# NOTICE

1. Enclosed is a copy of a decision by an Administrative Law Judge of the Federal Mine Safety and Health Review Commission. The issuance date of this decision appears on the first page of the Decision.

   *THIS DECISION MUST BE POSTED ON THE MINE BULLETIN BOARD BY THE OPERATOR.*

2. You may petition for review of this decision by the Commission. A PETITION FOR DISCRETIONARY REVIEW must be received by the Commission within thirty (30) calendar days after the issuance date of the decision to be considered [29 C.F.R. § 2700.5(f) and .70(a)]. If this decision is an ORDER OF TEMPORARY REINSTATEMENT, the Petition for Review must be received within 5 days of the receipt of the order [29 C.F.R. § 2700.45(f)].

   If a party wishes to file a petition for discretionary review, you are encouraged to file it within the Commission's electronic filing system (https://www.fmshrc.gov). Petitions are not currently being accepted via fax during the Commission's pandemic related operational changes (https://www.fmshrc.gov). If you mail the petition, you should allow enough time for delivery by the thirtieth day. Petitions should be filed at:

   DOCKET OFFICE
   FEDERAL MINE SAFETY AND HEALTH
   REVIEW COMMISSION
   1331 Pennsylvania Ave., N.W., Suite
   520N WASHINGTON, D.C. 20004-1710
   Telephone No. (202) 434-9950

3. The Federal Mine Safety and Health Review Commission's Rules of Procedure specify that a petition may be filed only on one or more of the following grounds:

   A. A finding or conclusion of material fact is not supported by substantial evidence.
   B. A necessary legal conclusion is erroneous.
   C. The decision is contrary to law or to the duly promulgated rules or decision of the Commission.
   D. A substantial question of law, policy or discretion is involved.
   E. A prejudicial error of procedure was committed.

   Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignment of error are based on the record. Statutes, regulations or principal authorities shall be relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge has not been afforded an opportunity to pass. For further details on the filing of documents and the review process, see 30 U.S.C. § 823{d) and Commission rules 5 through 9 and .70 through .78 [29 C.F.R. §2700.5-.9 and .70-.78].

4. A Petition for Review must be served on the opposing party.

5. If a petition is filed, each party will be notified of the Commission's action on the petition.

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE
1331 PENNSYLVANIA AVE., N.W., SUITE 1400
WASHINGTON, DC 20004-1710
TELEPHONE: 202 434-9987

September 10, 2026

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| BRANDON OLIVER,<br>Complainant,<br><br>v.<br><br>ASH GROVE CEMENT COMPANY,<br><br>Respondent. | DISCRIMINATION PROCEEDING<br><br>Docket No. CENT 2025-0176<br>MSHA No. MADI-CD-2025-04<br><br>Mine: Louisville Plant Quarry & Mill<br>Mine ID: 25-00002 |

**ORDER DISMISSING PROCEEDINGS**

Before: Judge Young

This matter is before me pursuant to a complaint of discrimination filed by Complainant Brandon Oliver ("Complainant") against Respondent Ash Grove Cement Company ("Respondent" or "Ash Grove") in accordance with Section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 ("Mine Act" or "Act"), 30 U.S.C. § 815(c)(3).[1] For the reasons discussed below, this case is **DISMISSED**.

## I. FACTS AND PROCEDURAL BACKGROUND

Complainant was hired by Respondent in 2019. *See* Compl. Complainant alleges that he was terminated from his position on June 21, 2024 "for a violation of company policy related to vehicle operation." Compl. at 1. Specifically, on the night of June 19, 2024, Complainant was operating an ATV[2] with a coworker as a passenger. He was allegedly driving at an excessive speed and while braking after turning a corner, the vehicle rolled over. Earlier that day, Complainant admits that he was doing "donuts" with the ATV in the parking lot.

