

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 23, 2025

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA) obo
JAMES SUMMERS,
Complainant,

v.

CALLENDER CONSTRUCTION
COMPANY, INC.,
Respondent

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. LAKE 2026-0045
MSHA No. VINC-CD-2025-05

Mine: Thomas Quarry
Mine ID: 11-00214

ORDER GRANTING TEMPORARY REINSTATEMENT OF JAMES SUMMERS

Before: Judge Lewis

Pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 801, *et. seq.*, and Commission Procedural Rule 45, 29 C.F.R. § 2700.45, the Secretary of Labor (Secretary) on December 16, 2025, filed an Application for Temporary Reinstatement (Application) of miner James Summers (Complainant) to his former position as a haul truck operator with Callender Construction Company (Respondent), at the Thomas Quarry mine pending a final hearing and disposition of this discrimination case. I was assigned this temporary reinstatement case by Order dated December 22, 2025.

On December 16, 2025, the parties entered an Agreement providing for economic temporary reinstatement of Complainant, effective December 16, 2025, to “remain in effect until the entry of a final order of the Federal Mine Safety [and] Health Review Commission . . . regarding Summers underlying discrimination complaint (MSHA Case No. VINC-CD-2025-05) or until [the entry of an order issued by an Administrative Law Judge] approving [the parties’ Agreement] is dissolved, whichever shall occur first.” Agreement at ¶ 2.¹ The first paragraph of the Agreement stated that Respondent “hereby waives its right to a hearing on the Application for Temporary Reinstatement filed by the Secretary on Summers’ behalf.” *Id.* at ¶ 1. The

¹ The Agreement further provided that “If the Secretary notifies Summers that she has decided not to prosecute Summers’ case on the merits, [Respondent] will file a motion with the presiding [Administrative Law Judge] to dissolve [the] Agreement, and neither Summers or the Secretary will oppose said motion.” *Id.* at ¶ 2.

Agreement was signed by Counsel for the Secretary, Counsel for Complainant, and Counsel for Respondent. *Id.* at 3. On December 19, 2025, the parties simultaneously filed a Joint Motion to Approve Agreement for Economic Reinstatement, which Motion I have granted by separate Order issued this same day.

Governing Legal Standard

Pursuant to Commission Procedural Rule 45(c),

[i]f no hearing [on an Application for Temporary Reinstatement] is requested, the ALJ assigned to the matter *shall immediately review* the Secretary's application and, if based on the contents thereof the ALJ determines that the miner's complaint was not frivolously brought, the ALJ *shall immediately issue* a written order of temporary reinstatement.

29 C.F.R. § 2700.45(c) (emphasis added).

Section 105(c) prohibits discrimination against miners for exercising any protected right under the Mine Act and provides that a miner may file a complaint with the Secretary alleging discrimination. 30 U.S.C. § 815(c)(1) & (2). The plain language of the Mine Act also provides that “if the Secretary finds that the complaint was not frivolously brought, the Commission, on an expedited basis upon application by the Secretary, *shall* order the immediate reinstatement of the miner pending final order on the complaint.” 30 U.S.C. § 815(c)(2) (emphasis added). The Commission’s regulations control the temporary reinstatement procedure and temporary reinstatement is designed to maintain the status quo while miners proceed with their discrimination claims. *Sec'y on behalf of Jeffrey Pappas v. Calportland Co.*, 38 FMSHRC 137, 144 (Feb. 2016).

In this case, Respondent waived its right to a hearing on the Application. Agreement at ¶ 1. Thus, Commission Procedural Rule 45(c) compels me to immediately review the Secretary’s determination that Complainant’s Complaint in this matter was not frivolously brought. *See* 29 C.F.R. § 2700.45(c). Legislative history of the Mine Act suggests that a complaint is not frivolously brought if it “appears to have merit.” S. Rep. No. 181, 95th Cong., 1st Sess. 36-37 (1977), *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong. 2nd Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 624-25 (1978). In addition, the Commission and the courts have equated the “not frivolously brought” standard with “reasonable cause to believe” and “not insubstantial.” *Sec'y of Labor on behalf of Price v. Jim Walter Res., Inc.*, 9 FMSHRC 1305, 1306 (Aug. 1987), *aff'd*, 920 F.2d 738, 747 & n.9 (11th Cir. 1990).

