FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, N.W., Suite 520N
Washington, D.C. 20004

December 15, 2025

RONALD LOCKHART,	:	DISCRIMINATION PROCEEDING
Complainant,	:	
	:	Docket No. WEVA 2025-0281-D
v.	:	MSHA No. HOPE CD-2025-02
	:	
PANTHER CREEK MINING, LLC,	:	Mine: Winchester 2
BLACKHAWK MINING, LLC,	:	Mine ID: 46-09615
Respondents.	:	

ORDER GRANTING, IN PART, AND DENYING, IN PART, RESPONDENTS' MOTION FOR SUMMARY DECISION

This discrimination proceeding is before me pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 ("Mine Act"), 30 U.S.C. § 815(c)(3). On December 3, 2024, Complainant, Ronald Lockhart, filed a section 105(c) complaint with MSHA alleging Panther Creek Mining, LLC and Blackhawk Mining, LLC ("Respondents") discriminatorily discharged him on December 2, 2024. Specifically, Lockhart states that he "received a diagnosis of complicated black lung disease, and within a matter of less than a month [Respondents] discharged [him] for no other reason than to retaliate, discriminate, and interfere with [him] due to and by reason of the fact that [he is] suffering from pneumoconiosis, and [had] applied for Part 90,[1] and for state and federal black lung benefits." (Compl. at 3; Compl. Ex. 1.)

On February 27, 2025, MSHA notified Lockhart of the Secretary of Labor's decision not to file a discrimination case on his behalf under section 105(c)(2) of the Mine Act. Lockhart, on March 26, 2025, exercised his right under section 105(c)(3) to file a discrimination complaint against Respondents with the Federal Mine Safety and Health Review Commission, which was docketed April 1, 2025. Respondents submitted an answer to the complaint on April 25, 2025. On May 30, 2025, Chief Administrative Law Judge Glynn F. Voisin assigned me this case. I initially set a hearing for October 8–9, 2025. I continued this matter to December 15–17, 2025, upon the Respondents' request. I continued the case again due to a personal conflict, so the matter will now be heard on January 15–16, 2026, in Charleston, West Virginia.

On November 21, 2025, Respondents filed their Motion for Summary Decision, including a memorandum in support along with attachments, whereafter Lockhart timely filed his Opposition on November 25, 2025.

[1] The "Part 90 Miner" program, 30 C.F.R. part 90 (Coal Miners Who Have Evidence of the Development of Pneumoconiosis), is designed to prevent progression of Black Lung Disease or coal workers' pneumoconiosis ("CWP") by establishing a coal miner's right to transfer to a less dusty job in the mine. *See* 20 C.F.R. 718.201 (definition of pneumoconiosis).

I. THE PARTIES' ARGUMENTS ON SUMMARY DECISION

In their Motion for Summary Decision, Respondents argue that Lockhart did not engage in any protected activity. (Resp't Mot. at 1.) In the alternative, Respondents assert that to the extent Lockhart contends his discrimination claim is based upon his Part 90 application, he has failed to adduce any evidence that Respondents were aware of his Part 90 application or subsequent eligibility. (Resp't Mot., Mem. at 2.) Respondents attach several exhibits, including —the July 9, 2024, letter from the Department of Health and Human Services notifying Lockhart of his eligibility for Part 90 protections; the November 14, 2024, letter from the West Virginia Occupational Pneumoconiosis Board notifying Lockhart of its diagnosis; excerpts from the transcript of Lockhart's deposition; and Lockhart's November 9, 2024, letter requesting leave to attend the West Virginia black lung screening.

Lockhart, in his Response in Opposition to Respondents' Motion for Summary Decision, argues that Respondents terminated his employment because he suffers from pneumoconiosis, and he applied and was determined eligible for Part 90 protections. (Compl't Opp'n at 2.) Lockhart further argues that Respondents' assertion that they terminated him for serious employment misconduct is directly contradicted by evidence in the record. (Compl't Opp'n at 4.) Lockhart attaches several exhibits, including—Respondents' response to Lockhart's Federal Black Lung Benefits Claim; Rockwood Casualty Insurance Company's letter to Lockhart regarding his West Virginia occupational pneumoconiosis claim dated August 9, 2024; the West Virginia Occupational Pneumoconiosis Board's letter dated November 14, 2024, notifying Lockhart of the diagnosis; the Department of Health and Human Services' letter dated July 9, 2024, notifying Lockhart of his Part 90 rights; Panther Creek Mining, LLC's agreement dated December 2, 2024, confirming Lockhart's understanding of his voluntary resignation of employment; and Workforce West Virginia's decision regarding Lockhart's application for unemployment benefits.

