

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

**July 6, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
on behalf of JASON HARGIS	:	
	:	
v.	:	Docket No. SE 2021-0163
	:	
VULCAN CONSTRUCTION	:	
MATERIALS, LLC	:	Docket No. SE 2022-0001
	:	
	:	
JASON HARGIS	:	Docket No. SE 2022-0013
	:	
v.	:	
	:	
VULCAN CONSTRUCTION	:	
MATERIALS, LLC	:	

ORDER FOR SUPPLEMENTAL BRIEFING

These proceedings all involve cross-petitions for discretionary review by the Secretary of Labor (“Secretary”), Vulcan Construction Materials, LLC (“Vulcan”), and a miner, Jason Hargis (“Complainant”). On January 9, 2023, the Commission granted all three petitions for discretionary review. On January 20, 2023, the Commission consolidated the cases and set forth a briefing order. Since the filing of the parties’ briefs, however, the Commission has noticed an issue not previously briefed by the parties.

The issue involves the interaction between two sections of the Mine Act. Specifically, section 105(c)(2) authorizes temporary reinstatement pending “the final order on the complaint” and instructs that the “order shall become final upon *30 days* after [the] issuance” of the decision. 30 U.S.C. § 815(c)(2) (emphasis added).

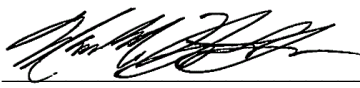
Section 113(d)(1) of the Act states that “[t]he decision of the administrative law judge of the Commission shall become the final decision of the Commission *40 days* after its issuance unless within such period the Commission has directed that such decision shall be reviewed by the Commission . . . .” 30 U.S.C. § 823(d)(1) (emphasis added).

Thus, the issue in calculating the final order date for ending temporary reinstatement concerns the applicability and interaction of the 30-day language in section 105(c)(2) and the 40-day language in section 113(d)(1).

As a result, the Commission requests supplemental briefing on the calculation of a “final order” date for temporary reinstatement purposes given section 105(c)(2) and section 113(d)(1). The briefs of the parties shall be filed within 14 days of the date of this order and shall not exceed 15 pages in length.

  
\_\_\_\_\_  
Mary Lu Jordan, Chair

  
\_\_\_\_\_  
William I. Althen, Commissioner

  
\_\_\_\_\_  
Marco M. Rajkovich, Jr., Commissioner

  
\_\_\_\_\_  
Timothy J. Baker, Commissioner

Distribution:

Emma P. Cusumano, Attorney  
April E. Nelson, Associate Solicitor  
Emily Toler Scott, Counsel for Appellate  
Litigation Office of the Solicitor, U.S. Department  
of Labor Division of Mine Safety & Health  
201 12th Street South, Ste. 401  
Arlington, VA 22202  
Cusumano.emma.p@dol.gov  
Nelson.April@dol.gov  
scott.emily.t@dol.gov

Christopher M. Smith, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
618 Church Street, Suite 230  
Nashville, TN 37219  
smith.christopher.m@dol.gov

Elaine M. Youngblood, Esq.  
Ortale Kelley  
330 Commerce Street, Suite 110  
Nashville, TN 37201  
eyoungblood@ortalekelley.com

Margaret S. Lopez, Esq.  
William K. Doran, Esq.  
Ogletree, Deakins, Nash, Smoak & Stewart, PC  
1901 K Street NW, Suite 1000  
Washington, DC 20006  
margaret.lopez@ogletree.com  
william.doran@ogletree.com

Chief Administrative Law Judge Glynn F. Voisin  
Office of the Chief Administrative Law Judge  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004-1710  
GVoisin@fmshrc.gov

Administrative Law Judge Michael Young  
Office of the Chief Administrative Law Judge  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004-1710  
[myoung@fmshrc.gov](mailto:myoung@fmshrc.gov)