. (I Tr. 79:21–80:13.) On Monday, February 27, 2023, Palo also reported the incident and her resulting injury to her union representative, Bonach, with the understanding that he would tell Labor Relations Rep. Koski or Senior Manager Wiirre about the incident. (Ex. C–80; I Tr. 88:13–19, 91:3–92:20, 95:15–96:1.) On Tuesday, February 28, 2023, Bonach showed Koski the text messages about the incident that Palo sent him the previous day, and Wiirre also learned of the incident. (II Tr. 20:23–21:15, 22:9–23:2, 23:25–25:25, 83:11–25, 120:8–122:2, 142:9–141:17; Ex. C–80.) Then on Thursday, March 2, 2023, Palo directly reported the incident and her resulting injury to Koski during their meeting. (I Tr. 102:1–104:17.)

Subsequently on Tuesday, March 7, 2023, Labor Relations Rep. Koski issued two discipline slips to Palo for failing to timely report her “workplace injury” and for violating her Last Chance Agreement which resulted in Palo’s five-day suspension. (II Tr. 10:7–11:16; Exs. R–17, R–18, C–27.) Furthermore, on March 13, 2023, USSC discharged Palo. (II Tr. 10:25–11:16, 93:13–24; Exs. R–19, C–30.) In light of the above timeline, I determine that a coincidence in time existed between Palo’s protected activities and USSC’s adverse actions against her.

3. Hostility or Animus Toward the Protected Activity

a. USSC's Dismissal of Palo's Past Reports of Workplace Safety Concerns

Palo claims that prior to February 26, 2023, Mesich had hit Palo with her gym bag nearly a half dozen times. (Compl't Br. at 27; I Tr. 72:22–74:10, 79:5–20, 184:20–185:5; II Tr. 143:18–23.) Palo asserts that she reported these incidents to Shift Manager Hunt and Labor Relations Rep. Koski and even went so far as to call USSC's ethics hotline to report the incidents. (Compl't Br. at 27; I Tr. 72:22–73:2, 74:6–76:21, 78:18–79:4.) Palo contends, however, that neither Hunt nor Koski took any action to address Palo's safety concerns or further investigate her reports. (Compl't Br. at 27; I Tr. 74:21–76:7.) Instead, Hunt laughed, apparently because he thought Palo's reports were funny and asked, "What do you want me to do?" (I Tr. 75:17–76:7.) Koski put the onus on Palo, telling Palo to "[s]tay away from her. Don't engage. Don't go near her. Don't talk to her." (I Tr. 75:3–16.) Indeed, Union President Bonach testified that Palo was nervous to formally report the February 26 incident because of USSC's handling of her prior complaints. (II Tr. 162:24–163:5, 164:17–23.) Palo argues that USSC's lack of response to her prior reports of Mesich hitting her demonstrates USSC's hostility and animus towards her protected activity of reporting a workplace safety concern. (Compl't Br. at 27.)

In response, USSC disputes that Palo previously reported any physical incidents with Mesich prior to the incident that occurred on February 26, 2023. (Resp't Reply Br. at 4–6.) Specifically, USSC points to Shift Manager Hunt and Labor Relations Rep. Koski's testimony that they did not recall Palo previously reporting that Mesich hit her prior to the February 26, 2023, incident. (Resp't Reply Br. at 4–5; I Tr. 233:20–234:12; II Tr. 32:2–5.) However, USSC concedes that Koski and Hunt were aware of the prior issues between Palo and Mesich. (Resp't Reply Br. at 4–5.) Specifically, Koski admitted that "[t]he two had prior animosity, that had been investigated and . . . I had told her that . . . if there were any future things that happened, that we needed to know about it, that they needed to be reported." (II Tr. 32:6–19.) Hunt also admitted that he was aware of Palo and Mesich's previous issues and knew that they were not supposed to interact at work. (I Tr. 233:11–19.) Additionally, Union President Bonach testified that Palo previously reported to Koski that Mesich had hit her prior to the February 26, 2023, incident. (II Tr. 143:18–23.) Thus, I determine that USSC's argument is unpersuasive, and I find credible Palo's assertions that she previously reported to USSC management that Mesich hit her prior to the February 26, 2023, incident and they did nothing to address her concerns.