II. PRINCIPLES OF LAW

A. Summary Decision

Commission Procedural Rule 67(b) states that a motion for summary decision shall only be granted if "the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows: (1) [t]hat there is no genuine issue as to any material fact; and (2) [t]hat the moving party is entitled to summary decision as a matter of law." 29 C.F.R. § 2700.67(b); *see Mo. Gravel Co.*, 3 FMSHRC 2470, 2471 (Nov. 1981). The Commission has consistently held that summary decision is an "extraordinary procedure" and analogizes it to Rule 56 of the Federal Rules of Civil Procedure. *Lakeview Rock Prods., Inc.*, 33 FMSHRC 2985, 2987 (Dec. 2011) (citations omitted). The Supreme Court held that both the record and "inferences to be drawn from the underlying facts" are to be viewed "in the light most favorable to the party opposing the motion." *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

B. Discrimination under section 105(c) of the Mine Act

Section 105(c)(1) of the Mine Act states, in relevant part, that "[n]o person shall discharge or in any manner discriminate against . . . or otherwise interfere with the statutory rights of any miner . . . because such miner . . . is the subject of medical evaluations and potential transfer under a standard published pursuant to section 811 of this title." 30 U.S.C. § 815(c)(1). For discrimination claims, the Commission applies the *Pasula-Robinette* framework in which a complainant must establish a prima facie case showing the miner: (1) engaged in protected activity, (2) suffered an adverse action, and (3) the adverse action was motivated in any part by the protected activity. *Driessen v. Nev. Goldfields*, 20 FMSHRC 324, 328 (Apr. 1998); *Sec'y of Labor ex rel. Robinette v. United Castle Coal Co.*, 3 FMSHRC 803, 817–18 (Apr. 1981); *Sec'y of Labor ex rel. Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786, 2799–2800 (Oct. 1980), *rev'd on other grounds, sub nom. Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir. 1981).

III. ISSUES

It is undisputed that Respondents terminated Lockhart's employment on December 2, 2024, which clearly constitutes adverse action. (Resp't Mot., Mem. at 3; Compl't Opp'n at 3, 4.) Consequently, the issues before me focus on two of the three elements—the first "protected activity" and third "motivation" elements—of a prima facie discrimination case, whereby I must determine: (1) whether there is no genuine issue as to any material fact; and (2) whether Respondents are entitled to summary decision as a matter of law. Based on the discussion below, Respondents are only entitled to partial summary decision.

IV. DISCUSSION AND ANALYSIS

A. Protected Activity

1. Pneumoconiosis Diagnosis and Black Lung Benefits

Respondents assert that Lockhart's allegations in his discrimination complaint "exclusively relate to his [pneumoconiosis] diagnosis in connection with his claim for state and/or federal benefits, which is not protected activity under section 105(c)(1)" of the Mine Act. (Resp't Mot., Mem. at 6.) In his opposition, Lockhart asserts that "[s]ection 105(c)(1) prohibits discrimination against miners for exercising their right to receive black lung benefits." (Compl't Opp'n at 2.) Lockhart adds that his complaint "alleges a violation of 30 U.S.C. § 938, which specifically prohibits discrimination against a person because they are suffering from pneumoconiosis." (Compl't Opp'n at 2.)

Section 428 of the Black Lung Benefits Act ("BLBA"), 30 U.S.C. § 938, provides that, "[n]o operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from *pneumoconiosis*." 30 U.S.C. § 938(a) (emphasis added). Furthermore, "[a]ny miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section . . .

may, within ninety days after such violation occurs, apply to the *Secretary* for a review of such alleged discharge or discrimination." 30 U.S.C. § 938(b) (emphasis added).

The Commission in one of its earliest cases—*Matala v. Consolidation Coal Co.*, which arose under the anti-discrimination provisions of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 801–964 ("1969 Coal Act")—decided whether it had jurisdiction to review discrimination claims related to pneumoconiosis. *See Matala v. Consolidation Coal Co.*, 1 FMSHRC 1 (April 1979). The Commission held that discrimination complaints based on allegations that the miner suffers from pneumoconiosis were to be resolved by the Secretary of Labor under section 428 of the BLBA, which specifically covers discrimination based on pneumoconiosis, rather than under the more general discrimination provisions of the 1969 Coal Act, the precursor to the 1977 Mine Act. *Matala*, 1 FMSHRC at 3.

