FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR
WASHINGTON, D.C. 20006

May 18, 2000

DONALD L. RIBBLE	:	
	:	
v.	:	Docket No. LAKE 2000-25-DM
	:	
T & M DEVELOPMENT COMPANY	:	

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

DIRECTION FOR REVIEW AND DECISION

BY: THE COMMISSION

Pursuant to Commission Procedural Rule 71, 29 C.F.R. § 2700.71, on our own motion, we direct review of the judge's April 18, 2000 Order of Dismissal in this case on the ground that it is contrary to law and Commission policy. 30 U.S.C. § 823(d)(2)(B). For the reasons set forth below, we vacate the judge's decision and remand this matter to him to conduct further proceedings consistent with this order.

I.

Factual and Procedural Background

On December 20, 1999, Donald Ribble filed a pro se discrimination complaint with the Commission pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(3) (1994) ("Mine Act").[1] In his complaint, Ribble alleges that his former employer, T & M Development Company ("T & M"), fired him on August 17, 1999 after he

[1] In order to succeed in a discrimination case under the Mine Act, a miner has to present evidence that could convince a judge that (1) the miner engaged in protected activity (for example, reporting a safety violation), (2) the miner suffered an adverse employment action, and (3) the adverse action was motivated by the protected activity. *Secretary of Labor on behalf of Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786, 2799 (Oct. 1980), *rev'd on other grounds sub nom. Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir. 1981); *Secretary of Labor on behalf of Robinette v. United Castle Coal Co.*, 3 FMSHRC 803, 817-18 (Apr. 1981).

sustained a back injury on August 11, 1999. Ribble also alleges that after his injury, but before being fired, he repeatedly and unsuccessfully attempted to obtain an accident report from T & M. Compl. at 1. Ribble also submitted to the judge notes of a September 20, 1999, interview between Ribble and two Mine Safety and Health Administration ("MSHA") investigators in which Ribble details several complaints he made to mine inspectors regarding safety problems at T & M, although it is unclear when these complaints were made. Notes at 7-8.

Ribble's complaint was assigned to Commission Administrative Law Judge Gary Melick. On March 28, 2000, Judge Melick issued on his own motion an Order to Show Cause in which he stated that Ribble's complaint failed to "allege facts constituting a violation" of the Mine Act's anti-discrimination provision, section 105(c)(1), 30 U.S.C. § 815(c)(1). Order at 2. The judge directed Ribble "to show cause (explain why) *on or before April 14, 2000*, why this case should not be dismissed." *Id*. (emphasis in original).

On April 18, 2000, Judge Melick issued an Order of Dismissal reiterating the points made in his Order to Show Cause, stating that Ribble failed to respond to that order, and dismissing the case. On April 21, 2000, the Commission received a letter from Ribble dated April 17 bearing a postmark of April 18, 2000, in which he essentially responded to the judge's Order to Show Cause. Ribble stated, inter alia, that when he "asked for a[n] accident report form to fill out at the time [he] fell," his supervisor "had all kind[s] of excuse[s]," and that "three day[s] before I got fired they didn't even want me to fill out a[n] accident report form." Letter at 1.

II.

Disposition

Although in his Order to Show Cause and Order of Dismissal the judge did not cite Rule 12(b)(6) of the Federal Rules of Civil Procedure or use its terminology, he in essence dismissed Ribble's complaint for failure to state a claim upon which relief could be granted.[2] In *Perry v. Phelps Dodge Morenci, Inc.*, the Commission stated as follows regarding Rule 12(b)(6):

> It is well settled that "[t]he motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." The Supreme Court has held that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Additionally, we hold the pleadings of pro se litigants to less stringent standards than pleadings drafted by attorneys. In cases brought by pro se complainants, motions to

[2] *See* 29 C.F.R. § 2700.1(b) ("On any procedural question not regulated by [the Commission's Procedural] Rules . . . the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure . . .").

> dismiss for failure to state a claim should rarely be granted. Instead, in such a case, a judge should ensure that he informs himself of all the available facts relevant to his decision, including the complainant's version of those facts.

18 FMSHRC 1918, 1920 (Nov. 1996) (citations omitted).

Here, as in *Perry*, a pro se discrimination complaint was dismissed for failure to state a claim — although in this case, Ribble's complaint was dismissed by the judge sua sponte rather than on any motion filed by a party. Under the stringent standard set forth in *Perry*, we find the judge's initial conclusion in his Order to Show Cause that Ribble's "Complaint does not allege facts constituting a violation of Section 105(c)(1)" erroneous. It follows that his decision to dismiss Ribble's complaint was also erroneous.

To state a claim, Ribble's complaint had to set forth "a short and plain statement of the facts, setting forth the alleged . . . discrimination . . . and a statement of the relief requested." 29 C.F.R. § 2700.42. We find that the complaint met this minimal burden. Ribble alleged that he engaged in protected activity, namely, requesting an accident report form on which to report his injury.[3] The protected nature of Ribble's request arises from T & M's obligation under 30 C.F.R. § 50.20 to report Ribble's injury to MSHA. In addition, we note that Ribble's statement to MSHA, included as part of his complaint, mentions safety problems he reported to mine inspectors, which would also clearly be protected activity. Furthermore, Ribble's allegation that T & M terminated him is an assertion of adverse action. There may also be a close connection in time between the adverse action allegedly taken by T & M against Ribble and his request (as reported in his complaint) that he be permitted to fill out an accident report, which could indicate discriminatory motivation. *See Secretary of Labor on behalf of Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2511 (Nov. 1981), *rev'd on other grounds*, 709 F.2d 86 (D.C. Cir. 1983) (coincidence in time between protected activity and adverse action may be circumstantial indicia of discriminatory intent). On the record before us, we therefore find that Ribble has met his burden of alleging discrimination actionable under section 105(c).

In *Perry*, we warned against requiring a pro se complainant to begin proving his or her "prima facie case at a stage in the proceedings when [the complainant is] simply obligated to meet the Commission's minimal pleading requirements." 18 FMSHRC at 1921. Accordingly, Ribble must now be afforded the opportunity to prove his allegations, and to avail himself of all the other rights afforded under our Procedural Rules, including discovery and, if necessary, a full hearing.

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[3] Under Rule 12(b)(6), we must construe the complaint in the light most favorable to Ribble, and must assume that his allegations are true. *See* 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil* § 1357, at 304 (2d ed. 1990). We must also liberally construe the complaint, which was filed pro se. *Marin v. Asarco, Inc.*, 14 FMSHRC 1269, 1273 (Aug. 1992).

III.

Conclusion

For all the foregoing reasons, we vacate the judge's dismissal order and remand this matter for further evidentiary proceedings consistent with this order.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

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