

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

PETE TARTAGLIA, JR.

NOV 07 2019

v.

: Docket No. WEST 2018-362-DM
:
:

FREEPORT-MCMORAN BAGDAD, INC. :

BEFORE: Rajkovich, Chairman; Jordan, Young, Althen, and Traynor, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On March 14, 2019, the Commission received a letter from Pete Tartaglia, Jr., a pro se complainant, essentially requesting review of the Judge’s decision approving the settlement in this discrimination proceeding. On October 9, 2019, Freeport-McMoRan Bagdad Inc. (“FMBI”) filed a motion for clarification from the Commission regarding Tartaglia’s filing and the status of this case.

On October 11, 2019, the Commission issued an order instructing Tartaglia to file a response to FMBI’s motion, if any, by October 22, 2019. On October 16, 2019, Tartaglia filed a response alleging that counsel for the operator had engaged in fraud. On October 22, 2019, counsel for FMBI filed an Amended Motion for Sanctions requesting that the Commission strike Tartaglia’s response from the record and impose sanctions on him.

At the conclusion of the hearing in this proceeding, the parties entered into an agreement in principle and put the terms of the agreement into the record under seal. 41 FMSHRC 47 (Feb. 2019) (ALJ). However, the record does not contain a written agreement. On January 14, 2019, after prompting from FMBI, the Judge issued an order directing Tartaglia to inform the Judge whether he intended to comply with the terms of the settlement or file a post-hearing brief so the Judge could render a decision on the merits. When no response was filed within the directed time frame, FMBI filed a motion to enforce the agreement and file the hearing transcript under seal. Tartaglia responded to FMBI’s motion to enforce indicating that he was not complying with the settlement agreement and alleging that FMBI was wrongfully taking money from his pay due to an alleged overpayment in order to satisfy the terms of the agreement in this case.

On February 11, 2019, the Judge issued a decision approving settlement, concluding that the parties had entered into an enforceable and binding settlement agreement, and rejecting Tartaglia’s claims of alleged fraud as irrelevant and unrelated to the terms of the settlement and

his section 105(c)(3) complaint. The Judge directed Tartaglia to comply with the terms of the settlement agreement and dismissed the proceeding. *Id.*

We are guided here by the Commission's decision in *Transit Mixed Concrete Co.*, 13 FMSHRC 175 (Feb. 1991). In that case, the Secretary requested that the Commission amend the administrative law judge's decision approving settlement or issue a supplemental decision approving the parties' settlement of a citation that was omitted from the original decision approving settlement. *Id.* at 175. The Secretary had not filed a timely petition for discretionary review and the Judge's decision had become a final order. The Commission construed the Secretary's request as a request for relief from a final Commission order and incorporated by implication the Secretary's request as a late-filed petition for discretionary review. Relying on Fed. R. Civ. P. 60(b), the Commission reopened the matter and proceeded to consider the Secretary's substantive request for relief. *Id.* at 176.

Here, the Judge's jurisdiction over this case terminated when he issued his decision approving settlement on February 11, 2019. 29 C.F.R. § 2700.69(b). Relief from a Judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Tartaglia's request was received by the Commission on March 14, 2019, after the time for filing a PDR had passed. The Judge's decision became a final order on March 25, 2019.

The Commission has ruled that relief from a final Commission judgment or order is available to a party under Fed. R. Civ. P. 60(b). 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply "so far as practicable" in the absence of applicable Commission rules); *e.g.*, *Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991). The Commission has held that in appropriate circumstances, it may, in its discretion, reopen one of its proceedings pursuant to Fed. R. Civ. P. 60(b)(6) upon a proper showing that an underlying settlement agreement approved by the Commission has been materially breached or repudiated. *See Johnson v. Lamar Mining Co.*, 10 FMSHRC 506, 508 (Apr. 1988). We deem Tartaglia's submission as a request for relief from a final Commission order, in accord with our precedents.

The parties' submissions raise issues that are not directly or fully addressed in the current record, including the validity of the settlement and alleged misconduct. We are unable to evaluate the merits of these assertions and Tartaglia's request based on the current record. Without expressing any view regarding the merits of Tartaglia's claims, in the interest of justice, we reopen the proceeding and remand the matter to the Judge, who shall determine whether relief from the final order is warranted. *See Hickory Coal Co.*, 12 FMSHRC 1201, 1202 (June 1990). The Judge shall also address the question of whether sanctions against any party are appropriate.

For the foregoing reasons, this case is remanded to the Judge for appropriate proceedings.



Marco M. Rajkovich, Jr., Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

Distribution:

Peter Tartaglia Jr.
8340 N. Thornydale Rd, #209, Suite #110
Tucson, AZ 85741

Laura Beverage
Jackson Kelly PLLC
1099 18th Street, Suite 2150
Denver, CO 80202

Ali Beydoun, Esq.
Office of the Solicitor
US Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450

April Nelson, Esq.
Office of the Solicitor
US Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450

Melanie Garris
Office of Civil Penalty Compliance, MSHA
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5450

Administrative Law Judge David P. Simonton
Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
721 19th Street, Suite 443
Denver, CO 80202-2536