

**July 2021**

**TABLE OF CONTENTS**

**COMMISSION ORDERS**

07-13-21	PEDROTTI MATERIALS, LLC	WEST 2020-0275-M	Page 341
07-13-21	MINGO LOGAN COAL, LLC	WEVA 2019-0320	Page 344
07-30-21	PALM BEACH AGGREGATES LLC	SE 2020-0067-RM	Page 347

**ADMINISTRATIVE LAW JUDGE DECISIONS**

07-14-21	WARRIOR MET COAL MINING, LLC	SE 2020-0213	Page 351
----------	---------------------------------	--------------	----------

**ADMINISTRATIVE LAW JUDGE ORDERS**

07-29-21	PRAIRIE STATE GENERATING CO.	LAKE 2021-0158	Page 363
07-29-21	VULCAN CONSTRUCTION MATERIALS, LLC	SE 2021-0163	Page 365

**Review was Denied in the Following Case During the Month of July 2021**

Daniel B. Lowe v. Western Environmental Testing Laboratory, Docket No. WEST 2021-0145  
(Judge Bulluck, June 16, 2021)

# **COMMISSION ORDERS**



**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

June 13, 2021

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

Docket No. WEST 2020-0275-M  
A.C. No. 04-05724-505659

v.

PEDROTTI MATERIALS, LLC

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

**ORDER**

BY THE COMMISSION:

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On May 12, 2020, Pedrotti Materials, LLC filed a motion seeking to reopen a penalty assessment under section 105(a) of the Mine Act, 30 U.S.C. § 815(a), that had appeared to become a final order of the Commission.

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

Pedrotti asserts that it never received the proposed penalty assessment at issue because the Secretary mailed it to the wrong address. The Secretary confirms that his Mine Safety and Health Administration erroneously mailed the proposed assessment to an incorrect address.

Having reviewed Pedrotti’s request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator never received the proposed assessment. This obviates any need to invoke Rule 60(b) of the Federal Rules of Civil Procedure in order to consider reopening a final order.

Accordingly, the operator's motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

/s/ Arthur R. Traynor, III  
Arthur R. Traynor, III, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

Distribution:

Jason Pedrotti  
Pedrotti Materials, LLC  
P.O. Box 994283  
Redding, CA 96099  
[pedrottimaterials@gmail.com](mailto:pedrottimaterials@gmail.com)

John M. McCracken, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Mine Safety and Health Division  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[McCracken.John.M@dol.gov](mailto:McCracken.John.M@dol.gov)

Archith Ramkumar, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th Street South, Suite 401  
Arlington, VA 22202  
[Ramkumar.Archith@dol.gov](mailto:Ramkumar.Archith@dol.gov)

April Nelson, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Mine Safety and Health Division  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[Nelson.April@dol.gov](mailto:Nelson.April@dol.gov)

Melanie Garris  
U.S. Department of Labor  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[Garris.Melanie@dol.gov](mailto:Garris.Melanie@dol.gov)

Chief Administrative Law Judge Glenn Voisin  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004-1710  
[GVoisin@fmshrc.gov](mailto:GVoisin@fmshrc.gov)

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

July 13, 2021

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

Docket No. WEVA 2019-0320  
A.C. No. 46-09029-478458

v.

MINGO LOGAN COAL, LLC

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

## ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On March 18, 2019, the Commission received from Mingo Logan Coal, LLC a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that a proposed assessment was delivered on December 3, 2018, and became a final order on January 2, 2019. Mingo Logan asserts that there is good cause to reopen this matter. The mine’s assistant safety manager timely prepared the proposed assessment form,



marking ten specific citations for contest.<sup>1</sup> However, due to an inadvertent clerical error the completed form was not mailed. An internal audit on February 18, 2019 revealed the mistake. After learning of the issue, the manager contacted counsel to file a motion to reopen the proceeding.<sup>2</sup>

The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Mingo Logan's request and the Secretary's response, we find that Mingo Logan demonstrated that its failure to timely file contest was the result of an unintentional mistake. We find good cause, hereby reopen this matter, and remand the case to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

/s/ Arthur R. Traynor, III  
Arthur R. Traynor, III, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

---

<sup>1</sup> Citation Nos. 9175236, 9178580, 9178758, 9178759, 9178584, 9178585, 9178588, 9178589, 9175246, and 9178596.

<sup>2</sup> Mingo Logan's motion was accompanied by supporting affidavits signed by the employees involved.