The Commission has stated that "[i]t is the very definition of animus towards a protected activity when a miner makes a health or safety complaint or engages in protected activity that requires attention, and the operator chooses to ignore it and do nothing." *Hargis*, 46 FMSHRC at 531. Therefore, I determine that USSC's dismissal of Palo's previous reports of Mesich hitting her and lack of any significant action to address Palo's safety concerns demonstrates USSC's hostility and animus towards her protected activity of reporting a workplace safety concern.

b. Hunt's Response to Palo's Statement on February 26, 2023

Palo notes that she told Shift Manager Hunt about the incident with Mesich immediately after it occurred, yet he failed to take any measure of action in response. (Compl't Br. at 28, Compl't Reply Br. at 2–3.) Palo asserts that “[i]t was Hunt’s responsibility to bring [her] in and ask her what had occurred, take a report, and investigate.” (Compl't Br. at 28.) Palo argues that Hunt’s failure to respond to her complaint on February 26, 2023, is indicative of USSC’s animus towards her protected activity of reporting a workplace safety concern. (Compl't Br. at 27–30; II Tr. 152:21–22.)

In response to Palo’s argument, USSC contends that Shift Manager Hunt did not understand that Palo was reporting an incident with injury. (Resp’t Br. at 22–23; Resp’t Reply Br. at 7.) USSC notes that Hunt claims he only heard Palo say: “Did you guys see that?” and something about “a push” and “a bag.” (Resp’t Br. at 22; I Tr. 229:21–230:5; Ex. R–4.) After Palo left, Hunt asked Team Leaders Aho and Sweeney “What was that?” and Aho replied, “How can we see anything with these walls here?” (I Tr. 230:6–12; Ex. R–4.) USSC also points out that Palo spoke to Hunt during a shift change, which was a busy time for him, and Palo left before he could ask her any follow-up questions. (Resp’t Br. at 22–23.)

Shift Manager Hunt clearly understood the steps he is supposed to take to respond to employee reports of workplace violence. (I Tr. 226:23–228:5.) Hunt stated that—

first of all, you question the person that’s reporting the incident [and] . . . find out the information that they are reporting. . . . [Then y]ou get the employee injury or incident report from their perspective. They write down their perspective of what . . . happened. Then you go on to writing up the incident, making phone calls, [and] sending out emails. Then if it’s an incident with injury, you get them help, whether you call emergency services and then they come to the scene to check that person out.

(I Tr. 227:1–22.)

Shift Manager Hunt explained that while “it would matter to me if Michelle [Mesich] had hit” Palo, “the way Wanda [Palo] reported it, she threw out a question and left. It [therefore] didn’t come across as an incident with injury.” (I Tr. 244:5–11.) Indeed, all Palo said to Hunt was: “‘Did anybody just see that? She just hit me . . . I’m tired of getting hit with the bag.’” (I Tr. 80:2–5; Exs. R–16, C–38, C–46, C–80.) Palo did not identify who hit her or specify what exactly occurred. Then, before Hunt could respond to Palo, she left. (I Tr. 86:13–23, 135:22–136:6, 223:10–22, 255:25–256:10; Exs. R–2, R–3, R–4.) Thus, even if Hunt had heard Palo’s complete statement, it was reasonable for him not to take any action at that time as her brief, vague complaint likely does not qualify as a report of workplace violence. Accordingly, while I understand Palo had a challenging relationship with Hunt, I determine Palo has failed to establish that his alleged failure to respond to or investigate her statement on February 26, 2023, demonstrates USSC’s hostility or animus towards her protected activity of reporting a workplace safety concern.