Supporting Evidentiary Basis

The Secretary’s Application provides the evidentiary basis for the Secretary’s conclusion that the Summers’ Complaint was not frivolously brought. *See* 29 C.F.R. § 2700.45(b) (requiring a temporary reinstatement application to include the miner’s complaint and an affidavit setting forth the Secretary’s supporting reasons). The Mine Act requires the Secretary to investigate a

miner's complaint of discrimination, 30 U.S.C. § 815(c)(2), and here, the Secretary's Application includes the Complaint filed by Complainant (Exhibit B), as well as the Declaration of Special Investigator Rexdon Boliard (Exhibit A), indicating that Boliard is "in the process of investigating the discrimination complaint" filed by Complainant Summers and that his investigation has revealed the following facts to date:

- a. At all relevant times, the Respondent was engaged in the operation of a surface limestone mine and is, therefore, an "operator" within the meaning of Section 3(d) of the Act.
- b. At all relevant times, Mr. Summers was employed by the Respondent as an equipment operator and was a "miner" as defined by Section 3(g) of the Act.
- c. The Respondent's Thomas Quarry mine, located in Winchester, Illinois, has products that enter commerce and is, therefore, a "mine" as defined in Sections 3(b), 3(h) and 4 of the Act.
- d. Mr. Summers has asserted to me that between September 17, 2025, and September 22, 2025, he engaged in protected activity when he informed management of Respondent that a haul truck he was assigned to operate was not safe to drive. This assertion does not appear to me to be frivolous.
- e. On September 22, 2025, the Respondent terminated Mr. Summers' employment. Mr. Summers has asserted this constitutes an act of discrimination under the Mine Act. This assertion does not appear to me to be frivolous.

Dec. of Rexdon Boliard (dated Dec. 16, 2025) (Exhibit A). *See also* Exhibit C (Complainant's Summary of Discriminatory Action (dated Sept. 30, 2025), providing "On Sep[t.] 17 Tom [Parker, Quarry Foreman] told me to drive CAT Haul Truck[.] I told him it's not safe[.] Door won't close and stay shut. Sent home[.] Sep[t.] 18 same thing again[.] Tom told me to drive the CAT Haul Truck[.] I told him I don't feel safe driving it. Sent home. Sep[t.] 19 Tom told me to drive the CAT Haul Truck or go home and think about it. Said next time I don't drive the CAT Haul Truck I would be fired, Tom called me on Sep[t.] 22 and fired me for not driving CAT [Haul] Truck.")

The facts provided in support of the Secretary's conclusion, if true, would establish jurisdiction, a timely Complaint of Discrimination, and that the Complainant engaged in protected activity and suffered an adverse action close in time to the protected activity under circumstances that provide reasonable cause to believe there was a causal nexus between the safety complaints he made to management and his refusal to perform a work assignment in light of those complaints, and his termination from employment on September 22, 2025.

Findings and Conclusion

At this stage, the facts alleged by the Secretary are undisputed. Upon careful review of the Application, I find that the Complaint "was not frivolously brought," 29 C.F.R. § 2700.45(c),

and that Complainant Summers is entitled to Temporary Reinstatement under the provisions of Section 105(c) of the Mine Act.

ORDER

It is hereby **ORDERED** that **James Summers** be **immediately TEMPORARILY ECONOMICALLY REINSTATED**, effective December 16, 2025, in accordance with the parties' Agreement Regarding Economic Temporary Reinstatement and my Order Granting Joint Motion to Approve Agreement for Economic Reinstatement entered on this same day, December 23, 2025.

This Order of Temporary Reinstatement **SHALL** remain in effect until such time as there is a final determination in this matter by hearing and decision, approval of settlement, or other order of this court or the Commission. *See also* Agreement at ¶ 2; n. 1 *supra*. I retain jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4). The Secretary shall provide a report on the status of the underlying discrimination complaint as soon as possible.



John Kent Lewis
Administrative Law Judge

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