Distribution:

Kelby Thomas Gray, Esq.  
Dinsmore & Shohl LLP  
707 Virginia Street East, Suite 1300  
Charleston, WV 25301  
[Kelby.gray@dinsmore.com](mailto:Kelby.gray@dinsmore.com)

John M. McCracken, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Mine Safety and Health Division  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[McCracken.John.M@dol.gov](mailto:McCracken.John.M@dol.gov)

Archith Ramkumar, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th Street South, Suite 401  
Arlington, VA 22202  
[Ramkumar.Archith@dol.gov](mailto:Ramkumar.Archith@dol.gov)

April Nelson, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Mine Safety and Health Division  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[Nelson.April@dol.gov](mailto:Nelson.April@dol.gov)

Melanie Garris  
U.S. Department of Labor  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[Garris.Melanie@dol.gov](mailto:Garris.Melanie@dol.gov)

Chief Administrative Law Judge Glenn Voisin  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004-1710  
[GVoisin@fmshrc.gov](mailto:GVoisin@fmshrc.gov)

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

July 30, 2021

PALM BEACH AGGREGATES LLC,

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

PALM BEACH AGGREGATES LLC

Docket No. SE 2020-0067-RM

Docket No. SE 2021-0168  
A.C. No. 08-01160-510158

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

**DIRECTION FOR REVIEW AND ORDER**

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (the “Mine Act”). On June 10, 2020, the contest proceeding in Docket No. SE 2020-0067-RM was dismissed as moot on grounds that the penalty assessment for the citation at issue had become a final order. On June 12, 2020, Palm Beach Aggregates, LLC (“Palm Beach”) filed a motion in Docket No. SE 2020-0067-RM seeking to reopen both the contest proceeding and the related penalty assessment. We construe Palm Beach’s filing as a petition for discretionary review of the order dismissing the contest proceeding, and a motion to reopen the civil penalty proceeding.

Regarding the motion to reopen, under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the

Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed penalty assessment was delivered on March 17, 2020, and became a final order of the Commission on April 16, 2020. Palm Beach asserts that internal processing of the proposed assessment was delayed by the operator’s response to the Covid-19 pandemic. Specifically, a work-from-home policy was initiated on March 16, 2020, before the proposed assessment arrived. As a result, the proposed assessment was not received by the Safety Director until April 23, 2020, and was contested approximately two weeks later. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Palm Beach Aggregates’ request and the Secretary’s response, we find that the moderate delay in contesting the proposed penalty assessment was excusable in light of the unusual pandemic-related circumstances. In the interest of justice, we hereby reopen the penalty proceeding. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order.

With regard to the dismissal of the contest proceeding, we grant the operator’s timely petition for discretionary review. 29 C.F.R. § 2700.70. The contest proceeding was dismissed as moot on grounds that the proposed civil penalty for the citation at issue had not been properly contested, and had therefore become a final order. As we have reopened the associated penalty proceeding, we vacate and reverse the Judge’s dismissal order in Docket No. SE 2020-0067-RM.

We hereby consolidate the contest and penalty proceedings, and remand this matter to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

/s/ Arthur R. Traynor, III  
Arthur R. Traynor, III, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

Distribution:

Daniel A. Kaplan  
Foley & Lardner LLP  
150 East Gilman Street  
Madison, WI 53701-1497  
[dkaplan@foley.com](mailto:dkaplan@foley.com)

John M. McCracken, Esq.  
Office of the Solicitor  
Division of Mine Safety and Health  
U.S. Department of Labor  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[McCracken.John.M@dol.gov](mailto:McCracken.John.M@dol.gov)

Archith Ramkumar, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th Street South, Suite 401  
Arlington, VA 22202  
[Ramkumar.Archith@dol.gov](mailto:Ramkumar.Archith@dol.gov)

April Nelson, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[Nelson.April@dol.gov](mailto:Nelson.April@dol.gov)

Chief Administrative Law Judge Glynn Voisin  
Federal Mine Safety & Health Review Commission  
Office of the Chief Administrative Law Judge  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004-1710  
[GVoisin@fmshrc.gov](mailto:GVoisin@fmshrc.gov)

Melanie Garris  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
201 12th Street South, Suite 401  
Arlington, VA 22202-5452  
[Garris.Melanie@DOL.gov](mailto:Garris.Melanie@DOL.gov)

# **ADMINISTRATIVE LAW JUDGE DECISIONS**





**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9900 / FAX: 202-434-9949

July 14, 2021

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

v.

WARRIOR MET COAL MINING, LLC,  
Respondent

CIVIL PENALTY PROCEEDINGS

Docket No. SE 2020-0213  
A.C. No. 01-01401-516467

Docket No. SE 2020-0232  
A.C. No. 01-01401-518427

Mine: No. 7 Mine

**DECISION APPROVING SETTLEMENT**  
**ORDER TO MODIFY**  
**ORDER TO PAY**

Before: Judge McCarthy

This case is before the undersigned upon Petitions for the Assessment of Civil Penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The Solicitor has filed a motion to approve settlement proposing a reduction in the penalties from \$61,707.00 to \$33,035.00. Citations No. 9493251, 9493254, 9493165, 9493261, 9493263, 9493249, 9493250, 9493164, and 9493167 remain unchanged, but the Solicitor justifies the reductions in penalties by stating there are legitimate factual and legal disputes regarding gravity and negligence. The Solicitor also requests that

Citation No. 9493255 be modified to reduce the number of persons affected from two to one;

Citations No. 9493257 and 9493256 be modified to reduce the likelihoods of injury or illness from highly likely to reasonably likely and the numbers of persons affected from two to one;

Citation No. 9493166 be modified to reduce the level of negligence from high to moderate;

Citations No. 9133601, 9493273, 9264049, 9264050, and 9493308 be modified to reduce the levels of negligence from moderate to low;

Citations No. 9493031 and 9493032 be modified to reduce the expected injuries or illnesses from fatal to permanently disabling; and

Citation No. 9230950 be modified to reduce the level of negligence from high to low.<sup>1</sup>

The Secretary also argues that “

[t]he Secretary’s use of [the 30 C.F.R. § 100.3] regular assessment tables in settlement is a *prima facie* indication that the penalty reduction is fair, reasonable, and adequate under the facts, and protects the public interest. It is appropriate to defer to the judgment of the parties[] in arriving at a modified penalty based on the § 100.3 tables.