c. Koski and Wiirre's Investigation of the February 26, 2023, Incident

Palo notes that on Tuesday, February 28, 2023, both Labor Relations Rep. Koski and Senior Manager Wiirre learned of the February 26 incident and Palo's resulting pain. (Compl't Br. at 28; II Tr. 20:23–21:15, 22:9–23:2, 23:25–25:25, 83:11–25, 120:8–122:2, 142:9–141:17; Ex. C–80.) Yet, Koski did not speak with Palo about the incident until Thursday, March 2, 2023. (Compl't Br. at 28–30; I Tr. Vol. 102:1–22, 168:2–24.) Additionally, Wiirre never directly spoke to Palo about the incident even though she typically worked until 9:00 p.m. or 10:00 p.m. and therefore could have talked to Palo before Palo started her night shift at 5:30 p.m. on either Tuesday, February 28 or Wednesday, March 1. (Compl't Br. at 28–29; II Tr. 103:17–104:10, 120:8–122:2.) Palo argues that Koski and Wiirre's failure to adequately investigate and address the incident with Mesich on February 26, 2023, is indicative of USSC's animus towards her protected activity of reporting a workplace safety concern and injury. (Compl't Br. at 27–30; II Tr. 152:21–22.)

In response, USSC argues that Labor Relations Rep. Koski adequately investigated Palo's claim that Mesich hit her with her bag on February 26, 2023. (Resp't Br. at 23–24.) In support, USSC points out that on March 1, 2023, Koski spoke with Shift Manager Hunt on the phone about his recollection of what Palo said to him on February 26 and contacted the area manager. (Resp't Br. at 24; Resp't Reply Br. at 8–9.) USSC notes that Koski also looked up Palo and Mesich's work schedules, which showed that Palo was scheduled to start another night shift that same day, March 1, 2023, at 5:30 p.m. (Resp't Br. at 23; Resp't Reply Br. at 8–9; II Tr. 38:20–39:25, 47:12–50:20.)

Palo argues that Labor Relations Rep. Koski therefore could have stayed late to speak with Palo on the evening of March 1, 2023, when Palo arrived for her night shift. (Compl't Br. at 29.) However, Koski testified that she preferred to reach out to Palo the following morning and noted that she could not recall what she had going on in her personal or work life that day. (II Tr. 39:8–13, 40:4–41:13, 47:12–49:1.) Palo also argues that Koski could have called Palo during Koski's normal work hours of 7:30 a.m. to 4:00 p.m. on March 1, 2023, while Palo was at home. (Compl't Br. at 29; II Tr. 49:16–19.) However, Koski explained that she did not call Palo because of a policy prohibiting USSC management from contacting union-represented employees outside of work. (II Tr. 49:16–19, 52:18–25; Resp't Br. at 24; Resp't Reply Br. at 9.)

Ultimately, Labor Relations Rep. Koski spoke with Palo at the March 2, 2023, meeting, during which Palo told her about the incident with Mesich and her resulting injury. (I Tr. Vol. 102:1–104:17; II Tr. 20:7–21:15, 22:9–23:2, 23:25–25:25, 80:8–24, 83:11–25; Resp't Br. at 24.) Palo asserts that during the meeting, Koski resisted giving Palo an incident report form after her union representatives requested that Koski do so, which reflects the animosity at issue. (Compl't Br. at 29–30; Compl't Reply Br. at 6–7.) Palo argues that Koski did not want to provide an incident report form to Palo "because she knew that it would reflect that [USSC] had not done what it was required to do by its own policies and what it should have done." (Compl't Br. at 29–30.) In response, USSC denies that Koski resisted giving Palo an incident report form. (Resp't Reply Br. at 12; II Tr. 85:14–22.) Additionally, USSC argues that Koski would have no

reason to prevent Palo from completing an incident report because Palo already verbally reported her injury to Koski during the March 2 meeting, which was sufficient to qualify as a report of workplace injury under Safety Rules 1.7 and 1.8. (Resp't Reply Br. at 10, 12–13, 14, 16.)

