

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
7 PARKWAY CENTER, SUITE 290
875 GREENTREE ROAD
PITTSBURGH, PA 15220
TELEPHONE: 412-920-7240 / FAX: 412-928-8689

FEB 05 2016

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
On behalf of JESSE R. STOLZENFELS
Complainant

v.

MARION COUNTY COAL COMPANY,
and its successors,
Respondent

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. WEVA 2016-134-D
MORG-CD-2016-3

Mine I.D.: 46-01433

Mine: Loveridge No. 22

**ORDER DENYING RESPONDENT'S MOTION TO DISSOLVE ORDER APPROVING
JOINT SETTLEMENT MOTION FOR TEMPORARY ECONOMIC REINSTATEMENT**

On December 10, 2015, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 ("Act"), 30 U.S.C. §801, *et. seq.*, and 29 C.F.R. §2700.45, the Secretary of Labor ("Secretary") filed an Application for Temporary Reinstatement of miner Jesse R. Stolzenfels ("Stolzenfels" or "Complainant") to his former position with Consolidation Coal Co., now known as Marion County Coal Company (herein "Respondent") at its Loveridge #22 Mine¹ pending final hearing and disposition of the case.

Respondent did not timely request a hearing on the Secretary's Application . Rather, on December 22, 2015, I received a Joint Motion to Approve Settlement Regarding Temporary Reinstatement from Respondent, the Secretary and the attorneys for Stolzenfels. This Motion provided for temporary economic reinstatement in lieu of physical reinstatement. This Motion provided:

5. Mr. Stolzenfels's period of economic temporary reinstatement will terminate upon a finding by MSHA that section 105(c)(1) has not been violated. Alternatively, if MSHA finds that the discrimination complaint has merit and causes a Complaint of

¹ This mine, located in Marion County, West Virginia, was purchased by Murray Energy Company. from CONSOL Energy, Inc. in December 2013 and its name has been subsequently changed to Marion County Coal Company.

Discrimination to be filed with the Review Commission, Mr. Stolzenfels's temporary reinstatement shall expire only after any decision or other similar order from the Federal Mine Safety and Health Review Commission becomes a final order that is not appealed by the Secretary, Mr. Stolzenfels or Respondent.

On December 23, 2015, I issued a Decision and Order Approving Joint Settlement Motion for Temporary Economic Reinstatement. This Order specifically included the paragraph noted above describing how temporary economic reinstatement would terminate.

On January 19, 2016, Respondent filed a Motion to Dissolve Order Approving Joint Motion for Temporary Economic Reinstatement ("Motion to Dissolve"). On January 28, 2016, the Secretary and the Complainant filed oppositions to the Motion to Dissolve. In support of its Motion, Respondent asserts that the mine was idled until January 18, 2016,² and Stolzenfels has been placed in a better position than he would have been had he been reinstated. Further, Respondent asserts that it was informed that counsel for Stolzenfels issued a comment to the media that Respondent placed Stolzenfels on temporary economic reinstatement because it wanted to avoid "demonstrat[ing] [that] workers have rights they can use to speak out on the job";³ and that Respondent wishes to avoid any appearance such is the case.

The Secretary and the Complainant oppose the Motion to Dissolve on the basis that Respondent has presented no evidence to support either dissolution or tolling. The Secretary's Opposition recites many reasons why dissolution is not appropriate, all of which I find to have merit. In sum, I conclude that Respondent is not entitled to dissolution of my Decision and Order Approving Joint Settlement Motion for Temporary Economic Reinstatement.

Initially I note that Respondent did not request a hearing on the Secretary's Application, thereby forgoing a contest of the Secretary's Application. Rather it chose to join in a motion by the parties on temporary economic reinstatement. In the Joint Motion, Respondent agreed that economic reinstatement would continue until either the Secretary declined to issue a Complaint of Discrimination⁴ or until there was a final decision by the Review Commission or an appropriate Court of Appeals if the Respondent appealed an unfavorable decision by the Commission. The only justification for Respondent to now seek dissolution is that it has had a change of heart, as noted by the Secretary in his Opposition to the Motion to Dissolve, that was occasioned by the Complainant's counsel's alleged remarks to the media. It would thus appear that the Motion to Dissolve was in retaliation for such perceived remarks, whether true or not. Clearly, this is a totally insufficient basis for dissolution.

² No further details of this alleged mine idling were included in the Motion.

³ Respondent did not identify the source of the alleged comment by the Complainant's counsel.

⁴ This event has not occurred as MSHA has not yet concluded his investigation of Stolzenfels's discrimination complaint.

It is well settled Commission law that a valid settlement agreement cannot be reopened or altered unless there are grounds of fraud or mutual mistake. *United Mine Workers of America, Local Union 1769, District 22 v. Utah Power and Light Company*, 12 FMSHRC 1548, 1555 (Aug. 1990). Moreover, the Federal Rules of Civil Procedure, particularly Rule 60(b), do not provide a basis for Respondent's requested relief as there has been no mistake, inadvertence, fraud, misconduct or other applicable reason for relief. See also *Secretary of Labor (MSHA) o/b/o Juan G. Pena v. Eisenman Chemical Company*, 11 FMSHRC 2166, 1267-68 (Nov. 1989). In the instant case Respondent agreed to temporary economic reinstatement and cannot now claim that it was mistaken so as to entitle it to dissolution of the settlement. Respondent, like all parties to a settlement, should be bound by all the terms it negotiated until the agreement is terminated by its terms.

Respondent's Motion to Dissolve is without merit and **IT IS HEREBY DENIED.**



Janet G. Harner
Administrative Law Judge

Distribution (Via E-mail and First Class Mail):

Jordana L. Greenwald, Esq., Office of the Solicitor, U. S. Department of Labor, The Curtis Center, Suite 630 East, 170 South Independence Mall West, Philadelphia, PA 19106-3306
greenwald.jordana@dol.gov

Thomas A. Smock, Esq., Philip K. Kontul, Esq., & Michael D. Glass, Esq., Ogletree, Deakins, Smoak, Nash & Stewart, P.C. One PPG Place, Suite 100, Pittsburgh, PA 15222
Thomas.smock@ogletreedeakins.com philip.kontul@ogletreedeakins.com &
michael.glass@ogletreedeakins.com

Tony Oppegard, Esq., P.O. Box 22446, Lexington, KY 40522 tonyoppegard@gmail.com

Rachel Hanna, Esq., Law Office of Rachel Hanna, P.O. Box 871, 117 E. Washington St., Lewisburg, WV 24901 rachelhanna@rachelhanna.com

Jesse R. Stolzenfels 1209 Wilson Ridge Road, Thornton, WV 26440