Settlement Mot. at 9 (citing *Vindex Energy Corp.*, 34 FMSHRC 223, 224 (Jan. 2012) (ALJ)). However, not only is the Commission not bound by 30 C.F.R. § 100.3, but it is the purview of the Commission—not the Secretary or regulations issued by the Secretary—to determine whether a settlement is appropriate under the criteria set forth in section 110(i) of the Act. *Sellersburg Stone Co. v. FMSHRC*, 736 F.2d 1147, 1151-52 (7th Cir. 1984) (“[N]either the ALJ nor the Commission is bound by the Secretary’s proposed penalties. . . . [W]e find no basis upon which to conclude that these MSHA [penalty] regulations also govern the Commission.”); *Hidden Splendor Res., Inc.*, 36 FMSHRC 3099, 3101 (Dec. 2014) (“The Secretary’s regulations at 30 C.F.R. Part 100 apply only to the Secretary’s penalty proposals, while the Commission exercises independent “authority to assess all civil penalties provided [under the Act]’ by applying the six criteria set forth in section 110(i).” (quoting 30 U.S.C. § 820(i))).

In order to overcome this burden, the Secretary must present evidence to a judge—exercising his or her independent authority—to satisfy the six criteria set forth in section 110(i). Simply pointing to the Secretary’s regulations does not overcome this burden. Therefore, the undersigned rejects the Solicitor’s contention that the application of section 100.3 establishes a *prima facie* case for a reasonable settlement.

Consequently, the undersigned evaluated the settlement agreement absent the argument rejected above.

The undersigned considered the representations and documentation submitted in this case, and the undersigned concludes that the proffered settlement is fair, reasonable, appropriate under the facts, and protects the public interest under *The American Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016), and is appropriate under the criteria set forth in section 110(i) of the Act. The settlement amounts are as follows:

---

<sup>1</sup> Although there were some clerical errors in the Settlement Motion, the Secretary clarified the proposed settlement in an email dated July 13, 2021. This Decision reflects those clarifications.

<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>	<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>
9493251	\$1,076.00	\$807.00	9493167	\$782.00	\$587.00
9493254	\$482.00	\$362.00	9230950	\$324.00	\$137.00
9493255	\$2,595.00	\$1,946.00	9493269	\$1,166.00	\$1,166.00
9493257	\$19,178.00	\$7,995.00	9493273	\$720.00	\$325.00
9493256	\$19,178.00	\$7,995.00	9264049	\$1,166.00	\$524.00
9493165	\$2,394.00	\$1,796.00	9149557	\$351.00	\$351.00
9493166	\$2,394.00	\$1,796.00	9264050	\$144.00	\$121.00
9493261	\$720.00	\$540.00	9493308	\$144.00	\$121.00
9493263	\$720.00	\$540.00	9493031	\$482.00	\$242.00
9493249	\$1,076.00	\$807.00	9493270	\$1,166.00	\$1,166.00
9493250	\$2,394.00	\$1,796.00	9493032	\$482.00	\$242.00
9133601	\$1,166.00	\$582.00	9493177	\$144.00	\$144.00
9493164	\$1,263.00	\$947.00			
				\$61,707.00	\$33,035.00

**WHEREFORE**, the motion for approval of settlement is **GRANTED**.

It is **ORDERED** that Citation No. 9493255 be **MODIFIED** to reduce the number of persons affected from two to one.

It is **ORDERED** that Citations No. 9493257 and 9493256 be **MODIFIED** to reduce the likelihoods of injury or illness from highly likely to reasonably likely and the numbers of persons affected from two to one.

It is **ORDERED** that Citation No. 9493166 be **MODIFIED** to reduce the level of negligence from high to moderate.

It is **ORDERED** that Citations No. 9133601, 9493273, 9264049, 9264050, and 9493308 be **MODIFIED** to reduce the levels of negligence from moderate to low.

It is **ORDERED** that Citations No. 9493031 and 9493032 be **MODIFIED** to reduce the expected injuries or illnesses from fatal to permanently disabling.

It is **ORDERED** that Citation No. 9230950 be **MODIFIED** to reduce the level of negligence from high to low.