USSC also notes that Labor Relations Rep. Koski spoke with Team Leader Bissonnette and Shift Manager Eric Meese and obtained written statements from Team Leaders Aho and Sweeney as part of her investigation. (Resp't Br. at 24; Resp't Reply Br. at 9.) After Koski had issued discipline slips to Palo on March 7, 2023, she interviewed Mesich about the incident on the morning of March 9, 2023.¹⁴ (Resp't Br. at 24; Resp't Reply Br. at 9; I Tr. 185:13–187:1; II Tr. 10:7–12, 12:14–13:22, 35:18–25, 89:24–19:19; Exs. R–17, R–18, C–27.) Koski explained that March 9 was the first day Mesich returned to work since Koski started her investigation and noted the USSC policy preventing her from contacting union-represented employees outside of work. (II Tr. 13:16–22, 36:1–8, 52:21–25; Resp't Br. at 24; Resp't Reply Br. at 9.)

Based on the evidence above, it is worth noting that Palo never directly spoke to a supervisor about her injury from the incident until March 2—four days after the February 26 incident. (I Tr. 103:10–104:17; II Tr. 26:1–23, 81:14–21, 84:12–85:2; Ex. C–38.) Although Palo argues that Labor Relations Rep. Koski or Senior Manager Wiirre should have contacted her sooner, they only learned of the incident from Union President Bonach holding up his cell phone to Koski, who briefly read his text conversation with Palo. (II Tr. 20:23–21:15, 22:9–23:2, 23:25–25:25, 80:8–24, 83:11–25, 143:24–144:22; Ex. C–80.) Koski was not given a printout of the text or a screenshot. (II Tr. 22:9–23:2, 25:16–25.) Moreover, in her text conversation with Bonach, Palo noted, “it was a bit painful. I had to c[o]me home and ice[] it,” but then Palo later “leave[s] it up to [Bonach]” whether to raise the incident with Koski or Wiirre. (Ex. C–80.) Thus, the tone of Palo’s text messages was not one of urgency and they did not indicate that anything but a minor injury occurred. Indeed, Bonach waited a full day after his February 27 texts with Palo to contact Koski, lessening any sense of urgency. (II Tr. 20:23–21:6, 22:25–23:2, 23:25–24:6, 80:8–24, 83:11–25.) And Koski began her investigation the following day on March 1 by reviewing Mesich and Palo’s work schedules and contacting Palo’s supervisor. (II Tr. 38:18–39:25, 49:16–19.)

I therefore determine that while Labor Relations Rep. Koski and Senior Manager Wiirre could have spoken to Palo about the incident earlier, Koski ultimately conducted an adequate

¹⁴ USSC notes that during Koski’s interview with Mesich, Mesich denied any kind of contact or touching of Palo and stated she could not recall if she had passed Palo in the hallway on February 26. (Resp't Br. at 24; Resp't Reply Br. at 9.) USSC argues that based on the information Koski received from Palo and Mesich, “Koski was not able to draw any conclusions as to what, if anything, happened between them on February 26.” (Resp't Br. at 24; Resp't Reply Br. at 9.) I do not find such a view credible, as it would be nonsensical for USSC to discipline Palo for failing to timely report an injury arising from an incident that possibly never occurred. (II Tr. 89:24–90:19; *see* Resp't Br. at 24; *see also* Resp't Reply Br. at 3, 9.) Yet, by the time Mesich was interviewed on March 9, Koski had established that Palo had not timely reported her injury that caused Palo to leave work early during her night shift on February 28. Thus, Koski trying to determine Mesich’s intent, if any, or giving Mesich any type of warning to keep away became moot.

investigation into the February 26, 2023, incident between Palo and Mesich. Thus, I conclude that Palo has failed to establish that Koski and Wiirre’s investigation of the February 26, 2023, incident demonstrates USSC’s hostility or animus towards her protected activity of reporting a workplace safety concern and injury.

