

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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October 16, 2015

MATTHEW A. VARADY,  
Complainant,

v.

VERIS GOLD USA, INC.,  
Respondent.

DISCRIMINATION PROCEEDING

Docket No. WEST 2014-307-DM  
WE-MD 14-03

Mine: Jerritt Canyon Mill  
Mine ID: 26-01621

**ORDER REGARDING COMPLAINANT’S MOTION FOR DAMAGES<sup>1</sup>**

Before: Judge William B. Moran

In this section 105(c)(3) action under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act” or “Act”), Complainant, Matthew A. Varady, asserted that he was fired by Veris Gold USA, Inc., because of safety and health complaints he voiced related to his job at Veris’ Jerritt Canyon Mill. The Court issued its decision on September 2, 2015, finding that Complainant was so discriminated against. That decision directed Complainant to provide his itemized and documented damages within 30 days of the decision.

The Court will address each of the items of damages and remedies sought by Complainant in his Motion. **Initially, it is important to note that the Court cannot award any damages until Complainant submits an affidavit which provides the date he resumed gainful employment and which declares whether workmen’s unemployment compensation was received or not, and, if it was received, the dates and all amounts received through such compensation.**

“1: The sum of \$25.57 an hour, plus interest at a rate of 5%, for 76 hours a pay period, as regular hourly pay, from the date of Nov 8, 2013 to the date of April 21, 2014 equaling 11 pay

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<sup>1</sup> In Varady’s document seeking damages, Complainant also filed a motion to rule on successorship. In that document, “Complainant motions the court to find the new ownership, Jerritt Canyon Gold, jointly and severally liable for damages using the 9 factors set forth in the successorship doctrine enunciated by the Commission in *Glenn Munsey vs. Smitty Baker Coal Co.* 2 FMSHRC 3463 (December 1980).” Motion at 3. Jerritt Canyon Gold was not a party to these proceedings and is not presently a party. The Court does not believe that it has jurisdiction to rule on successorship. In a related case, *Lowe v. Veris Gold, Inc.*, WEST 2014-614-DM, the Court issued its decision on October 15, 2015, requesting direction from the Commission as to the same successorship issue. Accordingly, the Court defers ruling on this motion at this time.

periods. Totaling **\$22,438.24.**” For the reasons identified in the paragraph below, the Court cannot rule on this item at this time.

“2: The sum of \$38.85 an hour, plus interest at a rate of 5%, for 56 hours a pay period, as overtime hours, including mandatory overtime worked, From the date of Nov 8, 2103 to the date of April 21,2014 equaling 11 pay periods. Totaling **\$25,126.64.**” Complainant will need to identify the number of days composing a “pay period.” In this connection, it would seem doubtful that Complainant would be working an additional 56 hours per week or even every two weeks. If Complainant contends otherwise, he will have to demonstrate, by submitting past pay stubs, that he routinely worked an additional 56 hours per pay period.

“3: The sum \$25.57 an hour, plus 5% interest, for 80 hours, for paid vacation leave. Totaling **\$2,147.20.**” Complainant will need to document that he received 80 hours of paid vacation leave, as well as the days, during the 12 months preceding his employment termination, in which he received paid vacation and the amounts paid. Further, Complainant will have to demonstrate that he would have accrued such vacation pay during the period following his termination and up to the time he resumed gainful employment.

“4: The sum of \$25.57 an hour, plus 5% interest, for 54 and 1/2 hours, for personal time off. Totaling **\$1,472.78.**” The same problem as identified for item 3, above, exists for this request. Complainant must demonstrate that during the 12 months preceding his termination he was entitled to and received “personal time off” and the number of hours so received. Complainant must submit documentation establishing entitled to this benefit as well as pay stubs so identifying payments for such personal time in the amount of 54 and ½ hours.

“5: The sum of \$38.85 an hour, plus 5% interest, for 48 hours, for paid holidays. Totaling **\$1,957.92.**” The Complainant should see, from the requirements listed for items 1 through 4 above, that he must demonstrate that during the 12 months preceding his termination he was entitled to and received “paid holidays” including the number of hours so received and demonstrate that such pay was *in addition to* his normal pay, so that there is no “double counting” of his income. The best way for the Complainant to establish his fair and complete income would be to provide copies of his paystubs during the 12 months preceding his termination, minus any post-termination benefits he received from Veris, minus any workmen’s compensation benefits received to date, together with a paystub and sworn statement as to when he resumed gainful employment.