It is further **ORDERED** that the operator pay a total penalty of \$33,035.00 within thirty days of this order.<sup>2</sup>

/s/ Thomas P. McCarthy  
Thomas P. McCarthy  
Administrative Law Judge

Distribution:

Jean C. Abreu  
C. Renita Hollins  
Office of the Solicitor  
U.S. Department of Labor  
61 Forsyth Street, S.W.  
Room 7T10  
Atlanta, GA 30303  
[abreu.jean.c@dol.gov](mailto:abreu.jean.c@dol.gov)  
[hollins.cordelia.r@dol.gov](mailto:hollins.cordelia.r@dol.gov)  
[Atl.fedcourt@dol.gov](mailto:Atl.fedcourt@dol.gov)

Guy W. Hensley  
Warrior Met Coal Mining, LLC  
16243 Highway 216  
Brookwood, AL 35444  
[guy.hensley@warriormetcoal.com](mailto:guy.hensley@warriormetcoal.com)

---

<sup>2</sup> Payment should be sent to: Pay.gov, a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508> or, alternately, Mine Safety & Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.

# **ADMINISTRATIVE LAW JUDGE ORDERS**



# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9950 / FAX: 202-434-9949

July 14, 2020

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
on behalf of JAMES MCGAUGHRAN,  
Complainant,

v.

LEHIGH CEMENT COMPANY, LLC,  
Respondent.

DISCRIMINATION PROCEEDING

Docket No. PENN 2020-0015-DM

Mine: Nazareth Plant I  
Mine ID: 36-00190

## **ORDER DENYING MOTION TO ENFORCE ORDER**

Before: Judge Rae

This matter comes before the Court upon the Secretary of Labor's ("Secretary") Motion to Enforce Order ("Motion"). For the reasons set forth below, the Secretary's Motion is denied.

### **I. BACKGROUND**

On August 20, 2019, I issued an Order Granting Temporary Economic Reinstatement ("Order") ordering Lehigh Cement Company, LLC ("Respondent") to economically reinstate James McGaughran in accordance with all terms set forth in the parties' Joint Motion to Approve Settlement Regarding Temporary Reinstatement. I issued the Order in the temporary reinstatement proceeding, Docket No. PENN 2019-0144. Subsequently, I was assigned this discrimination proceeding—Docket No. PENN 2020-0015—which concerns the merits of McGaughran's discrimination complaint. I set a hearing date of June 2-4, 2020 for the discrimination proceeding. Subsequently, I postponed the hearing until October 27-30, 2020 due to COVID-19.

On May 11, 2020, Respondent filed a Motion for Tolling of Economic Temporary Reinstatement. On May 22, 2020, I issued the Order Tolling Temporary Reinstatement under the temporary reinstatement docket, Docket No. PENN 2019-0144. The Secretary filed a Petition for Discretionary Review of my Order Tolling Temporary Reinstatement, which the Commission granted on July 1, 2020. The matter is currently pending before the Commission.

### **II. DISCUSSION**

The Secretary's Motion alleges that Respondent is not honoring the Order. Specifically, the Secretary alleges that Respondent failed to pay McGaughran the entire amount he is owed under Respondent's Annual Incentive Plan ("Incentive Plan"). The Incentive Plan provides Respondent's eligible employees with "an incentive compensation opportunity for improving

operating performance within their areas of responsibility during the ‘plan year.’” Mot. to Enforce Order Ex. 1, at 1. The Secretary seeks an order requiring Respondent to pay McGaughran \$12,000.00, which the Secretary claims represents the remainder of the Incentive Plan payment that Respondent has withheld from McGaughran.<sup>1</sup>

Conversely, Respondent claims it is in full compliance with the Order. Respondent argues that payments under the Incentive Plan are a discretionary “bonus,” not a “benefit” that McGaughran is entitled to under the Order. Resp’t’s Opp’n to Mot. to Enforce Order, at 3-5. Although Respondent made a partial Incentive Plan payment to McGaughran, Respondent now maintains that the Order does not require Respondent to make *any* Incentive Plan payment to McGaughran. *Id.* at 6-7. For that reason, Respondent seeks an order requiring McGaughran to return the partial Incentive Plan payment to Respondent.

Ultimately, I cannot resolve the issues raised by the Secretary’s Motion at the present time because the Motion is not properly before me and because I lack jurisdiction over the temporary reinstatement proceeding. The Secretary filed the instant Motion under the incorrect docket. The instant discrimination proceeding solely concerns *the merits* of McGaughran’s discrimination claim, not issues addressing compliance with the Order. Rather, the matter of enforcing compliance with the Order would be properly filed under Docket No. PENN 2019-0144, the temporary reinstatement proceeding.

However, this Court would lack jurisdiction to address the substance of the Secretary’s Motion even if it were filed under the temporary reinstatement docket. Per Commission Rule 45(e), “[a] Judge’s order temporarily reinstating a miner is not a final decision within the meaning of [Section] 2700.69, and[,] *except during appellate review of such order by the Commission or courts*, the Judge shall retain jurisdiction over the temporary reinstatement proceeding.” 29 C.F.R. §2700.45(e)(4) (emphasis added); *see also BR&D Enters., Inc.*, 23 FMSHRC 386, 389 (Apr. 2001). During the Commission’s review of the Order, the Court does not retain jurisdiction over the temporary reinstatement proceeding.<sup>2</sup> 29 C.F.R. § 2700.45(e)(4).

---

<sup>1</sup> From 2016 through 2019, Respondent paid McGaughran an incentive payment that ranged from 15% to 17% of his annual salary. McGaughran Decl. ¶ 5. The Incentive Payment Respondent paid McGaughran in April 2020 represented approximately 7% of his annual salary. *Id.* ¶¶ 6, 7.

