

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 26, 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

DECISION ON REMAND

AND

ORDER OF TEMPORARY REINSTATEMENT

Appearances: Mary Sue Taylor, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, for the Complainant;
Mark Heath, Esq., Spilman, Thomas & Battle, Charleston, West Virginia, for the Respondent.

Before: Judge Feldman

This matter is before me based on 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 has 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).

Accordingly, **IT IS ORDERED** that CAM Mining, LLC **SHALL IMMEDIATELY REINSTATE** Lige Williamson to the former job position that he held on May 15, 2009, at his former rate of pay, with back pay effective September 30, 2009. Williamson’s reinstatement shall include entitlement to all benefits associated with his employment including overtime, if applicable.

Williamson's 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).

Jerold Feldman
Administrative Law Judge

Distribution: (VIA FACSIMILE AND CERTIFIED MAIL)

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