Later, in *Goff v. Youghiogheny & Ohio Coal Co.*, the Commission pointed out that the discrimination provisions of the 1969 Coal Act "protected miners from certain specified forms of discrimination but contained no language shielding them from retaliation based on their medical evaluation or transfer." *Goff v. Youghiogheny & Ohio Coal Co*., 7 FMSHRC 1776, 1780 (Nov. 1985). The Commission highlighted that "[i]n comparison, section 105(c) of the [1977] Mine Act granted miners broader protection and relief[,]" including "specific protection from discrimination for miners who were the subject of medical evaluation and potential transfer" under a standard published pursuant to section 101. *Goff*, 7 FMSHRC 1776, 1780–81 (Nov. 1985). Thus, the Commission limited *Matala*, holding that "a miner may state a cause of action under section 105(c)(1) of the Mine Act by alleging discrimination based on the miner's being 'the subject of medical evaluations and potential transfer' under 30 C.F.R. Part 90." *Id.* at 1781.

Just prior to *Goff*, Judge Koutras echoed the Commission's rationale when he wrote that the extent of any such protection under section 105(c) of the Mine Act "is specifically tied to the regulations promulgated pursuant to section 101 of the Mine Act," such as the Part 90 standards. *Janoski v. R & F Coal Co.*, 7 FMSHRC 402, 408 (Mar. 1985) (ALJ). No such protections under section 105(c) of the Mine Act are extended to miners pursuant to section 428 of the BLBA. Lockhart's allegations of discrimination under section 428 of the BLBA based solely on his pneumoconiosis diagnosis and his applications for federal and state black lung benefits, consequently, cannot be the basis for any discrimination claim under the Mine Act.

Accordingly, I **GRANT** Respondents' request for summary decision, **IN PART**, based on jurisdictional grounds because section 105(c) protections only extend to allegations of discrimination related to pneumoconiosis under standards, such as Part 90, promulgated pursuant to section 101 of the Mine Act.

2. Application for Part 90 Protections

Respondents assert that Lockhart fails to allege in his complaint that the discrimination he suffered "was the result of a 'medical evaluation and potential transfer' under Part 90, the only recognized form of protected activity under section 105(c)(1) related to a pneumoconiosis diagnosis." (Resp't Mot., Mem. at 6.) In his opposition, Lockhart argues that he "engaged in

protected activity by initiating action related to his right to transfer to a low-dust environment under Part 90 of Title 30 of the Code of the Federal Regulations." (Compl't Opp'n at 3.)

As noted above in *Goff*, the Commission determined that "[t]he Part 90 standards, promulgated pursuant to section 101(a)(7) of the Act, are clearly the kind of standards to which" the medical evaluation and transfer clause of section 105(c) of the Mine Act applies. *Goff*, 7 FMSHRC at 1781. The Commission further noted that "a miner is protected from adverse personnel actions based on his medical evaluation or potential transfer pursuant to Part 90 at least as early as the date on which he files his application for Part 90 status." *Id.* at 1782–83; *see also McGlothlin v. Dominion Coal Corp.*, 37 FMSHRC 1256, 1263 (June 2015) (ALJ) ("[t]he plain language of section 105(c)(1) protects the rights of protective Part 90 miners whose [X]-ray findings are subject to medical evaluation by NIOSH during the period required to determine whether such miners are eligible for Part 90 status.").

Lockhart states in his initial discrimination complaint to MSHA, that Respondents discharged him because he had "applied for Part 90." (Compl. Ex. A.) Indeed, it is this complaint that MSHA investigated and referenced in its letter on February 27, 2025, notifying Lockhart that the Secretary would not file a case on his behalf. (Compl. Ex. B.) Additionally, in his opposition to Respondents' motion for summary decision Lockhart includes a letter from the Department of Health and Human Services, dated July 9, 2024, informing him that the results of his chest X-ray taken on March 21, 2024, indicate coal workers' pneumoconiosis and therefore establish his eligibility for Part 90 protections. (Compl't Opp'n, Ex. 5; Resp't Mot., Mem. at 2–3; Resp't Ex. 1.)

