

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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August 20, 2019

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), on
behalf of JAMES MCGAUGHRAN,
Petitioner,

v.

LEHIGH CEMENT COMPANY, LLC,
Respondent.

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. PENN 2019-0144-DM
MSHA Case No. NE-MD_19-05

Mine: Nazareth Plant I
Mine ID: 36-00190

ORDER GRANTING TEMPORARY ECONOMIC REINSTATEMENT

Before: Judge Rae

This matter is before me upon an Application for Temporary Reinstatement, filed by the Secretary of Labor (“Secretary”) on August 1, 2019, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2). Section 105(c) prohibits operators from discharging or otherwise discriminating against miners who have engaged in safety related protected activity, and authorizes the Secretary to apply to the Commission for miners’ temporary reinstatement, pending full resolution of the merits of their discrimination complaints. The Secretary seeks an order requiring Lehigh Cement Company, LLC (“Lehigh”), to temporarily economically reinstate James McGaughran (“McGaughran”) in lieu of actual temporary reinstatement.

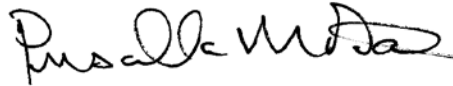
The Application is supported by the Declaration of MSHA Supervisory Special Investigator Jeffrey C. Maxwell, and a copy of the Discrimination Complaint filed by McGaughran on May 16, 2019. The Application alleges that McGaughran was terminated in March 2019 in retaliation for protected activity.

The parties subsequently negotiated and filed a Joint Motion to Approve Settlement Regarding Temporary Reinstatement, setting forth, for my approval, a proposal that resolves all issues in controversy with respect to this temporary reinstatement proceeding. The essential provisions of the Agreement are as follows:

1. Lehigh agrees to make payment to McGaughran, in the amount of \$9,317.02, to account for the time period between August 1, 2019 and the date of this Order;

2. Lehigh agrees to provide wages to McGaughran in the amount of \$4,658.51, less all appropriate and necessary deductions and withholdings, on Lehigh's regularly scheduled paydays.
3. Lehigh agrees to compensate McGaughran with all benefits as if he were continuously employed, and there shall be no loss in McGaughran's seniority status during the temporary economic reinstatement period. Further, McGaughran shall be eligible for any raises and/or benefits that would accrue during the reinstatement period.
4. McGaughran is not entitled to request or collect any unemployment compensation benefits during the temporary economic reinstatement period.
5. Economic reinstatement of McGaughran shall continue unless MSHA finds that section 105(c)(1) has not been violated, or if the investigation or discrimination proceeding is otherwise discontinued for any reason. Should the Secretary elect to file a Complaint of Discrimination under section 105(c)(2) of the Mine Act, McGaughran's temporary economic reinstatement will only expire after the Commission's judgment in that matter becomes final.

WHEREFORE, the Joint Motion to Approve Settlement Regarding Temporary Reinstatement is **GRANTED**, and it is **ORDERED** that Lehigh Cement Company, LLC **TEMPORARILY ECONOMICALLY REINSTATE** James McGaughran, in accordance with all terms set forth in the parties' Joint Motion to Approve Settlement Regarding Temporary Reinstatement of August 16, 2019.



Priscilla Rae
Administrative Law Judge

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/smp