4. Disparate Treatment

a. USSC Management’s Violation of the Prevention of Workplace Violence Policy

USSC claims it discharged Palo because of her alleged failure to timely report her workplace injury, as required by Safety Rules 1.7 and 1.8. (Resp’t Reply Br. at 13 n.11; II Tr. 11:17–12:13.) However, Palo notes that USSC has a comparable “Prevention of Workplace Violence Policy” which requires that:

You must report all acts of Workplace Violence, whether you are subject to the act or aware of an act of Workplace Violence involving others. Reports may be made to your direct supervisor, Corporate Security, Human Resources, the Legal Department, or the USSC Ethics and Safety Line.

Note: If the reporting employee does not notify the Security Department at his or her location, anyone receiving the report of Workplace Violence must immediately report the matter to Plant or Corporate Security at Headquarters.

(Ex. C–42; Compl’t Br. at 32.) Palo asserts that Shift Manager Hunt, Labor Relations Rep. Koski, and Senior Manager Wiirre failed to report the February 26, 2023, incident to security as required by USSC’s Prevention of Workplace Violence Policy, and that USSC did not discipline them despite supposedly taking allegations of workplace violence seriously and having a zero-tolerance policy for workplace violence. (I Tr. 170:11–12, 173:12–16, 177:9–24, 218:7–10, 226:14–16, 242:9–18; II Tr. 8:15–17, 34:8–10; Compl’t Br. at 32; Compl’t Reply Br. at 5–6.) Thus, Palo argues that USSC treated her differently than its own management employees when enforcing its reporting policies and rules. (Compl’t Br. at 32.)

In response to Palo’s argument, USSC contends that—even if Shift Manager Hunt, Labor Relations Rep. Koski, and Senior Manager Wiirre should have recognized that Palo’s report that Mesich hit her constituted workplace violence and thus reported it to security—the purposes of the policy were still achieved. (Resp’t Reply Br. at 18.) Specifically, USSC notes that security is typically notified of incidents of workplace violence to allow for intervention, but in this instance, the reported incident had already ended before Hunt, Koski, and Wiirre were made aware of it, and Mesich was not scheduled to return to work until March 9, 2023. (Resp’t Reply Br. at 18–19.) USSC explains the other purpose of the policy is to spur investigations of reports of workplace violence, which Koski had already initiated in this case. (Resp’t Reply Br. at 18.)

I agree with USSC that logically there was no need for Shift Manager Hunt, Labor Relations Rep. Koski, or Senior Manager Wiirre to report the February 26, 2023, incident to security, because the imminent threat had passed by the time each of them had learned of the

incident and Koski initiated an investigation on her own accord. Therefore, I determine that Palo has failed to establish that USSC treated her differently than its members of management when enforcing its reporting policies and rules.

b. Other USSC Employees who were Discharged for Violating their Last Chance Agreements

USSC argues that Exhibits Nos. 21 and 21A demonstrate that USSC has discharged other employees, who did not engage in protected activities, for violating their Last Chance Agreements. (Resp't Br. at 29–30.) Exhibit No. 21, titled “Violation of LCA Disciplines Summary Chart,” is a compiled list of the thirteen USSC employees, including Palo, whom USSC discharged for “Violation[s] of LCA” from January 1, 2019, through March 7, 2023. (Ex. R–21.) Additionally, Exhibit No. 21A contains documents for each employee listed in Exhibit No. 21, such as the employees’ Last Chance Agreements and supporting documents that indicate the facts and circumstances surrounding their violations. (Exs. R–21, R–21A.)

Palo points out that all the USSC employees, aside from herself and one other employee (“Jacobson”), listed in Exhibit No. 21 were discharged because they violated their Last Chance Agreements for the same reasons USSC placed them on Last Chance Agreements. (Compl't Br. at 33.) In response, USSC argues “[t]he fact that eleven other employees happened to violate their Last Chance Agreements for the same reasons was coincidental and irrelevant.” (Resp't Reply Br. at 20.) USSC states that all the Last Chance Agreements address both prior offenses and additional compliance requirements, such as mandating that any violation—whether related to past offenses or not—is a material breach of the Last Chance Agreement. (Resp't Reply Br. at 20.) Likewise, USSC asserts that none of these Last Chance Agreements limited the employees’ compliance only to provisions relating to their preceding offenses or limited the material violations solely to those relating to their preceding offenses. (Resp't Reply Br. at 20.)