The unrefuted evidence establishes that Lockhart engaged in protected activity when he underwent a chest X-ray on March 21, 2024, under the auspices of HHS/NIOSH as part of applying for Part 90 status. Lockhart's allegations regarding his Part 90 application would, therefore, satisfy the first element of the *Pasula-Robinette* test for a discrimination claim under section 105(c)(1). This would also qualify as an exercise of a protected activity under the interference tests articulated by the Commission. *See Greathouse*, 40 FMSHRC at 686 (Comm'rs Cohen & Jordan, separate op.) (quoting *UMWA ex rel. Franks v. Emerald Coal Res., LP*, 36 FMSHRC 2088, 2108 (Aug. 2014) (Chairman Jordan & Comm'r Nakamura, separate op.)); *Sec'y of Labor ex rel. Pepin v. Empire Iron Mining P'ship*, 38 FMSHRC 1435, 1453–54 (June 2016) (ALJ).

B. Motivational Nexus

Respondents also argue that Lockhart "has failed to adduce any evidence that Respondents were ever even aware that he applied for Part 90." (Resp't Mot., Mem. at 7.) Specifically, Respondents assert that "Panther Creek[] was never notified by MSHA, pursuant to 30 C.F.R. § 90.102, that Mr. Lockhart applied and was eligible for Part 90 transfer." (Resp't Mot., Mem. at 7.) Additionally, Respondents point out that Lockhart "testified only that he 'assumed' that Part 90 papers were sent to Panther Creek." (Resp't Mot., Mem. at 7; Resp't Ex. 2: Lockhart Dep. 137:14–24.) Thus, Respondents argue that Lockhart has failed to produce "a single shred of evidence that Panther Creek had any knowledge whatsoever that Mr. Lockhart had applied for Part 90." (Resp't Mot., Mem. at 7.)

The operator in *McGlothlin v. Dominion Coal Corp.* similarly sought to escape liability under section 105(c) of the Mine Act by asserting it had no knowledge that the complainant miner was undergoing NIOSH evaluation when it reduced the complainant miner's pay. *McGlothlin*, 37 FMSHRC at 1264. However, Judge Feldman noted that that "direct evidence of a discriminatory motive is rare." *Id.* (citing *Sec'y of Labor ex rel. Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510 (Nov. 1981) *rev'd on other grounds*, 709 F.2d 86 (D.C. Cir. 1983)). Although not binding, I find Judge Feldman's reasoning persuasive. Indeed, knowledge of the protected activity is only one of the four common circumstantial indicia for determining whether a motivational nexus exists. *Sec'y of Labor ex rel. Hargis v. Vulcan Constr. Materials, LLC*, 46 FMSHRC 523, 530 (Aug. 2024) (citation omitted). A complainant need not demonstrate all four of these factors to establish a motivational nexus. *See Chacon*, 3 FMSHRC 2508, 2511.

When faced with a similar case involving a Part 90 miner with claims of discrimination and interference, I opined the following:

> Looking at the entire record . . . *in the light most favorable to* [the complainant miner], it is quite possible that [respondents] not only believed [the complainant miner] would apply for Part 90 status because [respondent] agreed to pay for free x-rays . . . but that [the complainant miner] would eventually qualify as a Part 90 miner because of his pneumoconiosis diagnosis years earlier. . . Both [respondents] knew of, and accepted, [the complainant miner's] complicated pneumoconiosis diagnosis several years before [the complainant miner] ever applied for Part 90 status under the Mine Act. . . Indeed, [respondent] knew of [the complainant miner's] complicated pneumoconiosis diagnosis at least as early as 2015, so if [the complainant miner] applied for Part 90 protections it would not have taken a leap in logic to conclude he would qualify.

Addington v. XMV, Inc., 44 FMSHRC 657, 666–67 (Nov. 2022) (ALJ).

Here, Lockhart argues, and Respondents acknowledge, that on July 10, 2024, Respondents received a notice of Lockhart's claim for federal black lung benefits at the Respondents' corporate offices. (Compl't Opp'n at 2; Compl't Opp'n, Ex. 1; Resp't Mot., Mem. at 3; Compl. at 2; Answer at 2.) On July 18, 2024, a Claims Manager for Rockwood Casualty Insurance Company, on behalf of Respondents, sent a letter to the Department of Labor, confirming receipt of the Department of Labor's Notice of Claim concerning Lockhart. (Compl't Opp'n, Ex. 1.)

