

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, DC 20001

November 30, 2009

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION, (MSHA),	:	
on behalf of LIGE WILLIAMSON	:	Docket No. KENT 2009-1428-D
Complainant	:	PIKE CD 2009-06
v.	:	
	:	
CAM MINING, LLC,	:	Mine ID 15-18911
Respondent	:	Number 28 Mine

AMENDMENT OF ORDER OF TEMPORARY REINSTATEMENT

Before: Judge Feldman

An Order of Temporary Reinstatement was issued on October 26, 2009, granting an application for temporary reinstatement filed by the Secretary, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. § 815(c)(2), against CAM Mining, LLC (CAM Mining) on behalf of Lige Williamson. The initial decision on the Secretary's application, following a September 2, 2009, evidentiary hearing, determined that the Secretary failed to satisfy her burden of demonstrating that the application for temporary reinstatement was not frivolously brought. 31 FMSHRC __ (Sept. 30, 2009) (ALJ). The Secretary appealed the initial decision. The Commission then reversed and ordered the retroactive reinstatement of Williamson effective as of September 30, 2009, the date of the initial decision. 31 FMSHRC __, slip op. at 8 (Oct. 22, 2009). Consistent with the Commission's remand, the October 26, 2009, Order of Temporary Reinstatement granted Williamson's reinstatement relief effective September 30, 2009.

The parties have now filed a joint motion to amend the Order of Temporary Reinstatement. The Secretary and CAM Mining have agreed to the method of computation that will determine Williamson's economic reinstatement relief as of September 30, 2009.

In view of the above, consistent with the terms of the parties' agreement, **IT IS ORDERED THAT** CAM Mining shall pay Lige Williamson his regular weekly rate of pay of \$24.00 per hour for 40 hours in addition to payment for 10 hours of overtime pay per week computed at the normal overtime compensation rate. The agreed total gross wages per week that Williamson shall be paid is \$1,320.00 retroactive to September 30, 2009, minus deductions for taxes and other items, if any, that were deducted during Williamson's

employment. The parties have agreed to the terms of the deductions for Williamson's health insurance premiums and the effective date of his health insurance coverage. In addition, all other benefits that Williamson was entitled to prior to his termination shall be restored effective September 30, 2009, including but not limited to his participation in CAM Mining's 401(k) employee benefit program.

Williamson's economic reinstatement shall not prejudice CAM Mining's right to contest Williamson's discrimination complaint that currently is being investigated by the Secretary. The Secretary should endeavor to complete, as soon as practicable, her investigation so that this matter may proceed to an evidentiary hearing on the merits. If the Secretary, upon investigation, finds that the provisions of section 105(c) have not been violated, she shall file a motion to vacate this Order of Temporary Reinstatement. Alternatively, CAM Mining may move to vacate this temporary reinstatement order if the Secretary declines to prosecute Williamson's complaint pursuant to section 105(c)(2) of the Mine Act. *Peter J. Phillips v. A&S Construction Co.*, 31 FMSHRC __, Docket No. West 1057-DM (Sept. 9, 2009). If the Secretary elects to file a discrimination complaint on behalf of Williamson pursuant to section 105(c)(2) of the Mine Act, **IT IS ORDERED** that Williamson's economic reinstatement shall remain in effect until the merits of the Secretary's 105(c)(2) complaint becomes final.

Jerold Feldman
Administrative Law Judge

Distribution: (Regular and Certified Mail)

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