<sup>2</sup> Even if I had jurisdiction, I would find that payments under the Incentive Plan are not a “benefit” that McGaughran is entitled to under the Order. Payments under the Incentive Plan are solely at the discretion of Respondent to award. Further, Section VI.D of the Incentive Plan states that “incentive payments . . . shall not be deemed a part of a participant’s regular, recurring compensation for purposes of calculating payments or benefits from any Company benefit plan or severance program.” Mot. to Enforce Order Ex. 1, at 7.



Therefore, I deny the Secretary's Motion to Enforce Order because the Motion is not properly before me and because I lack jurisdiction over the temporary reinstatement proceeding pending review by the Commission.

**ORDER**

The Secretary's Motion to Enforce Order is **DENIED**.

/s/ Priscilla M. Rae  
Priscilla M. Rae  
Administrative Law Judge

Distribution:

M. del Pilar Castillo, Office of the Solicitor, U.S. Department of Labor, 170 S. Independence Mall West, Suite 630E, Philadelphia, PA 19106, [Castillo.M.Pilar@dol.gov](mailto:Castillo.M.Pilar@dol.gov)

Margaret Lopez, Carin Burford, OGLETREE, DEAKINS, NASH, SMOAK & STEWART P.C., 1909 K Street NW, Suite 1000, Washington, DC 20006, [margaret.lopez@ogletree.com](mailto:margaret.lopez@ogletree.com), [carin.burford@ogletreedeakins.com](mailto:carin.burford@ogletreedeakins.com)

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVENUE N. W., SUITE 520N  
WASHINGTON, D.C. 20004-1710  
TELEPHONE NO.: 202-434-9933  
TELECOPIER NO.: 202-434-9949

July 25, 2020

SECRETARY OF LABOR, U.S.  
DEPARTMENT OF LABOR on behalf of  
WILLIAM R. WHITMORE,  
Complainant

v.

YAGER MATERIALS CORP.,  
Respondent

TEMPORARY REINSTATEMENT

Docket No. KENT 2020-0116-DM  
Mine: Riverside Stone Mine  
Mine ID: 15-00081

Docket No. KENT 2020-0117-DM  
Mine: Riverside Stone Mine  
Mine ID: 15-18549

**ORDER ON RESPONDENT'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS**

Respondent, Yager Materials Corp., through Counsel, filed, on July 21, 2020, a Motion to Compel Production of Documents. ("Motion"). The Court held a conference call with the parties on July 23, 2020 to discuss the Motion. During that call the also Court issued its rulings on the subjects identified in the Motion. This Order memorializes the Court's rulings.

The Motion requested the following documents: Copies of the statement or memorandum of interview of any interview of Mr. Whitmore; Copies of the statements or memoranda of interviews of any management witness; Copies of all exhibits the Secretary intends to introduce at hearing on the Secretary's Application for Temporary Reinstatement in this matter; Copies of any documents Mr. Fugate relied upon in preparing his Declaration. Motion at 2-3.

The Secretary responded to the Motion via an email, objecting to it on the basis that it ran afoul of several of the Commission's Procedural Rules, including claims that the response to the Motion would not be due until the day of the temporary reinstatement hearing or later and that discovery was not expressly contemplated for a hearing on a temporary reinstatement application. The full text of the Secretary's email response is footnoted here.<sup>1</sup>

---

<sup>1</sup> The Secretary's Attorney stated in his email that he "request[ed] oral argument on this matter [asking that the Court] [p]lease permit [him] a brief, if unorthodox, rejoinder: As the parties are aware, by Rule, a response to the Respondent's Motion is not due for eight days from service, which would be July 29, 2020, the day of the hearing. 29 C.F.R. 2700.10(d). Any discovery served under the Rules would not be due for 25 days from service. 29 C.F.R. 2700.57(c). If we call what [Respondent's Attorney] served on July 17, 2020 "Document Requests," the responses from the Secretary would not be due until August 11, 2020. The Rules also clearly state that discovery must be completed at least 20 days before a hearing. 29 C.F.R. 2700.56(e). We are within 20 days of hearing and were when the requests were served. Even [the Respondent's attorney's] arbitrary deadline of this Friday [July 24, 2020] (after he conceded his initial arbitrary deadline of tomorrow) has not passed for the Secretary's responses. So, to have any discussion of what the Rules permit, we must ignore the plain language of the foregoing rules, and the deadline that the Respondent, itself, set. The Respondent and the Secretary agree on one thing: the Commission Rules do not expressly contemplate discovery commencing after a request for a hearing on an Application for Temporary Reinstatement: (d) Initiation of discovery. Discovery may be initiated after an answer to a notice of contest, an answer to a petition for assessment of penalty, or an answer to a complaint under section 105(c) or 111 of the Act has been filed. 30 U.S.C. 815(c) and 821. 29 C.F.R. 2700.56(d). Absent from this list is the request for a Temporary Reinstatement hearing. This absence is intentional in light of the unique scope of such a hearing and the speed at which it must be completed. If the rules contemplated discovery prior to a Temporary Reinstatement hearing, they would necessarily have set forth things like the scope of such discovery in light of the limited scope of the hearing, alternate time frames for service of requests and responses, and a blanket exemption from Rule 2700.56(e). Initial disclosures, rather than discovery, would be more appropriate given the tight deadlines between the request for a hearing and the hearing itself, but the Rules contain no such provisions. As I explained to [the Respondent's Attorney]: he wants discovery, the complainant (I am sure) wants discovery, and the Secretary wants discovery. Why does the Respondent get discovery and not the Secretary or the Complainant? The time frame for a Temporary Reinstatement hearing does not allow the parties the opportunity to serve discovery and to lodge good-faith objections to such requests. As we have here, we are essentially preparing for the hearing at the same time we are having a discovery dispute. If all of the parties, as the Respondent argues, are allow[ed] to serve discovery, the week before the hearing will be filled with constant expedited discovery battles for which the Rules set forth no time frames. This current issue only came to a head because the Secretary's counsel affirmatively stated that discovery was not permitted. Had the undersigned waited until this Friday to do so, the issue would not be before the Tribunal until three days before the hearing. Had the Secretary served discovery responses with objections, the same problem would have arisen. Finally, since the Rules set forth no limit on discovery for [a]Temporary Reinstatement proceeding, who is to decide the scope of what is permissible for such requests and how many requests can be served? There is simply no guidance available on  
(continued...)

