

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004

November 22, 2016

SECRETARY OF LABOR, MSHA,
on behalf of RAYMOND MCKINNEY,
JR.,

v.

BLACK RIVER COAL, LLC,
Respondent.

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. VA 2015-261-D
NORT-CD 2015-02

Mine ID No.: 44-06859

**ORDER TERMINATING TEMPORARY REINSTATEMENT
AND
DISMISSAL ORDER**

Before: Judge Feldman

This matter is before me on the Secretary of Labor’s Application for Temporary Reinstatement filed on behalf of Raymond McKinney, Jr. pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(2) (“the Act”). On June 22, 2015, McKinney filed a discrimination complaint with the Mine Safety and Health Administration (“MSHA”). On July 15, 2015, the Secretary filed an Application pursuant to section 105(c)(2) seeking McKinney’s temporary reinstatement to his former position with Black River Coal, LLC, (“Black River”) pending completion of MSHA’s investigation of McKinney’s underlying discrimination complaint. On August 21, 2015, I issued an order requiring McKinney’s temporary reinstatement following receipt of the parties’ Amended Joint Motion for Approval of Settlement Agreement and Motion for Order Granting Temporary Reinstatement, which was filed the same day.

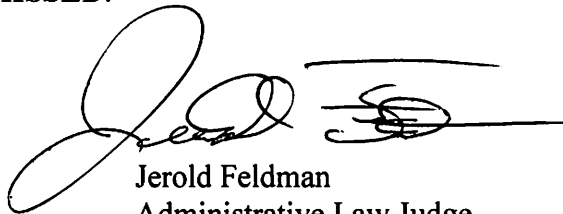
On October 20, 2016, Black River filed a Motion to Toll Temporary Reinstatement Order, asserting that temporary reinstatement should be suspended as Black River had ceased all operations at the War Creek No. 1 mine, with no plans for future operations at the mine site. The Secretary has not opposed Black River’s motion to suspend. As McKinney was temporarily reinstated, rather than economically reinstated, I assume his temporary reinstatement was suspended upon the cessation of mining operations at the War Creek No. 1 facility.

Shortly thereafter, on November 9, 2016, the Secretary advised the undersigned via email that he has declined to bring a section 105(c)(2) discrimination complaint on behalf of McKinney. Consequently, Black River has moved via email for dissolution of McKinney’s temporary reinstatement.

It is well-settled that an order of temporary reinstatement terminates after the Secretary, upon investigation, concludes that a violation of the anti-discrimination provisions of section 105(c) has not occurred. *North Fork Coal Corp. v. FMSHRC*, 691 F.3d 735 (6th Cir. 2012), *rev'g Sec'y o/b/o Gray v. North Fork Coal Corp.*, 33 FMSHRC 27 (Jan. 2011); *Vulcan Constr. Materials*, 700 F.3d 297 (7th Cir. 2012). Accordingly, as the Secretary has declined to bring a section 105(c)(2) proceeding on behalf of McKinney, the August 21, 2015, Order of Temporary Reinstatement shall be terminated.

ORDER

In view of the above, **IT IS ORDERED** that the August 21, 2015, Order granting the temporary reinstatement of McKinney as of August 10, 2015, **IS TERMINATED** effective as of the date of this Order. **IT IS FURTHER ORDERED** that the captioned temporary reinstatement proceeding **IS DISMISSED**.



Jerold Feldman
Administrative Law Judge

Distribution: (Regular and Certified Mail)

Melanie A. Stratton, Esq., U.S. Department of Labor, Office of the Solicitor, 201 12th Street South, Suite 401, Arlington, VA 22202

Robert S. Wilson, Esq., U.S. Department of Labor, Office of the Solicitor, 201 12th Street South, Suite 401, Arlington, VA 22202

Michael A. Olivio, Esq., Olivio Law Firm, 813 Quarrier Street, Charleston, WV 25301

Billy Shelton, Esq., Jones, Walters, Turner & Shelton, PLLC, 2452 Sir Barton Way, Suite 101, Lexington, KY 40509

/acp