Palo’s Last Chance Agreement explicitly states that a “failure by [an] employee to follow any plant or corporate rules, policies, or procedures shall be considered a material violation of this Agreement” and a “[f]ailure by Employee to abide by ANY of the terms or conditions of this Agreement . . . shall result in suspension subject to discharge.” (Ex. R–1.) Palo’s Last Chance Agreement therefore did not limit her compliance only to provisions relating to her preceding offense of unsatisfactory work performance on April 28, 2020. (Ex. R–1.) Rather, Palo’s Last Chance Agreement clearly allows USSC to discharge her if she violates any plant or corporate rules. (Ex. R–1.)

Hence, it is plausible that USSC simply executed the terms of Palo’s Last Chance Agreement when it issued discipline slips to her and subsequently discharged her for violating it—i.e., by allegedly violating Safety Rules 1.7 and 1.8—regardless of Palo’s protected activity. (Ex. R–1.) Given the evidence, I determine USSC has established that it consistently enforced the terms of its Last Chance Agreements, and the fact that eleven of the thirteen employees listed in Exhibit No. 21 violated their Last Chance Agreements for the same reasons that USSC placed them on Last Chance Agreements, while Palo did not, is coincidental and unpersuasive.

c. Other USSC Employees who were Disciplined for Violating USSC's Reporting Rules

USSC argues that Exhibit No. 20 demonstrates that it has disciplined other employees, who did not engage in protected activities, for violating its reporting rules. (Resp't Br. at 27–28.) Exhibit No. 20, titled “Failure to Report Discipline Summary Chart,” is a compiled list of the seven employees, including Palo, whom USSC disciplined for “failure to report an incident” or “failure to timely report an alleged injury” from January 1, 2019, through March 7, 2023. (Ex. R–20.)

Palo counters that while the other six USSC employees listed in Exhibit No. 20 were disciplined for failing to report an incident all together, she is the only employee who was disciplined for failing to *timely* report an injury. (Compl't Br. at 33; II Tr. 112:8–116:23.) In response, USSC argues that Palo “has not identified any similarly situated employee who did not timely report an incident (with or without injury) who was not disciplined.” (Resp't Br. at 28.)

In her brief, Palo highlights Union Safety Chair McDonald and Union President Bonach's testimony about the multiple instances of USSC employees who did not report their workplace injuries until several days after they were injured, yet USSC did not discipline them. (Compl't Br. at 23; I Tr. 175:14–177:8; II Tr. 158:11–159:11, 166:6–168:1.) However, as USSC points out, Palo failed to provide any concrete evidence of the instances McDonald and Bonach referenced in their testimony or any specific details regarding when these incidents occurred, when the employees realized that they were injured and attributed their injuries to the workplace incidents,¹⁵ and when they reported the injuries to USSC. (Resp't Br. at 19–20.) Rather, when investigating prior injury reports, McDonald testified that he simply looked “at the date the incident occurred and then the date it was reported,” and he therefore did not know when the employees realized they had suffered an injury from a workplace incident. (I Tr. 197:16–198:25.)

In light of the discussion above, I determine that USSC has established it consistently enforced its reporting rules, and Palo has failed to present sufficient evidence to establish that other USSC employees did not timely report their workplace injuries but were not disciplined.

