

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 15, 2016

SECRETARY OF LABOR, MSHA,
On behalf of **JENNIFER MORREALE**,
Complainant,

v.

VERIS GOLD U.S.A., INC.,
Respondent.

DISCRIMINATION PROCEEDING

Docket No. WEST 2014-793-DM
MSHA Case No.: WE MD 14-13

Mine: Jerritt Canyon Mill
Mine ID: 26-01621

**ORDER DENYING COMPLAINANT'S "PRO SE"
TEMPORARY REINSTATEMENT APPLICATION**

Before: Judge Simonton

This motion is before me under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c). The Complainant, Ms. Jennifer Morreale, first filed a discrimination complaint against Veris Gold U.S.A with the Mine Safety and Health Administration (MSHA) on March 18, 2014. On June 23, 2014, the Secretary of Labor filed a formal 105(c)2 complaint with the Commission, seeking civil penalties and personal damages on behalf of the Complainant. The Secretary did not file an application for temporary reinstatement on behalf of the Complainant at any point. Following protracted motions practice, the parties submitted a joint settlement motion to this court on February 20, 2015. In critical part, the Respondent agreed to pay the Secretary a civil penalty of \$1,000 and an undisclosed monetary payment to the Complainant within 30 days of the final order. The Respondent specifically stated within the settlement motion that,

Respondent's counsel has petitioned and secured approval from the bankruptcy monitor to approve this settlement in the ordinary course of business and allow payment to be made outside of the general unsecured creditor process.

February 20, 2015 Settlement Agreement, 2.

Relying on these representations, the court approved the joint settlement motion on February 27, 2015. However, on May 27, 2015, Morreale filed a "Motion to Compel" on her own behalf with this court. Morreale stated within her motion that the Respondent had not made any payment to her and requested that this court enforce the terms of the settlement agreement. Through a series of conference calls with the Secretary of Labor, the Complainant, and the Respondent's counsel, the court confirmed that the Respondent had not made any payments to the Complainant or the Secretary. The court also learned that the Respondent did not plan to

honor the agreement pursuant to a pending asset sale in which the Jerritt Canyon Mill mine would be sold free and clear of all interests. June 3, 2015 Notice Reserving Judgment.

On June 19, 2015, Morreale filed a joint motion with several other 105(c) complainants in the District of Nevada U.S. Bankruptcy court, seeking to stay the pending asset sale to Jerritt Canyon Gold (JCG). Although the Secretary continued to officially represent Ms. Morreale and another 105(c)2 complainant with a claim against Veris before the Commission, the Secretary did not join the complainants' motion to stay the asset sale. The bankruptcy court denied the complainants' stay motion that same day and the asset sale was finalized on June 24, 2015. On July 8, 2015, this court issued an order denying the Complainant's motion to compel payment as the court had released jurisdiction upon issuing the final settlement order.

On October 14, 2015, Morreale petitioned the Commission to reopen this matter for further proceedings in aid of compliance. On February 3, 2016, Morreale filed a formal motion to amend with the Commission, naming JCG and its controlling entities as liable successors in interest. On March 8, 2016, the Commission reopened and remanded this matter for further proceedings, including consideration of Morreale's motion to add JCG, Eric Sprott, and Whitebox Asset Management as successors in interest.

That same day, Morreale filed a "Motion for Temporary Reinstatement and Financial Reinstatement" with this court. Within, Morreale requested reinstatement to her former environmental technician position at the Jerritt Canyon Mill Mine and requested "temporary financial reinstatement, including interest, from March 2014 until (the conclusion of this case)." Morreale TR Motion, 2. The Secretary did not sign or appear to join Morreale's request for temporary reinstatement and backpay.

ANALYSIS

The Mine Act sets forth clear procedural requirements for temporary reinstatement applications, stating that,

Upon receipt of (a discrimination) complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis *upon application of the Secretary*, shall order the immediate reinstatement of the miner pending final order on the complaint.

30 U.S.C. 815 (c)2 (emphasis added).

Thus, a complainant is not eligible for temporary reinstatement unless the Secretary has submitted an appropriate application to the Commission. The Secretary has not filed an application for temporary reinstatement at any time during these proceedings. Solicitor Doherty

February 26, 2015 E-Mail. The Secretary did not join Morreale in submitting her March 8, 2016 motion for temporary reinstatement. Thus, I must deny Complainant's application for temporary reinstatement at the Jerritt Canyon Mill mine.

With this finding in mind, the court notes that it is the Secretary that brought this matter before the Commission in June 2014, seeking both civil penalties and personal damages on behalf of the Complainant. As such, the court is perplexed that after obtaining a final settlement agreement, the Secretary failed to aid Morreale in her efforts before the U.S. bankruptcy courts and the Commission. However, the court is well aware that the Commission cannot order the Secretary to pursue enforcement of monetary judgments in the federal courts. *Tolbert v. Chaney Creek Coal Corp.*, 12 FMSHRC 615, 618. The court is also aware that the Secretary has previously informed the Commission that it does not act as a legal representative for discrimination complainants in section 105(c)2 proceedings. *Disciplinary Proceeding*, 24 FMSHRC 28, 34 (January 2002). The Commission in that case found nothing in the manner in which the Solicitor of Labor handles section 105(c)(2) discrimination cases that indicates to miners that counsel in the Solicitor's Office are not their attorneys. I note this is also true of the way the Solicitor of Labor enters their representation on the record before the Commission. I echo the Commission's view as applied in this case.

However, now that the Commission has reopened this matter, the Secretary has not withdrawn their initial 105(c)2 complaint or released their claim for the agreed upon civil monetary penalty.¹ As such, the Complainant and Secretary are **ORDERED** to jointly submit all future filings in this section 105(c)(2) proceeding.

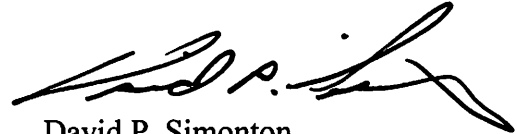
Furthermore, Morreale's request for reinstatement and backpay would in effect void the terms of the parties' prior voluntary settlement agreement. Although the listed Respondent has failed to honor the terms of the settlement agreement to date, the court currently considers the February 20, 2015 settlement agreement to be in full effect. What is at issue is whether JCG, Eric Sprott, and Whitebox Asset Management should be added as successors in interest parties.² As such, even if the Secretary were to submit an application for temporary reinstatement on behalf of Ms. Morreale, it is unlikely that the court would grant such a request.

¹ The court does not suggest that the Secretary withdraw from this matter. The Secretary may, as it has in *Garcia v. Veris* WEST 2014-905, submit filings detailing the Secretary's position on the successorship issues raised by the Complainant.

² The court could, if appropriate, ultimately award additional damages such as interest or incurred legal expenses to the Complainant due to the Respondent's failure to timely honor the settlement agreement. However, the court does not intend to reopen the substance of this case or the primary terms of the parties' final settlement agreement.

ORDER

The Complainant's application for temporary reinstatement is **DENIED**. The Complainant is directed to submit all future filings jointly through the Secretary of Labor. As directed by the Commission, the court will promptly issue further direction on the outstanding question of successorship liability.



David P. Simonton
Administrative Law Judge

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