At the outset of the July 23, 2020 conference call with the parties to discuss the Motion, the Court informed that it considered the Secretary's Counsel's procedural objections to have been waived by virtue of his email response.

The Court's rulings on the Motion were also informed by the Commission's procedural rules on the subject of Temporary reinstatement Proceedings at 29 CFR 2700.45. It is noted that subsection (d) of that section provides that "[t]he scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought. **In support of his application for temporary reinstatement, the Secretary may limit his presentation to the testimony of the complainant.** The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought." *Id.* (emphasis added). In that regard, the Court notes that there is no reference to the MSHA investigator's declaration. Rather, the focus is upon the testimony of the complainant and that the Secretary's presentation can rely solely upon that.<sup>2</sup>

**1. The Respondent's request for copies of the statement or memorandum of interview of any interview of Mr. Whitmore**

Apart from the Court's ruling that the Secretary had waived issues regarding the due date for a response to the motion, the Court informed the parties that it did not view the Respondent's request for copies of the statement or memorandum of interview of any interview of Mr. Whitmore to be properly denominated as "discovery," at least in the classic sense of that term. The Court explained its reasoning for this determination, noting that all the Respondent had, and all that the Court had as well, was the Complainant's signed, but *unfairly uninformative* May 18, 2020, "Discrimination Report." That document contained a typed "Summary of Discriminatory Action," which stated *in its entirety* the following:

I was suspended on April 23, 2020, then discharged on April 29, 2020, from my job as the Maintenance Manager at Riverside Stone underground and surface mines because of numerous protected safety activities that I engaged in.

Discrimination Report, May 18, 2020.

---

<sup>1</sup> (...continued)

what the permissible scope of discovery is in light of the 'not frivolously brought' standard. It is inconsistent that a party would be burdened with a broader scope of discovery than its burden of proof at an expedited hearing. The Rules contain no guidance on these issues because discovery was not completed, and was specifically excluded, for Temporary Reinstatement hearings." July 21, 2020 email from the Secretary to the Court.

<sup>2</sup> As explained *infra* with regard to the Respondent's request for copies of the statement or memorandum of interview of any interview of Mr. Whitmore, the Court considered the Respondent's discovery request to actually be a request for a complete statement of the Complaint from the Complainant Whitmore.

The “Discrimination Complaint” document itself was no more enlightening. At its heart, it informed of the Complainant’s name, rate of pay, job title and the address of the Respondent’s mine and the names of four individuals employed by the Respondent alleged to be responsible for the discriminatory action.<sup>3</sup> Discrimination Complaint, May 19, 2020.

Importantly, the Discrimination Complaint added nothing, that is to say it provided no additional information whatsoever regarding any particulars about the alleged protective activity.

It was *only* through the vehicle of the Secretary’s “Declaration of Freddie Fugate,” identified as a “senior special investigator” employed by MSHA, that some particulars about the nature of the Complainant’s discrimination complaint were first revealed. Of course, Mr. Fugate has no more first-hand knowledge about the Complainant’s allegations than the Court.

Accordingly, the Fugate Declaration serves as a mere conduit, recounting the allegations made by the Complainant and nothing more than that. Thus, the Court does not consider it far-fetched to analogize the Fugate Declaration as akin to an individual relating a story over a fence to a neighbor. And it is that serious shortcoming that formed the basis of the Court’s problem with the inadequacy of the declaration. The story may be an accurate retelling, or it may not, but for purposes of defending a discrimination complaint under due process, a respondent has a right to more. The Respondent is entitled to the Complainant’s first-hand accounting of the basis for his discrimination complaint. Fundamental fairness demands this. *See, e.g., Sec. v. Cumberland Coal Resources*, 32 FMSHRC 442 (May 2010), wherein the Commission stated that the “concepts of fundamental fairness [ ] require that every litigant receive adequate notice of charges made against it.” *Id.* at 449.