C. Whether USSC's Reporting Policy is Discriminatory on its Face

Palo also asserts that the terms of USSC's injury reporting policies are discriminatory on its face when coupled with USSC's policy that only members of management can distribute incident report forms. (Compl't Br. at 30–31.) To determine whether an operator's policy is facially discriminatory, “a complainant must show that *the explicit terms of the policy, apart from motivation or any particular application*, plainly interferes with rights under the Act or discriminates against a protected class.” *Swift v. Consolidation Coal Co.*, 16 FMSHRC 201,

¹⁵ McDonald and Bonach testified, and USSC acknowledged, that “the timeliness of a report under the Safety Rules depends on when an employee recognizes that he/she has been injured due to an event in the workplace.” (Resp't Br. at 14; I Tr. 174:15–175:13, 194:8–195:4; II Tr. 165:19–168:1.)

206–07 (Feb. 1994) (emphasis added) (holding that an operator’s policy requiring miners to report personal injuries by completing an injury report form was not facially discriminatory, because the policy’s explicit terms aligned with the Mine Act’s goal of encouraging miners to report accidents and injuries without punishing them for doing so).

The explicit terms of USSC’s Safety Rules 1.7 and 1.8 do not discriminate against a protected class or plainly interfere with miners’ rights under the Mine Act. Moreover, USSC points out that it has never taken the position that Palo, or any other employee, was required to complete an incident report form to comply with the reporting requirements of Safety Rules 1.7 and 1.8. (Resp’t Reply Br. at 13.) Rather, under Safety Rules 1.7 and 1.8, reports can be made to a supervisor in any manner, including in person, by radio, phone, text, email, etc. (Resp’t Reply Br. at 10, 14, 16.) Therefore, I determine that Palo has failed to demonstrate that the explicit terms of USSC’s Safety Rules 1.7 and 1.8 are facially discriminatory.

D. Conclusion

Palo explains that while she felt pain after Mesich hit her on February 26, 2023, she was not immediately sure if the pain was caused by Mesich’s bag hitting her or if it was just the typical pain she felt after finishing a twelve-hour shift. (I Tr. 135:1–21, 137:9–140:23, 143:8–14.) However, Palo’s pain in her hip worsened throughout the evening of February 26 and into the morning of February 27, so much so that she notified Union President Bonach of the incident and her resulting pain that morning. (I Tr. 88:13–16, 97:11–98:6; Ex. C–80.) Bonach told Palo that she should call Labor Relations Rep. Koski or Senior Manager Wiirre to report the incident and her injury but also offered to do so on her behalf. (Ex. C–80.) Palo simply told Bonach, “I’ll leave it up to you” and took no action of her own. (Ex. C–80.) On February 28, 2023, Bonach showed Koski the text messages that Palo had sent him the previous day. (II Tr. 20:23–21:15, 22:9–23:2, 23:25–25:25, 83:11–25, 143:24–144:22; Ex. C–80.)

As previously discussed, *see* discussion *supra* Part V.C, USSC explains that under Safety Rules 1.7 and 1.8, reports can be made to a supervisor in any manner, including in person, by radio, phone, text, email, etc. (Resp’t Reply Br. at 10, 14, 16.) Thus, Palo could have simply texted or called Labor Relations Rep. Koski or Senior Manager Wiirre and communicated the information she shared with Union President Bonach on February 27 when her pain following the incident worsened, but she chose not to do so.

On the evening of February 28, 2023, Palo claims that before she started her night shift, she asked whether there were any supervisor notes about her in the computer system and learned there were not, indicating that USSC possibly did not have knowledge of her injury from the incident on February 26. (I Tr. 82:14–24, 98:21–99:10, 144:17–145:2, 146:19–147:3, 147:22–148:6) A few hours into Palo’s shift that night, Palo developed a muscle spasm and was in such extreme pain that she needed to leave work early, yet Palo left work without reporting her injury to any member of USSC management. (I Tr. 98:21–100:4, 148:7–19; Ex. C–46.)

On March 1, 2023, Palo was still worried about her hip, so she scheduled a doctor's appointment to have it examined,¹⁶ yet she did not report the injury to USSC at this time. (I Tr. 96:13–97:2.) During her shift that night Palo was still in pain, but she did not report her injury to USSC. (Ex. C–46.) Ultimately, Palo herself never affirmatively reported her workplace injury to USSC; she only shared this information with Labor Relations Rep. Koski during their meeting on March 2 to explain why she left work early on February 28. (I Tr. 103:17–104:17; II Tr. 26:1–23, 81:14–21, 84:12–85:2; Ex. C–38.)

