

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 Pennsylvania Avenue NW, Suite 520N  
Washington, D.C. 20004

August 13, 2015

SECRETARY OF LABOR, MSHA,  
on behalf of RAYMOND MCKINNEY,  
Complainant,

v.

BLACK RIVER COAL, LLC,  
Respondent.

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. VA 2015-261-D

MSHA Case No.: NORT-CD 2015-02  
War Creek No. 1 Mine  
Mine ID: 44-06859

**ORDER DENYING SECRETARY'S  
MOTION IN LIMINE AND MOTION TO STRIKE**

This matter is before me based on the Secretary of Labor's Application for Temporary Reinstatement filed on behalf of miner Raymond McKinney pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, as amended ("the Mine Act"). 30 U.S.C. § 815(c)(2). The temporary reinstatement hearing is scheduled for August 18, 2015, in Abingdon, Virginia.

Under section 105(c)(2) of the Mine Act, "if the Secretary finds that [a discrimination] complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the reinstatement of the miner pending final order on the complaint." 30 U.S.C. § 815(c)(2). The scope of a temporary reinstatement hearing is narrow and limited to a determination by the judge as to whether a miner's discrimination complaint is frivolously brought. *See Sec'y of Labor on behalf of Price v. Jim Walter Res., Inc.*, 9 FMSHRC 1305, 1306 (Aug. 1987), *aff'd*, 920 F.2d 738 (11th Cir. 1990).

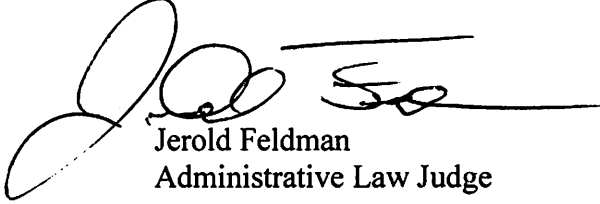
On August 7, 2015, the Respondent provided Secretary's counsel with a prehearing report reflecting that the Respondent intended to introduce into evidence in this proceeding McKinney's personnel file and pre-operation checklists for a relevant scoop. The Respondent's prehearing report also reflected that it planned to call Mark Huffman, Patrick Graham, Raymond Simpson, Kriss Proffit, and Joe Price, as witnesses. On August 12, 2015, the Secretary filed a Motion in Limine and Motion to Strike that seeks to preclude introduction of the aforementioned documents and the testimony of the named witnesses.

The Respondent's counsel, who is experienced appearing in mine safety matters, is well aware of the narrow scope of a temporary reinstatement proceeding. It is true that it is not the judge's duty to resolve conflicts in testimony in deciding the temporary reinstatement issue. *Sec'y of Labor o/b/o Albu v. Chicopee Coal Co.*, 21 FMSHRC 717, 719 (July 1999). However, due process requires that the Respondent is given the opportunity to introduce evidence it

believes supports its claim that McKinney's discrimination complaint has been frivolously brought. Whether such evidence is relevant, and as such, admissible, can only be determined at the hearing, at which time I will rule on any evidentiary objections proffered by the Secretary. See 29 C.F.R. § 2700.55(c), (e) (Commission judges are authorized to regulate the course of the hearing by ruling on offers of proof and receiving relevant evidence).

**ORDER**

In view of the above, **IT IS ORDERED** that the Secretary's a Motion in Limine and Motion to Strike **IS DENIED**.



Jerold Feldman  
Administrative Law Judge

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