Accordingly, during the conference call, the Court ordered that copies of the statement or memorandum of interview of any interview of Mr. Whitmore be provided.

## **2. Copies of the statements or memoranda of interviews of any management witness**

The Court ruled during the conference call that this request was denied. The basis for that ruling was that such statements, if they exist, are not necessary in the context of the Secretary’s burden in an application for temporary reinstatement. If the Secretary did intend to introduce such documents, the Court’s order for the parties’ prehearing exchange would cover those.<sup>4</sup> As an aside, the Court opined that it would be highly unusual for any management witness to have made a statement without receiving a copy of it.

---

<sup>3</sup> Four individuals are named in Complaint itself as those responsible for the discriminatory action: Bryan Ory, Rick Voyles, Tammy Wimsatt, and Lisa Weldman, but *there is no information tying those individuals to Whitmore’s Discrimination Report.*

<sup>4</sup> The Court had previously ordered that the parties conduct their prehearing exchange by Friday, July 24, 2020. The parties submitted those exchanges pursuant to that order.

**3. Copies of all exhibits the Secretary intends to introduce at hearing on the Secretary's Application for Temporary Reinstatement in this matter**

This request, as alluded to above, was covered by the Court's prehearing exchange order.

**4. Copies of any documents Mr. Fugate relied upon in preparing his Declaration.**

As the Court ruled that Mr. Fugate's declaration could not serve as a substitute for copies of the statement or memorandum of interview of any interview of Mr. Whitmore, this request was denied. The Court considered that such other documents, if they exist, would more appropriately be the subject for possible discovery in a full hearing on the merits in the complainant's discrimination complaint, but not in the context of a temporary reinstatement application. It is noted that such a request could run afoul of attorney-client or deliberative process claims.

Accordingly, having ruled on the four aspects of the Respondent's Motion, this matter has been disposed of and will now proceed to the hearing on the application for temporary reinstatement set to commence on Wednesday, July 29, 2020 at 9:00 a.m. EDT.

**SO ORDERED.**

/s/ William B. Moran  
William B. Moran  
Administrative Law Judge

Distribution:

Thomas J. Motzny, Office of the Solicitor, U. S. Department of Labor, U. S. Department of Labor, 618 Church Street, Suite 230, Nashville, TN 37219 [motzny.thomas.j@dol.gov](mailto:motzny.thomas.j@dol.gov)

Tony Opegard, P.O. Box 22446, Lexington, KY 40522 [tonyoppegard@gmail.com](mailto:tonyoppegard@gmail.com)

Wes Addington, Appalachian Citizens' Law Center, 317 Main Street, Whitesburg, KY 41858 [wes@aclc.org](mailto:wes@aclc.org)

Arthur M. Wolfson, Fisher Phillips, Six PPG Place, Suite 830, Pittsburg, PA 15222 [awolfson@fisherphillips.com](mailto:awolfson@fisherphillips.com)

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9900 / FAX: 202-434-9949

July 29, 2021

SECRETARY OF LABOR, U.S.  
DEPARTMENT OF LABOR on behalf of  
DARCY WHITE,  
Complainant,

v.

PRAIRIE STATE GENERATING CO.,  
Respondent.

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. LAKE 2021-0158  
MSHA Case No. MORG-CD-2020-08

Mine: Lively Grove Mine  
Mine ID: 11-03193

**ORDER GRANTING JOINT MOTION TO APPROVE  
TEMPORARY ECONOMIC REINSTATEMENT  
MOTION AND AGREEMENT**

Before: Judge McCarthy

This matter is before the undersigned on the Secretary of Labor’s Application for Temporary Reinstatement filed on behalf of miner Darcy White pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq., as amended (“Mine Act”), and 29 C.F.R. § 2700.45. On July 01, 2021, Respondent filed a Motion to Dismiss Application for Temporary Reinstatement for Failure to Join a Required Party or To Join Required Party, wherein it attached a Declaration from Prairie State Safety Manager, Lane Hendricks. On July 08, 2021, the Secretary filed its Response to Respondent’s Motion to Dismiss, opposing the motion. On July 12, 2021, the Respondent filed a Reply to the Secretary’s Response, wherein it attached the contractual agreement between Prairie State and Custom Staffing, White’s employer.

On July 09, 2021, a Notice of Hearing was sent to the parties for a virtual hearing via Zoom to be held on July 20, 2021. On that date, the undersigned opened the hearing and asked the parties if there was any further possibility of exploring settlement avenues. The parties thereafter agreed to explore settlement possibilities in breakout rooms over Zoom. After approximately three hours, including status updates with the undersigned, the parties and their clients reached a meeting of the minds on material terms of settlement and placed the material terms of the tentative agreement on the record.

On July 27, 2021, the parties filed a Joint Motion to Approve Temporary Economic Reinstatement, as well as an Agreement Regarding Economic Reinstatement for Darcy White. The full terms and conditions of the parties’ economic reinstatement agreement are hereby incorporated by reference. The undersigned has reviewed the Motion and Agreement, and the

undersigned concludes that the proposed economic reinstatement agreement is fair, reasonable, appropriate, and protects the public interest because it will further the intent and purpose of the Mine Act.

