

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 29, 2025

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2025-0284-DM
on behalf of BRITTNY LUDESCHER,	:	MSHA No. NC-MD-2025-03
Complainant,	:	
	:	
v.	:	
	:	
HAAS SONS, INC.,	:	Mine: Wash Plant 5
Respondent.	:	Mine ID: 47-03293

**ORDER GRANTING COMPLAINANT’S MOTION TO AMEND EXHIBIT “A” TO
DISCRIMINATION COMPLAINT**

This discrimination proceeding is before me pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(c)(2). On July 3, 2025, the Federal Mine Safety and Health Review Commission received a complaint of discrimination filed by the Secretary of Labor on behalf of the complaining miner, Brittny Ludescher. Respondent, Haas Sons, Inc., timely filed an answer to the complaint on July 23, 2025. Chief Administrative Law Judge Glynn F. Voisin then assigned me this matter on August 20, 2025. I initially set a hearing for January 7–9, 2026. I continued this hearing to January 28–29, 2026, upon the Secretary’s request.

I. MOTION TO AMEND COMPLAINT

On November 24, 2025, counsel for the Secretary filed her Motion to Amend Exhibit A to Discrimination Complaint, although due to a glitch in eCMS my office only became aware of the motion on December 22, 2025. In her motion the Secretary seeks to “withdraw the Exhibit A attached to the original Discrimination Complaint e-filed by the Secretary and replace it with the attached Exhibit A” consisting of MSHA Form 2000-123 (Discrimination Complaint) and MSHA Form 2000-124 (Discrimination Report). (Mot. at 1.) In support, the Secretary states that Haas Sons “will suffer no prejudice as a result of this amendment, given that Haas Sons Inc[.] was already made aware of the discrimination complaint when MSHA presented MSHA Form 2000-124 to Haas Sons, Inc.” (Mot. at 3.)

At the time the motion to amend was filed, the Secretary had not yet received word from opposing counsel whether Haas Sons had any objection to the filing of the Motion to Amend Exhibit A to the Discrimination Complaint. (Mot. at 4.) Per email correspondence received by my Law Clerk on December 22, 2025, counsel for Haas Sons does not object to the motion.

II. PRINCIPLES OF LAW AND ANALYSIS

A. Principles of Law

The Commission has no specific rule regarding the amendment of pleadings, yet Commission Procedural Rule 1(b) states “[o]n any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act . . . the Commission and its judges shall be guided so far as practicable by the Federal Rules of Civil Procedure.” 29 C.F.R. § 2700.1(b). Federal Rule of Civil Procedure 15(a)(2) states that after more than 21 days after filing initial pleadings, a party may amend its pleading “only with the opposing party’s written consent, or the court’s leave,” but that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

The Supreme Court interprets Rule 15 liberally to allow amendments to pleadings unless one of the following factors is present that justifies denial—(a) undue delay; (b) bad faith by movant; (c) repeated failure to cure deficiencies by previous amendments; (d) undue prejudice to the opposing party; or (e) futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Commission takes a similar view when it comes to amending petitions, especially when the amendment does not prejudice the non-moving party in preparing its defenses. *See Cyprus Empire Corp.*, 12 FMSHRC 911, 914–16 (May 1990) (finding no abuse of discretion by ALJ who permitted Secretary’s prehearing amendment to the citation where the non-moving party was not prejudiced by the amendment); *see also Wyo. Fuel Co.*, 14 FMSHRC 1282, 1290 (Aug. 1992) (“amendments are to be liberally granted unless the moving party has been guilty of bad faith, has acted for the purpose of delay, or where the trial of the issue will be unduly delayed”); *CDK Contracting Co.*, 23 FMSHRC 783, 784 (July 2001) (ALJ) (“It is well settled that administrative pleadings are liberally construed and easily amended, as long as adequate notice is provided and there is no prejudice to the opposing party” in granting Secretary’s motion to amend to allege violations of two alternative safety standards).