On December 4, 2024, Complainant filed a Discrimination Complaint with MSHA. The entirety of the Report of Discrimination submitted to MSHA is set forth below:

[1] This case was initially assigned to Commission Administrative Law Judge (ALJ) John Kent Lewis and was subsequently reassigned to me.

[2] In his complaint, Complainant referred to the vehicle as an ATV. *See e.g.*, Compl. at 1. In his response to the Order to Show Cause, Complainant referred to the vehicle as a UTV. *See e.g.,* Complainant's Response to Order to Show Cause at 1 (Aug. 6, 2026).

> I was driving myself and a coworker back to the job site. I was operating an ATV and lost control of the unit. This was my first accident and I had been employed there for five years. I would like to get my job back and be able to maintain the seniority I had before being terminated.

Compl. at 7 (Mar. 11, 2025) (Report of Discrimination to MSHA, Dec. 4, 2024).

On February 3, 2025, the Secretary notified Complainant that MSHA found a lack of sufficient evidence to establish a Section 105(c) violation had occurred. *Id.* at 4. Complainant subsequently filed with the Commission a complaint which contained allegations pertaining to this same ATV incident. *Id.* at 1–3. Specifically, he alleged the following

> I was discriminated against under Section 105(c) of the Mine Act because the company introduced an ATV Safety Policy only after my termination, reinforcing that training was never implemented before my dismissal. This new policy explicitly states that operators must receive ATV-specific training before operating such vehicles, yet at the time of my employment, no such training existed or was enforced. Instead of providing the corrective training outlined in their previous policies, the company chose to terminate me, demonstrating that my dismissal was retaliatory rather than a legitimate safety enforcement measure.

Compl. at 2. The case was assigned to Commission Administrative Law Judge ("ALJ") John Kent Lewis on April 23, 2025.

On March 30, 2026, Respondent filed a Memorandum of Law in Support of Motion for Summary Decision. *See generally* Resp't's Mem. of Law in Support of Mot. for Summary Decision (Mar. 30, 2026). In his response to this motion, Complainant alleged he "raised safety-related concerns during his employment, including asking questions regarding safety procedures and training when he was first hired." Complainant's Resp. in Opp'n to Resp't's Mot. for Summary Decision at 2 (Apr. 12, 2026) ("Response to the Motion for Summary Decision" or "Resp.").

On April 17, Judge Lewis issued an Order Denying Motion for Summary Decision. Order Denying Motion for Summary Decision (Apr. 17, 2026) . In that order, he did not find that Complainant alleged that he engaged in any cognizable "protected activity" under the Mine Act in his Discrimination Complaint filed with MSHA, a determination with which this Court agrees. *Id.* at 4. However, he denied the motion because he found it appropriate to treat Complainant's allegation of raising safety-related concerns "as raising a genuine issue of material fact to defeat summary decision." *Id.* at 5.

This case was subsequently reassigned to me on May 21. Order of Reassignment (May 21, 2026). While Judge Lewis found Complainant's allegations of raising safety-related concerns were a "genuine issue of material fact," because Complainant is before the Commission pursuant to Section 105(c)(3) of the Mine Act, the allegations of protected activity are limited to those investigated by the Secretary in response to his initial discrimination complaint filed on December 4, 2024. After reviewing the case file, it was not clear to this Court whether the MSHA investigation into Complainant's complaint included the safety-related concerns he alleges that he raised during his employment. On July 17, 2026, I issued an Order to Show Cause directing Complainant to show cause why this case should not be dismissed for a lack of jurisdiction and show that the Secretary had the opportunity to consider and investigate any protected activity in considering his report of discrimination. Order to Show Cause at 4 (July 17, 2026).

On August 6, Complainant filed a Response to the Order to Show Cause, along with a copy of the Statement of Interview from his December 5,2024, interview with MSHA Inspector Brian Perdue. *See generally* Complainant's Response to Order to Show Cause (Aug. 6, 2026) ("Complainant's Response"); Statement of Interview (Dec. 4, 2024). On August 21, Respondent filed a Rebuttal to the Response to the Order to Show Cause. *See generally* Resp't's Rebuttal to Complainant's Response to the Order to Show Cause (Aug. 21, 2026) ("Resp't Rebuttal").