One can appreciate that perhaps Palo was nervous about reporting her injury to USSC given her previous history of workplace injuries—indeed, Palo later asked Union President Bonach if her injury would be considered old or new. (I Tr. 96:2–12; II Tr. 150:12–151:2, 162:24–163:5, 164:17–23, Ex. C–80.) However, Palo was on a Last Chance Agreement, and hers explicitly states that a “failure by [an] employee to follow any plant or corporate rules, policies, or procedures shall be considered a material violation of this Agreement” and a “[f]ailure by Employee to abide by ANY of the terms or conditions of this Agreement . . . shall result in suspension subject to discharge.” (Ex. R–1.) Thus, regardless of Palo's desire to keep quiet and avoid any issues, she needed to follow the rules, including Safety Rules 1.7 and 1.8, which she was clearly aware of at this time. (Exs. R–6, R–7, R–8, R–9, R–11, R–12, R–14; I Tr. 63:12–66:14, 68:14–69:5, 130:21–133:16, 134:4–15; II Tr. 78:22–79:9.) Additionally, Labor Relations Rep. Koski previously told Palo that “if there were any future things that happened [between Mesich and Palo], that we needed to know about it, that they needed to be reported.” (II Tr. 32:9–19.)

The language of USSC's Incident Reporting Requirements is quite clear—

Safety Rule 1.7 - Report to your supervisor, as soon as possible, all incidents with or without injury.

Safety Rule 1.8 - Report all injuries or hazardous exposures, however slight, to your supervisor as soon as possible. If you are injured, no matter how slightly, obtain first aid treatment promptly. Neglecting minor scratches or cuts may result in serious infections.

Report All incidents to your supervisor immediately no matter how minor you may think the injury is. Sometimes it is those minor injuries that end up turning into major problems. Infections or other unforeseen problems may arise out of a seemingly harmless injury.

(Ex. R–7.) Thus, no matter how minor Palo believed her injury was, *she* was required to report it to a supervisor as soon as possible once she realized it was not her typical aches and pains from working. Indeed, the Commission has affirmed that an operator's requirement that employees report injuries is “consistent with the Mine Act's goal of

¹⁶ When she saw her doctor a couple days later, he diagnosed her injury as a muscle strain, which likely explains the spasm she experienced the night of February 28. (Ex. C–23; I Tr. 112:3–113:9.)

encouraging miners to report accidents and injuries[, and u]nder the legislative history of the Act, the reporting of an injury is equally the miner's responsibility as it is his right." *Swift v. Consolidation Coal Co.*, 16 FMSHRC 201, 206-07 (Feb. 1994). Hence, it was not only Palo's right to report her workplace injury, but also her responsibility to do so consistent with USSC's policy.

For all the reasons discussed above, I conclude that Palo did not prove, by a preponderance of the evidence, a prima facie case with regard to the adverse action being motivated, in any party by the protected activity. Therefore, Palo has failed to establish that USSC discriminated against her in violation of section 105(c) of the Mine Act.

VI. ORDER

In light of the foregoing, it is hereby **ORDERED** that Complainant's discrimination claim under section 105(c)(3) is **DISMISSED**.



Alan G. Paez
Administrative Law Judge

Distribution: (Via Certified Mail and Electronic Mail)

Daniel Gray Leland, Esq., Leland Connors PLC, 60 South Sixth Street, Suite 2800,
Minneapolis, MN 55402-4444
(dan@lelandconnors.com)

Wanda Palo, P.O. Box 105, Buhl, MN 55713-0105
(palowanda1@gmail.com)

Michael P. Duff, Esq., United States Steel Corporation, 600 Grant Street, 15th Floor,
Pittsburgh, PA 15219-2800
(mpduff@uss.com)

/JPN & MEK