B. Analysis

In applying the Supreme Court’s five-factor test under *Foman v. Davis* on whether to grant a motion filed under Rule 15(a), I first note that the Secretary’s amendment causes no undue delay because the Secretary’s motion was filed eight weeks before the scheduled hearing date. Secondly, I find no indication of bad faith because the amended Exhibit A does not assert any new allegations. Third, given that this is the Secretary’s first proposed amendment in this case, the repeated failure to cure deficiencies by previous amendments is inapplicable. Fourth, the amendment is not futile because the Secretary could reasonably prove the allegations set forth in the amended Exhibit A at the hearing.

Lastly, under the *Foman v. Davis* factors, I must determine if granting the motion to amend creates “undue prejudice” to Haas Sons. 371 U.S. at 182. The Commission has held that “[m]ere allegations of potential prejudice or inherent prejudice should be rejected,” and the non-moving party must demonstrate more than a danger of prejudice to show actual prejudice. *Long Branch Energy*, 34 FMSHRC 1984, 1992–93 (Aug. 2012).

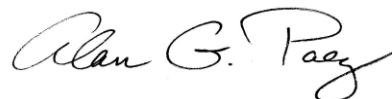
Here, the Secretary states that MSHA previously provided MSHA Form 2000-124 (Discrimination Report) to Haas Sons. (Mot. at 2.) Indeed, MSHA's Special Investigations Procedures Handbook notes that upon receipt of a written discrimination complaint MSHA sends a notification letter to the Respondent and includes "the completed MSHA Form 2000-124." U.S. Department of Labor, *Special Investigations Procedures Handbook: PH20-I-5*, Mine Safety and Health Administration, <https://www.msha.gov/sites/default/files/Directive%20%26%20Guidance/Handbooks/PH20-I-5%20Special%20Investigations%20Procedures%20Handbook.pdf>. Additionally, MSHA Form 2000-123 (Discrimination Complaint) includes information already made available to Haas Sons through the Complaint and its own employment records. Haas Sons, therefore, has had notice of the underlying facts in the Secretary's Amended Exhibit A, and it does not require additional discovery.

In determining undue prejudice, Commission Administrative Law Judges have found no prejudice for amendments made with significantly less time before hearing, including amendments made at hearing. *See Higman Sand & Gravel*, 18 FMSHRC 951, 958–59 (June 1996) (ALJ) (granting Secretary's amendment and finding no prejudice where amendment was made for the first time at the hearing); *Bob Bak Constr.*, 28 FMSHRC 817, 822–23 (Sept. 2006) (ALJ) (granting Secretary's motion to amend pleading to add an alternative standard and finding no prejudice where amendment was first made at hearing). Consequently, early notice here weighs in favor of finding the amendment nonprejudicial. Additionally, Haas Sons has filed no response alleging the amendment would cause undue prejudice.

Under Federal Rule of Civil Procedure 15(a) and Commission case law, Commission Judges may liberally grant amendments to petitions when justice requires. Here, the Discrimination Report that the Secretary wishes to add to the Complaint was already given to Haas Sons shortly after Ludescher filed her initial discrimination complaint. The Secretary therefore provided notice of this amendment in advance of the upcoming hearing date. Moreover, Haas Sons does not oppose the motion to amend Exhibit A. Consequently, I conclude that allowing the Secretary to amend Exhibit A of the discrimination complaint in Docket No. LAKE 2025-0284-DM is appropriate.

III. ORDER

WHEREFORE, it is hereby **ORDERED** that Complainant's Motion to Amend Exhibit A to Discrimination Complaint is **GRANTED**, and the Amended Complaint is accepted as filed.



Alan G. Paez
Administrative Law Judge

Distribution: (Via Electronic Mail Only)

Barbara M. Villalobos, Esq., U.S. Department of Labor, Office of the Solicitor
230 S. Dearborn St., Room 844, Chicago, IL 60604-1505
(villalobos.barbara@dol.gov)
(SOL.CHI@dol.gov)

Douglas E. Witte, Esq., Boardman & Clark LLP
1 South Pinckney Street, Suite 410, Madison, WI 53701-0927
(dwitte@boardmanclark.com)

/MEK