### **ORDER**

It is hereby **ORDERED** that **Darcy White** be **TEMPORARILY ECONOMICALLY REINSTATED** per the terms of the parties' Agreement, effective on the date of this Order. White shall receive the wages she was formerly paid, as well as other terms of her employment, as set forth in the Agreement.

This Order **SHALL** remain in effect until final order or determination on the underlying discrimination complaint as set forth in section 105(c)(2) of the Mine Act. 30 U.S.C. § 815(c)(2). The undersigned retains jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4).

Pursuant to section 105(c)(3) of the Act, the Secretary is required to notify the Complainant whether a violation has occurred within 90 days of the receipt of the complaint. Ms. White filed her complaint on April 20, 2021, and the Secretary is beyond the 90-day statutory requirement. The Secretary is **ORDERED** to complete its investigation and to make a determination within 30 days, or to provide this tribunal with a detailed reason for why this deadline cannot be met.

**SO ORDERED.**

/s/ Thomas P. McCarthy  
Thomas P. McCarthy  
Administrative Law Judge

Distribution: (Email)

Suzanne F. Dunne, Esq., Office of the Solicitor, U.S. Department of Labor, 230 S. Dearborn Street, Rm. 844, Chicago, IL 60604; [dunne.suzanne@dol.gov](mailto:dunne.suzanne@dol.gov)

Tony Oppegard, Esq., P.O. Box 22446, Lexington, KY 40522; [tonyoppegard@gmail.com](mailto:tonyoppegard@gmail.com)

Wes Addington, Esq., Appalachian Citizens' Law Center, 317 Main Street, Whitesburg, KY 41858; [wes@aclc.org](mailto:wes@aclc.org)

Arthur Wolfson, Esq., Fisher Phillips LLP, Six PPG Place, Suite #830, Pittsburgh, PA 15222; [awolfson@fisherphillips.com](mailto:awolfson@fisherphillips.com)



**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 Pennsylvania Ave. NW, Suite 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: (202)434-9958 / FAX: (202)434-9949

July 29, 2021

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
on behalf of JASON HARGIS,  
Complainant,

v.

VULCAN CONSTRUCTION  
MATERIALS, LLC,  
Respondent

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. SE 2021-0163  
MSHA Case No.: BARB-CD-2021-02

Mine: Wilson County Quarry  
Mine ID: 40-00131

**ORDER GRANTING TEMPORARY ECONOMIC REINSTATEMENT  
OF JASON HARGIS**

Before: Judge Young

Pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Act”), 30 U.S.C. § 801, et. seq., and 29 C.F.R. § 2700.45, the Secretary of Labor (“Secretary”) on July 16, 2021, filed an Application for Temporary Reinstatement of miner Jason Hargis (“Complainant”) to his former position with Vulcan Construction Materials, LLC, (“Respondent”) at Respondent’s mine pending final hearing and disposition of the case.

According to Commission Rule 45, a request for hearing must be filed within 10 days following receipt of the Secretary’s application for temporary reinstatement. 29 C.F.R. § 2700.45(c). The Secretary’s certificate of service states that the Application for Temporary Reinstatement of Complainant was served on Respondent by electronic mail on July 16, 2021. On a July 26, 2021 conference call, the Respondent told this Court that it would not be seeking a hearing in this matter.

On July 28, 2021, the parties further submitted a Joint Motion to Approve Settlement Regarding Temporary Economic Reinstatement. The Agreement sets forth the terms of the temporary economic reinstatement, including Complainant’s rate of pay and benefits, the date that economic reinstatement shall begin, and other terms, which are incorporated into this Order by reference.

The Secretary has found that the Complaint was not frivolously brought and has provided evidence supporting that determination. The Respondent does not contest the determination. Therefore, consistent with Section 105(c)(2) of the Act, the temporary economic reinstatement of Jason Hargis is granted.

## ORDER

It is hereby **ORDERED** that **Jason Hargis** be **TEMPORARILY ECONOMICALLY REINSTATED**, effective July 27, 2021. Hargis shall receive the wages he was formerly paid, as well as other terms of his employment, as set forth in the Agreement.

This Order **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.

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**. Counsel for the Secretary **SHALL** also **immediately** notify my office of any settlement or of any determination that Vulcan Construction Materials, LLC, did not violate Section 105(c) of the Act.

/s/ Michael G. Young  
Michael G. Young  
Administrative Law Judge

Distribution (Via Certified Mail & Email)

William K. Doran, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 1909 K Street, N.W., Suite 1000, Washington, DC 20006 ([william.doran@ogletree.com](mailto:william.doran@ogletree.com))

Christopher M. Smith, Office of the Solicitor, U. S. Department of Labor, 618 Church Street, Suite 230, Nashville, TN 37219 ([smith.christopher.m@dol.gov](mailto:smith.christopher.m@dol.gov))

Elaine M. Youngblood, Ortale Kelley, 330 Commerce Street, Suite 110, Nashville, TN 37201, ([eyoungblood@ortalekelley.com](mailto:eyoungblood@ortalekelley.com))