

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

September 19, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
on behalf of ALVARO SALDIVAR	:	
	:	
v.	:	Docket Nos. WEST 2022-0334
	:	WEST 2023-0015
GRIMES ROCK, INC.	:	WEST 2023-0016

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: THE COMMISSION

These proceedings arise under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2) (2018) (“Mine Act” or “Act”).¹ On August 22, 2024, the Commission received from Grimes Rock, Incorporated (“Grimes”) a motion to stay enforcement of the Administrative Law Judge’s July 24, 2024 assessment of civil penalties after granting the Secretary of Labor’s motion for summary decision. In the alternative, Grimes requests that the

¹ 30 U.S.C. § 815(c)(2) provides in pertinent part:

Any miner . . . who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary’s receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint.

Commission permit it to deposit the amount of the civil penalty assessment in an escrow account while the case is on appeal.

The Secretary does not oppose a stay of the order to pay the penalty or the request to deposit the penalty amount in an interest-bearing escrow account, but only through the pendency of the proceeding before the Judge in the Saldivar temporary reinstatement case, Docket No. WEST 2021-0178-DM.² Sec’y Resp. at 2. However, the Secretary also provides documentation demonstrating that since filing its motion for stay, on August 29, 2024, Grimes paid the subject penalties in full. To date, the Commission has not received a request from Grimes to withdraw this motion.

In light of Grimes’ recent payment of the penalties in the instant matter, we deny the operator’s motion to stay payment of said penalties as moot. *See Riverton Investment Corp.*, 31 FMSHRC 1067, 1067–68, (Oct. 2009) (denying motion to reopen as moot given operator’s payment of penalty assessment).


Mary Lu Jordan, Chair


Timothy L. Baker, Commissioner


Moshe Z. Marvit, Commissioner

² The Commission has held that a party seeking a stay must make an adequate showing with respect to the four factors set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958): (1) a likelihood that the moving party will prevail on the merits of its appeal; (2) irreparable harm to it if the stay is not granted; (3) no adverse effect on other interested parties; and (4) a showing that the stay is in the public interest. *Secretary on behalf of Price and Vacha v. Jim Walter Res., Inc.*, 9 FMSHRC 1312 (Aug. 1987); *Sec’y ex rel. Saldivar v. Grimes Rock, Inc.*, 44 FMSHRC 725 (Aug. 2022); *UMWA on behalf of Franks & Hoy v. Emerald Coal Res., LP*, 35 FMSHRC 2373, 2374 (Aug. 2013). The Commission made clear that a stay constitutes “extraordinary relief.” *Id.* We note that Grimes did not address the required factors.

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