Subsequently, "[o]n August 9, 2024, the claims administrator for Panther Creek Mining LLC acknowledged the filing of Mr. Lockhart's West Virginia Occupational Pneumoconiosis (WVOP) claim" and "[o]n August 16, 2024, the registered agent for service of process for Panther Creek Mining LLC signed for the receipt of Mr. Lockhart's WVOP claim." (Compl't Opp'n at 2; Compl't Opp'n, Exs. 2; 3.) Then on October 18, 2024, the West Virginia Office of the Insurance Commissioner sent a letter to Lockhart scheduling him for an examination on November 14, 2024, in connection with his WVOP claim. (Resp't Mot., Mem. at 3; Resp't Ex. 4.) On November 9, 2024, Lockhart submitted a request for leave to attend that scheduled black

lung screening, attaching the letter; and Respondents granted the request. (Resp't Mot., Mem. at 3; Resp't Ex. 4.)

Thereafter, "[o]n November 14, 2024, formal findings were issued by the [West Virginia] Occupational Pneumoconiosis Board, confirming that Mr. Lockhart suffered from 15% whole-body impairment due to coal workers' pneumoconiosis, and these findings were concurrently communicated to Respondents."[2] (Compl't Opp'n at 2–3; Compl't Opp'n, Ex. 4; Resp't Mot., Mem. at 3; Resp't Mot., Ex. 1 at 000062; Compl. at 3.) Specifically, the West Virginia Occupational Pneumoconiosis Board found that Lockhart's chest X-ray revealed "coalescent large opacities in the right perihilar region and right apex with some coalescence in the left apex" that "are consistent with the development of complicated occupational pneumoconiosis with progressive massive fibrosis." (Compl't Opp'n, Ex. 4.) The International Labor Organization ("ILO"), whose standards are referenced in the BLBA and its regulations, defines "large opacities" on chest X-rays as an opacity "greater than 1 centimeter in diameter." 20 C.F.R § 718.304; 30 U.S.C. § 921(c)(3)(A).

Thus, between July 10 and November 9, 2024, Respondents received several indications that Lockhart was applying for federal and state black lung benefits. Most importantly, on or around November 14, 2024, Respondents learned that Lockhart had been formally diagnosed with complicated occupational pneumoconiosis given the large opacities depicted on his chest X-ray. A diagnosis of complicated pneumoconiosis is the most severe form of the disease and under the federal black lung benefits program would entitle a miner to an "irrebuttable presumption of disability" due to pneumoconiosis if a chest X-ray reveals one or more large opacities (greater than one centimeter in diameter) under defined ILO classifications. 20 C.F.R § 718.304; *see* 30 U.S.C. § 921(c)(3) (same statutory language on irrebuttable presumption).

C. Conclusion

Looking at the entire record "in the light most favorable to" Lockhart, it is possible Respondents could have concluded that Lockhart would apply and qualify for Part 90 status, given that they knew he had applied for federal and state black lung benefits and had been diagnosed with complicated pneumoconiosis. *Diebold*, 369 U.S. at 655. Thus, Respondents' knowledge of Lockhart's diagnosis of complicated pneumoconiosis could arguably provide the motivational nexus alleged by Lockhart, inasmuch as Respondents could have assumed Lockhart would seek Part 90 protections, not knowing he had already sought them and was deemed eligible. Moreover, Lockhart highlights that the coincidence in time between Respondents learning of his complicated pneumoconiosis diagnosis in November 2024 and Respondents terminating his employment on December 2, 2024, further establishes the motivational nexus of his discrimination claim. (Compl't Opp'n at 3.)

[2] Indeed, West Virginia law provides that the Occupational Pneumoconiosis Board "shall make its written report, to the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, of its findings and conclusions . . . and the board shall send one copy of the report . . . to the employer." W. Va. Code § 23–4–8c(a).

These factual disputes surrounding the motivational factors articulated by the Commission are material to a determination of Respondents' motivation in terminating Lockhart's employment. As such, Respondent has failed to establish "[t]hat there is no genuine issue as to any material fact." 29 C.F.R. § 2700.67(b). Consequently, when viewed in the light most favorable to Lockhart, I must **DENY** Respondents' Motion for Summary Decision, **IN PART**, with respect to the "motivation" element of the *Pasula-Robinette* framework.

V. ORDER

In light of the foregoing, it is hereby **ORDERED** that Respondents' Motion for Summary Decision is **DENIED, in part, and GRANTED, in part**.

Alan G. Paez
Administrative Law Judge

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