## II. APPLICABLE LEGAL STANDARDS

### A. The Scope of the Commission's Jurisdiction and Challenges to Subject Matter Jurisdiction

When Congress enacted the Mine Act, it established the Commission as an independent adjudicative agency with the authority "to provide trial-type proceeding and administrative appellate review in cases arising under the Act." *Kaiser Coal Corp.*, 10 FMSHRC 1165, 1169 (Sept. 1988); 30 U.S.C. § 823. Provisions of the Mine Act grant subject matter jurisdiction to the Commission to preside over several types of enforcement and contest proceedings, including contests of citations and orders, contests of civil penalties, and complaints of discrimination. *Id. See also* 30 U.S.C. § 815(c), (d). The Commission's subject matter jurisdiction is limited to this authority granted to it by Congress. *Kaiser Coal Corp.*, 10 FMSHRC at 1169; *Pocahontas Coal Co.*, 38 FMSHRC 176, 180 (Feb. 2016).

Subject matter jurisdiction refers to "the courts' statutory or constitutional power to adjudicate the case." *United States v. Cotton*, 535 U.S. 625, 630 (2002). It is essential for any legal proceeding and "can never be forfeited or waived." *Id.* While a party to a proceeding may challenge subject matter jurisdiction at any time, a court has "an independent obligation to determine whether subject-matter jurisdiction exists." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Such a challenge "may be raised by a party, or by a court on its own initiative, at any stage in the litigation." *Id.* at 506. *See also H. Bittle & Son, Inc.*, 38 FMSHRC 2446, 2450 (Sept. 2016) (ALJ). If the court—or in this case, the Commission—"determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. Procedure 12(h)(3).[3]

[3] Commission Procedural Rule 1(b) states: "On any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its ALJs shall be guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure."

### B. Framework for Discrimination Claims Under Section 105(c) of the Mine Act

Section 105(c) of the Mine Act prohibits both discrimination against miners for exercising any right protected under the Act and interference with the miner's exercise of statutory rights. 30 U.S.C. § 815(c)(1). To establish a *prima facie* case of discrimination, a miner must prove: (1) that he engaged in protected activity; and (2) that the adverse action complained of was "motivated in any part" by that protected activity. *Sec'y of Labor on behalf of Hargis v. Vulcan Constr. Materials, LLC*, 46 FMSHRC 523, 529 (Aug. 2024) (*citing Sec'y of Labor on behalf of Pasula v. Consolidation Coal Co*., 2 FMSHRC 2786, 2799 (Oct. 1980), *rev'd on other grounds sub nom*. *Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir. 1981); *Sec'y of Labor on behalf of Robinette v. United Castle Coal Co*., 3 FMSHRC 803, 817-18 (Apr. 1981)) (the "*Pasula-Robinette*" analysis).[4]

"To make out a *prima facie* case of discrimination, the complainant need only 'present[] evidence sufficient to support a conclusion that the individual engaged in protected activity and that the adverse action complained of was motivated in any part by that activity.'" *Turner v. Nat'l Cement Co. of California*, 33 FMSHRC 1059, 1065 (May 2011) (quoting *Driessen v. Nevada Goldfields, Inc.*, 20 FMSHRC 324, 328 (Apr. 1998)). This is a lower burden of proof than the ultimate burden of persuasion, and the evidence need only support an inference of employer retaliation for protected activity. *Keim v. Cordero Mining, LLC*, 36 FMSHRC 963, 970 (Apr. 2014).

