

**§ 2700.42 Contents of complaint.**

A discrimination complaint shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference, and a statement of the relief requested.

**§ 2700.43 Answer.**

Within 30 days after service of a discrimination complaint, the respondent shall file an answer responding to each allegation of the complaint.

**§ 2700.44 Petition for assessment of penalty in discrimination cases.**

(a) *Petition for assessment of penalty in Secretary's complaint.* A discrimination complaint filed by the Secretary shall propose a civil penalty of a specific amount for the alleged violation of section 105(c) of the Act, 30 U.S.C. 815(c). The petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act. 30 U.S.C. 820(i).

(b) *Petition for assessment of penalty after sustaining of complaint by miner, representative of miners, or applicant for employment.* Immediately upon issuance of a decision by a Judge sustaining a discrimination complaint brought pursuant to section 105(c)(3), 30 U.S.C. 815(c)(3), the Judge shall notify the Secretary in writing of such determination. The Secretary shall file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

**§ 2700.45 Temporary reinstatement proceedings.**

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties by personal delivery, including courier service, by certified or registered mail, return receipt requested, express mail or, as specified in paragraph (f) of this section, by facsimile transmission.

(b) *Contents of application.* An application for temporary reinstatement shall state the Secretary's finding that the miner's discrimination complaint was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons sup-

porting his finding. The application also shall include a copy of the miner's complaint to the Secretary, and proof of notice to and service on the person against whom relief is sought by the most expeditious means of notice and delivery reasonably available.

(c) *Request for hearing.* Within 10 days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the Secretary, whether a hearing on the application is requested. If no hearing is requested, the Judge assigned to the matter shall review immediately the Secretary's application and, if based on the contents thereof the Judge determines that the miner's complaint was not frivolously brought, he shall issue immediately a written order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 days following receipt of the request for hearing by the Commission's Chief Administrative Law Judge or his designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(d) *Hearing.* The 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.

(e) *Order on application.* Within 7 days following the close of a hearing on an application for temporary reinstatement, the Judge shall issue a written order granting or denying the application. However, in extraordinary circumstances, the Judge's time for issuing an order may be extended as deemed necessary by the Judge. The

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Judge's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought. The parties shall be notified of his determination by the most expeditious means reasonably available. Service of the order granting or denying the application shall be by certified or registered mail, return receipt requested.

(f) *Review of order.* Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The filing and service of any pleadings under this rule may be made by facsimile transmission. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 days following service of a petition. Pleadings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

(g) *Dissolution of order.* If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the Judge shall be so notified and shall enter an order dissolving the order of reinstatement. An order dissolving the order of reinstatement shall not bar

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the filing of an action by the miner in his own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b) of these rules.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48713, Sept. 8, 1999]

### Subpart F—Applications for Temporary Relief

#### § 2700.46 Procedure.

(a) *When to file.* As provided in section 105(b)(2) of the Act, 30 U.S.C. 815(b)(2), an application for temporary relief from any modification or termination of any order or from any order issued under section 104 of the Act, 30 U.S.C. 814, may be filed at any time before such order becomes final. No temporary relief shall be granted with respect to a citation issued under section 104(a) or (f) of the Act, 30 U.S.C. 814(a) and (f).

(b) *Statements in opposition.* Any party opposing the application shall file a statement in opposition within 4 days after receipt of the application.

(c) *Prior hearing required.* Temporary relief shall not be granted prior to a hearing on such application.

#### § 2700.47 Contents of application.

(a) An application for temporary relief shall contain:

(1) A showing of substantial likelihood that the findings and decision of the Judge or the Commission will be favorable to the applicant;

(2) A statement of the specific relief requested; and

(3) A showing that such relief will not adversely affect the health and safety of miners in the affected mine.

(b) An application for temporary relief may be supported by affidavits or other evidence.

### Subpart G—Hearings

#### § 2700.50 Assignment of Judges.

Judges shall be assigned cases in rotation as far as practicable.

#### § 2700.51 Hearing sites.

All cases will be assigned a hearing site by order of the Judge. The Judge shall give due regard to the convenience and necessity of the parties or