

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9900 / FAX: 202-434-9949

December 12, 2023

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
on behalf of SAMUEL COLEMAN,  
Complainant

v.

WARRIOR MET COAL MINING, LLC,  
Respondent

TEMPORARY REINSTATEMENT

Docket No. SE 2024-0060  
MSHA Case No. SE-MD-24-03

Mine: No. 7 Mine  
Mine ID: 01-01401

## ORDER OF TEMPORARY REINSTATEMENT

Before: Judge Sullivan

This case is before me upon an Application for Temporary Reinstatement filed by the Secretary of Labor pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq., and 29 C.F.R. § 2700.45. On December 1, 2023, the Secretary filed the Application on behalf of miner and designated Miners' Representative Samuel Coleman ("Complainant") seeking his reinstatement to his former positions of Underground Belt Repairman and Miners' Representative at the No. 7 Mine of Warrior Met Coal, LLC ("Respondent"). The certificate of service states that the Application was served on Respondents by e-mail that same day. The Application also satisfies the other procedural requirements of Commission Rule 45(b) as it timely "states the Secretary's finding that the miner's discrimination complaint was not frivolously brought[,] accompanied by an affidavit setting forth the Secretary's reasons supporting his finding[,] and includes a copy of the miner's complaint to the Secretary . . . ." 29 C.F.R. § 2700.45(b).<sup>1</sup>

Commission Procedural Rule 45(d) provided Respondent with the right to, within 10 days of receipt of the Application, request an expedited hearing on the Application. *See* 29 C.F.R. § 2700.45(d). Respondent elected not to do so.

Section 105(c)(1) of the Mine Act provides that "[n]o person shall discharge . . . any miner . . . because such miner . . . has filed or made a complaint under or related to this Act, including a complaint notifying the operator . . . of an alleged danger or safety or health violation in a . . . mine . . . ." 30 U.S.C. § 815(c)(1). In the Application, as supported by her investigator's sworn declaration (Exhibit A thereto), the following un rebutted allegations of the

---

<sup>1</sup> The Discrimination Complaint ("Complaint") filed with the Secretary's Mine Safety and Health Administration by the Complainant is dated October 31, 2023, thus well within 60 days of the Complainant's October 30 termination of employment. *See* 30 U.S.C. § 815(c)(2).

Secretary establish the Complaint to her as having been not frivolously brought under sections 105(c)(1) and (2):

- (1) Before his employment was terminated on October 30, 2023, Complainant had worked for Respondent as an underground coal miner for over four years.
- (2) In May 2023, the miners at the No. 7 Mine, pursuant to 30 C.F.R. § 40, designated Complainant as their Miner's Representative for purposes of the Mine Act.
- (3) On October 17, 2023, Zachiah Mann, an underground miner at the No. 7 Mine, reported to Complainant that Mann's supervisor, Neil Almacen, had removed danger tape where timbers were down and had instructed Mann to remove rocks underneath a moving belt. Mann informed Complainant that he refused to do so and alleged that he was terminated for complaining to Almacen about those safety issues.
- (4) Complainant, in his role as designated Miners' Representative, questioned Almacen about Mann's account of events. Almacen responded that "Mann walked off the job and I fired his ass." Complainant informed Almacen that he would inspect the area that Mann had complained about, and that if the problems had not been corrected, there would be a safety issue.
- (5) Complainant also told Almacen that he had seen him traveling through the mine without required reflective clothing.
- (6) The following day, October 18, Complainant was suspended by Respondent's Human Resources Representative, Sally Brown, on Almacen's allegation to upper management that Complainant had told Almacen that "someone was going to beat [his] ass." On October 30, Respondent terminated Complainant, on the purported ground of insubordination.

There being no opposition to the Application, I agree with the Secretary that it establishes the Complaint to have been "not frivolously brought." *See Jim Walters Res., Inc. v. FMSHRC*, 920 F.2d 738, 747 (11th Cir. 1990) (relying upon Mine Act legislative history and the Supreme Court's treatment of a similar whistleblower protection provision to conclude that the "not frivolously brought" standard is the equivalent of a "reasonable cause to believe" standard and is met when a miner's "complaint appears to have merit"). Accordingly, the Application is granted. I reach no conclusion beyond that regarding the merits of the Complaint.

### **ORDER**

It is hereby **ORDERED** that **SAMUEL COLEMAN** be **immediately** **TEMPORARILY REINSTATED** to his former positions at the No. 7 Mine at his former rate of pay, overtime, and all benefits he was receiving at the time of his termination.

This Order **SHALL** remain in effect until such time as there is a final determination in this matter by hearing and decision, approval of settlement, or other order of this court or the Commission.

I retain jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4). The Secretary **SHALL** provide a report on the status of the underlying discrimination complaint **no later than January 29, 2024.**<sup>2</sup> Counsel for the Secretary **SHALL** also **immediately** notify my office of any settlement or of any determination that the Respondent did not violate Section 105(c) of the Act.

**WHEREFORE**, the Application is **GRANTED**, and it is **ORDERED** that reinstatement shall remain in effect until such time that the Secretary provides notification that he will not be bringing a discrimination case in chief on behalf of the Complainant, or such a case is brought and there is a final determination on it by decision, approval of settlement, or other order of this court or the Commission. I retain jurisdiction over this temporary reinstatement proceeding for such purposes as are necessary, as provided by 29 C.F.R. § 2700.45(e)(4).

**WHEREFORE**, the Secretary is further **ORDERED** to provide an update regarding the status of the Secretary's investigation of the Complaint no later than January 29, 2024.



John T. Sullivan  
Administrative Law Judge

Distribution:

Colleen E. Howard & Jean C. Abreu, Office of the Solicitor, U.S. Department of Labor, 61 Forsyth Street, S.W., Room 7T10, Atlanta, GA 30303 ([howard.colleen.e@dol.gov](mailto:howard.colleen.e@dol.gov))  
([Abreu.jean.c@dol.gov](mailto:Abreu.jean.c@dol.gov))

Atlanta Docket ([atl.fedcourt@dol.gov](mailto:atl.fedcourt@dol.gov))

W. Brock Phillips & John B. Holmes, III, MAYNARD NEXSEN, P.C., 1901 Sixth Avenue North, Suite 1700, Birmingham, AL 35203 ([bphillips@maynardnexsen.com](mailto:bphillips@maynardnexsen.com))  
([JHolmes@maynardnexsen.com](mailto:JHolmes@maynardnexsen.com))

Samuel Coleman ([bubbacoleman85@gmail.com](mailto:bubbacoleman85@gmail.com))

---

<sup>2</sup> Section 105(c)(3) of the Act directs the Secretary to notify a complainant whether a section 105(c) violation occurred within 90 days of the filing of a complaint. 30 U.S.C. § 815(c)(3).