Under *Pasula-Robinette*, an operator can rebut a miner's *prima facie* case by showing either: (1) that the miner was not engaged in any protected activity; or (2) that the adverse action was in no part motivated by the protected activity. *Robinette*, 3 FMSHRC at 818 n. 20. When a *prima facie* case has been established, an operator can assert an affirmative defense by demonstrating: (1) that the adverse action was also motivated by the miner's unprotected activity; and (2) that the adverse action would have been taken in response to the protected activity alone. *Driessen*, 20 FMSHRC at 328.

Because of evidence of discriminatory intent is rare, the Commission looks to circumstantial indicia of discriminatory intent: (1) knowledge of the protected activity; (2) hostility or animus towards the protected activity; (3) coincidence in time between the protected activity and the adverse action; and (4) disparate treatment of the complainant, with knowledge of the protected activity often being the most important factor. *Hargis*, 46 FMSHRC at 530 (citing *Sec'y of Labor on behalf of Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510 (1981), *rev'd on other grounds sub nom. Donovan ex rel. Chacon v. Phelps Dodge Corp.*, 709 F.2d 86 (D.C. Cir. 1983)).

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[4] This case arises in the State of Nebraska, which is contained within the jurisdiction of the United States Court of Appeals for the Eighth Circuit. There is a possible open question as to whether *Continental Cement Co. v. Sec'y of Labor*, 94 F.4th 729, 732-733 (8th Cir. 2024), requires "but for" causation for a discrimination case brought within the Eighth Circuit.

An individual miner who believes he has suffered an adverse employment action because of his protected activity must first file a complaint of discrimination with the Mine Safety and Health Administration ("MSHA"). 30 U.S.C. 815(c)(2)-(3). MSHA must investigate this complaint, and the Secretary of Labor must inform the miner in writing whether the government believes discrimination has occurred. *Id.* If MSHA believes discrimination has occurred, the Secretary must file with the Commission a complaint of discrimination on behalf of the miner. *Id.* If MSHA determines discrimination has not occurred, the Secretary notifies the miner of his determination, and the miner can file with the Commission a complaint of discrimination on his own behalf. *Id.*

The Secretary's investigation into any allegations of discrimination, including the alleged protected activity, is a necessary component of this discrimination proceeding framework. *See Hatfield v. Colquest Energy, Inc.*, 13 FMSHRC 544, 546 (Apr. 1991) (noting the statute provides miners "a full administrative investigation and evaluation of an allegation of discrimination, as well as the right to private action *in the event* that the administrative evaluation results in a determination that no discrimination has occurred") (emphasis added) (citation omitted). It is, therefore, the Secretary's investigation into a miner's discrimination complaint filed with MSHA "that governs the permissible ambit of the complaint filed with the Commission." *Dixon v. Pontiki Coal Corp.*, 19 FMSHRC 1009, 1017 (June 1997). If the Secretary's determination of no discrimination did not consider matters alleged as protected activity, and those allegations of protected activity are the basis for the miner's *prima facie* case of discrimination, "the statutory prerequisites for a complaint pursuant to § 105(c)(3) [are] not met." *See Hatfield*, 13 FMSHRC at 546.

## III. DISCUSSION

### A. Both Protected Activity and a Mine Operator's Knowledge of that Protected Activity Are Essential to Complaints of Discrimination

Protected activity is the foundation for every complaint of discrimination brought under Section 105(c) of the Mine Act, as evidenced by its inclusion as the first element of a *prima facie* case of discrimination under the *Pasula-Robinette* analysis. *See also* 30 U.S.C. § 815(c)(1). Because any adverse action taken by an operator must be motivated by the protected activity, an operator's knowledge of the protected activity is essential to any case of discrimination brought under Section 105(c).

Motivation is defined as both "the act or process of giving someone a reason for doing something" and "a motivating force, stimulus, or influence." For someone to be motivated by something, the person must be aware of that "something." Someone cannot logically have a reason for or be influenced to take a specific action by something of which they have no knowledge. An operator therefore cannot be motivated by something it did not know. Establishing that an operator had knowledge of a miner's protected activity is important to every prima facie case of discrimination.