**Regarding items 6 through 12, listed immediately below, the Court will not repeat the evidentiary deficiencies for these, as the same problems exist. Accordingly, for these to be considered, Complainant must supply the needed information for each of items 6 through 12.**

“6: The sum of \$.25 an hour, plus 5% interest, for 76 hours a period, as a shift differential, from the date of Nov 8, 2013 to the date of April 21, 2014 equaling 11 pay periods. Totaling **\$219.45.**” **See comment, in bold print, preceding item 6.**

“7: The sum of \$.25 an hour, plus 5% interest, for 8 hours per pay period, as a shift differential for overtime, from the date of Nov 8, 2013 to the date of April 21, 2014 equaling 11 pay periods. Totaling **\$23.10.**” **See comment, in bold print, preceding item 6.**

“8: The sum of \$68.14, plus 5% interest, per pay period, for insurance premiums, from the date of Nov 8, 2013 to the date of April 21, 2014 equaling 11 pay periods. Totaling **\$787.01.**” **See comment, in bold print, preceding item 6.**

“9: The sum of \$2,379.87 for a production bonus, plus 5% interest. Totaling **\$2,498.86.**” **See comment, in bold print, preceding item 6.**

“10: The sum of the previously mentioned, plus 3% of that sum, and 5% interest on the 3% , for a 401k match, . Totaling **58,456.26.**” **See comment, in bold print, preceding item 6.**

“11: The sum of \$35 a day, for 13 subpoenaed witnesses, for two days time. Totaling **\$910.**” **See comment, in bold print, preceding item 6.**

“12: The sum of **\$150**, for mileage and fuel costs, paid to Mr. Michael Pierce, for his travel from Twin Falls, Idaho, in the event he was needed to testify.” **See comment, in bold print, preceding item 6.**

“13: The sum of **\$300,000.00** for punitive damages<sup>2</sup> for intentional discrimination by the Respondent, pursuant to Title V Section 102 of the Civil Rights Act of 1991. **Exhibit 2.**” As

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<sup>2</sup> As the Court explained in its September 2, 2015, decision, the “concept of damages is to ‘make whole’ a person who has been unlawfully discharged. Because Mr. Varady is not an attorney, the Court offers the following general guidance as to allowable damages. At the hearing, Varady stated that he is no longer seeking reinstatement, but is seeking, among other items, reimbursement for expenses in seeking reemployment. Tr. 19. Such expenses are recoverable. Lost wages plus interest<sup>2</sup> are also part of the recognizable damages and would cover the period between the date of Complainant’s discharge and the time when he again became employed. Because the “make whole” concept of relief does not contemplate a windfall to such individuals, any unemployment benefits received for the period between the unlawful discharge and the date of new employment are offsets to the damages that may be awarded. Litigation-related expenses are awardable. As examples, these would include copying expenses; any costs related to subpoenaing witnesses; medical expenses, including premiums, that would have been covered by Complainant’s medical insurance, if applicable; and lost vacation pay, if applicable. Mileage, telephone calls, and postage are other examples of awardable damages. These are examples only. The guiding principle is for a complainant to recover the financial reimbursement for items he would have received had his employment continued and the expenses in pursuing this litigation, minus benefits received such as workmen’s unemployment compensation. Some damages are not recognized for relief under the Mine Act. For example, there is no authority or precedent for awarding compensatory damages for damage to reputation and/or pain and suffering. *Bewak v. Alaska Mech., Inc.*, 33 FMSHRC 2337, 2338 (Sept. 2011) (ALJ); *Peterson v. Sunshine Precious Metals, Inc.*, 24 FMSHRC 810, 811-12 (Aug. 2002) (ALJ); *Casebolt v. Falcon Coal Co.*, 6 FMSHRC 485, 503 (Feb. 1984) (ALJ).” *Varady v. Veris Gold USA, LLC*, WEST 2014-307-DM, 2015 WL 5307780, at \*20 (FMSHRC Sept. 2, 2015).

previously explained by the Court, this category of damages is not cognizable relief in discrimination matters under the Mine Act. Therefore this request is **DENIED**.

“14: The sum of **\$300,000.00** for pecuniary damages to cover possible future medical treatment due to the sustained injury, that led to the intentional discrimination by Respondent, pursuant to Title V Section 102 of The Civil Rights Act of 1991, Exhibit 2.” As explained in the September 2, 2015, decision, such damages are not awardable and therefore this request is also **DENIED**.

“15: The sum of **\$175,368.78** for pain, suffering, and emotional distress caused by the injury suffered by the Complainant due to the Respondent's undisputed negligence in providing a safe working environment.” As explained in the September 2, 2015, decision, such damages are not awardable and therefore this request is **DENIED**.

“16: The removal of all negative items or information within the Complainant's employee file.” The final decision will include the standard language employed to address this issue.

“17: Repair the Complainant's employment status to rehirable.” The Court does not understand the nature of Complainant's request. Complainant is directed to explain the nature of this request.

**Complainant is further advised that the Court cannot have a continuing dialogue over substantiation of his claimed damages. If Complainant does not provide the requested information in response to this Order, the Court will have no choice but to simply deny those items for which documentation is lacking.** Once the Court issues a final order in this matter, Complainant can always appeal that Order before the Commission, challenging the Court's decision regarding damages and any other matter with which he takes issue. Complainant is directed to provide the requested documentation no later than 30 days after the date of this Order.

**SO ORDERED.**

*William B. Moran*  
William B. Moran  
Administrative Law Judge

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