### B. There is no Evidence Supporting Complainant's Assertion that the MSHA Investigation Included an Inquiry into Any Requests for ATV Task Training

Here, Complainant contends that there is "protected activity concerning the absence of ATV task training and whether Complainant had previously questioned or requested such training." Complainant Response at 1. He specifically contends that MSHA's investigation included the following inquiries:

1. The alleged absence of UTV task training;
2. Complainant's belief that UTV training was necessary for safe operation;
3. Whether Complainant had requested such training;
4. The contrast between the lack of UTV training and the task training provided on other equipment; and
5. Safety conditions and operational subjects that Complainant believed proper UTV training should have addressed.

Complainant Response at 3.

When Complainant was interviewed by the MSHA inspector on December 5, 2024, he replied "No" when asked whether he had previously reported safety concerns to Respondent or MSHA or had otherwise engaged in protected activity. Statement of Interview at 3. After the inspector explained to Complainant the elements of a discrimination complaint, Complainant stated, "I did not receive any task training for the operation of the UTV. They did not task anyone on the UTV's until after my accident. After my accident they created a task training procedure after they fired me." *Id.*

Later in the interview, Complainant stated that he felt it was unsafe to operate the UTV "in some instances" before the accident. *Id.* at 6. He also stated that he felt the need to be trained on the operation of the UTV. *Id.* However, when asked whether he ever requested to be trained on the UTV, Complainant stated, "I don't think so, I might have asked about it when I first got hired." *Id.*

In his response to the Order to Show Cause, Complainant stated that at the time of the interview, he understood the MSHA inspector's question about whether he engaged in "protected activity" to mean "whether he had filed a formal written safety complaint, made a prior formal complaint to MSHA, or formally invoked a statutory miners' right. Complainant had not done so." Complainant Response at 2. He replied "No" because he never filed a formal written safety complaint, made a formal complaint to MSHA or formally invoked a statutory right. *Id.* He "did not understand that an informal verbal question or request concerning safety training could constitute protected activity." *Id.*

To the extent that Complainant contends Respondent's failure to provide ATV training is protected activity (inquiry 1), that claim must fail. As a simple matter of statutory construction, an operator's omission cannot be construed as an act or exercise by, or status of, a miner under Section 105(c) of the Mine Act. The Act requires that a miner either (1) be in a protected class; (2) engaged in a protected activity as specified by the Act; or (3) exercised a statutory right afforded to him. 30 U.S.C. § 815(c)(1).

An action or failure to act by another, including a mine operator, cannot satisfy any of these three enumerated categories of protected activity/status under Section 105(c). *See Clark County School Dist. v. Breeden,* 520 U.S. 268, 273 (2001) (Rejecting "utterly implausible suggestion that the *EEOC's* issuance of a right-to-sue letter—an action in which the employee takes no part—is a protected activity of the employee.") (emphasis in original). Because any differences in task training on various equipment (inquiry 4) would also be action performed by the mine operator, that is also not considered protected activity under the Mine Act.

For similar reasons, Complainant's beliefs about whether and what type of ATV task training should have been provided (inquiries 2 and 5) are also not protected activity. A miner's beliefs about training do not afford him a protected status, and a belief that is not communicated to a mine operator cannot constitute engagement in activity or exercise of a right.

Only the third inquiry—whether Complainant had requested ATV task training—could meet the definition of protected activity because it constitutes an action performed by Complainant, namely communicating a request for training. As Judge Lewis stated in his Order Denying the Motion to Dismiss, there is no question that a miner voicing safety concerns can be deemed protected activity. *See* Order Denying Motion for Summary Decision at 4–5 (citing *Sec'y of Labor on behalf of Riordan v. Knox Creek Coal Corp*., 38 FMSHRC 1914, 1922 (Aug. 2016); *Sec'y of Labor on behalf of Munson v. Eastern Associated Coal Corp*., 23 FMSHRC 654, 662 (June 25, 2001) (ALJ)) (providing examples of cases).

However, Complainant has failed to establish that any cognizable protected activity occurred. When asked whether he requested ATV task training, Complainant stated, "I don't think so." While he did state he may have made a request at the beginning of his employment, that occurred five years before the accident. Complainant himself states that he "does not rely on unrelated safety concerns from years earlier as a newly created explanation for his termination," but on the "UTV task-training issue actually examined during MSHA's investigation." Complainant Response at 4.

Complainant alleges that the MSHA investigation included inquiry into whether Complainant requested ATV task training because the MSHA investigator asked whether he requested ATV task training. But such "threadbare recitals of the elements of a cause of action" and "mere speculation" about MSHA's investigation cannot satisfy the elements of a prima facie case, which must rest upon "well-pleaded facts." *Latture v. Priority Life Care, LLC,* No. 25-7063, Slip Op. at 10 (D.C. Cir., Sept. 8, 2026)[5] (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Hettinga v. United States,* 677 F.3d 471, 476 (D.C. Cir. 2012).

Complainant's response of "I don't think so" suggests that Complainant himself was doubtful about whether he engaged in protected activity when he was interviewed by the MSHA inspector. His essentially negative response to the investigator's question about task training foreclosed any meaningful investigation into the claim. Further, even if he had requested task training, it would have been when he was hired—five years before the accident and his termination. It is not reasonable to infer that an investigator would have looked into a request for task training that may or may not have occurred five years before the adverse action.

[5] This decision has not yet been reported on Westlaw.

Complainant's response to the Order to Show Cause highlights the difficulty of such an investigation. The Response fails to comply with the requirements given to him in the Order, which were designed to give him an opportunity to provide specific factual support for his claim. He was directed to do the following:

> Complainant shall provide testimonial or documentary evidence to support any claim that the Secretary's investigation included allegations concerning protected activity. Any testimonial evidence shall be specific as to the activity, when it occurred, and how the operator was aware of the protected activity (e.g. the person or persons to who any complaints, questions, or other statements was directed, or who witnessed his protected activity).

Order to Show Cause at 4.

Complainant has failed to meet the requirements for evidence to support that the MSHA investigation considered allegations of protected activity because he did not identify any times, persons, or specific statements or actions that might have qualified as protected activity. He also did not provide a sworn statement supporting allegations of protected activity, as directed by the Order. *See Id.*

Complainant's declaration equivocally suggested that he "might have asked about [task training] when I was first hired." If he himself was dubious about whether a request had been made and could provide no details, what reasonable basis would an investigator have had to pursue his claim, even if the request could be considered protected activity?

**C. Even if Requesting ATV Task Training at the Beginning of his Employment Could be Considered Protected Activity, the Request Would Have Been too Remote in Time to Infer any Relationship Between the Request and his Termination.**

In the Report of Interview with the MSHA Inspector and Complainant's Responses to the Motion to Dismiss and Order to Show Cause, Complainant stated that he may have requested task training or raised safety concerns about the ATV at the beginning of his employment. This non-specific time frame is the only information available about the requests he alleges he made to Respondent. Since Complainant began working in 2019, these concerns or requests would have been made five years before the accident after which Complainant was terminated.

In his Order Denying the Motion for Summary Decision, Judge Lewis stated that he did not find Complainant's initial complaint sufficient to find Complainant established a *prima facie* case of discrimination. In the Order directing Complainant to Show Cause, I stated that I did not find an allegation that Complainant raised safety concerns at the beginning of his employment would establish a *prima facie* case. Order to Show Cause at 3 & n. 3.

The five years between this alleged activity and Complainant's termination is too long to support any inference of discriminatory intent based on the coincidence in time. *Id. See also*

*Breeden*, 532 U.S. at 273-74 (Noting that cases relying on "mere temporal proximity" between protected activity and adverse action "uniformly hold that the temporal proximity must be 'very close'" and that "action taken . . . 20 months later suggests, by itself, no causality at all.") (citations omitted). The attenuation is even more pronounced here, when the time elapsed was five years and where a supervening event—a serious accident involving a vehicle Complainant was driving, which injured a co-worker—occurred almost immediately before the adverse action.

**D. The Fact That Other Employees in Similar Situations Received Different Discipline for Similar Actions, Even if True, is Not Discrimination Within the Scope of Section 105(c) of the Mine Act Absent Evidence of Protected Activity.**

In his Response to the Show Cause Order, Complainant states that when he "originally filed his discrimination complaint, he understood 'discrimination' to primarily mean that Ash Grove treated him differently and more severely than other employees involved in comparable or more serious safety incidents." Complainant Response at 4. In his initial interview with the MSHA inspector, Complainant stated that he filed the discrimination complaint because he "felt like I was targeted." Statement of Interview at 4. While other employees had been involved in accidents, they had not received the same type of discipline/termination. *Id.* As he stated, "the other guy's accidents got sweep [sic] under the rug, but with me they just fired me." *Id.*

While Complainant's motive for initially filing his complaint may meet a commonly used or "everyday" definition of discrimination,[6] the Commission's jurisdiction over discrimination proceedings is limited to discrimination "*because of*" a miner's protected activity, i.e. his exercise of rights afforded to him under the Mine Act. "[T]he Commission does not sit as a super grievance board to judge the industrial merits, fairness, reasonableness, or wisdom of an operator's employment policies except insofar as those policies may conflict with rights granted under section 105(c) of the Mine Act." *Delisio v. Mathies Coal Co*., 12 FMSHRC 2535, 2544 (Dec. 1990). *See also Sec'y of Labor on behalf of Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, (Nov. 1981) ("The Commission and its judges have neither the statutory charter nor the specialized expertise to sit as a super grievance or arbitration board meting out industrial equity.")

When an employee complains about unfair treatment in the workplace, such as "longstanding inequities in [an operator's] disciplinary procedures and managerial practices," those complaints are not properly before the Commission unless they "address discrimination based on activities protected under the Mine Act." *Keim,* 36 FMSHRC at 97. Mine operators, like any employer, may engage in business practices that treat employees differently, provided they do not unlawfully discriminate. The mere fact that a mine operator imposes more severe disciplinary action on one employee than that imposed on another does not mean that the operator has engaged in unlawful discrimination within the scope of Section 105(c) of the Mine Act. *See Delisio*, 12 FMSHRC 2545 (finding "an operator's policy of not paying an employee

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[6] The Merriam-Webster Online Dictionary defines discrimination as "the act, practice, or an instance of unfairly treating a person or group differently from other people or groups on a class or categorical basis (such as race, religion, gender, or sexual orientation)" and "the act of making or perceiving a difference". *Discrimination*, Merriam-Webster, https://www.merriam-webster.com/dictionary/discrimination (last visited Aug. 31, 2026).

for time spent testifying as another party's witness, while paying employees who testify as its own witnesses" was not an adverse action under the Mine Act).

Here, Complainant's allegation that he was discriminated against under the Mine Act because he was fired for causing an accident when other employees who caused accidents in the past faced lesser discipline is a complaint about Respondent's disciplinary procedures. But without protected activity, there can be no causal connection as required by the statute.

A disciplinary policy or practice of Respondent as alleged here is not itself related to miner health and safety and is beyond the scope of section 1105(c). The Commission and its judges lack the statutory authority or expertise to adjudicate this dispute absent such a connection to the Act and its protections. Therefore, Complainant's case cannot be sustained.

## IV. CONCLUSION AND ORDER

For the reasons discussed herein, I find that Complainant has failed to state a claim upon which relief has been granted and has failed to show that the Secretary had the opportunity to investigate any protected activity within the scope of Section 105(c) of the Mine Act during its investigation of this Complaint. Accordingly, it is **ORDERED** that this docket be **DISMISSED**.

Michael G. Young
Administrative Law Judge

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