

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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May 5, 2022

The Honorable Arthur R. Traynor III
Chair
Federal Mine Safety and Health Review Commission
1331 Pennsylvania Ave., N.W., Ste. 520N
Washington, D.C. 20004-1710

Dear Chairman Traynor:

We are conducting oversight of the Federal Mine Safety and Health Review Commission (FMSHRC). Information received by Committee Republicans raises concerns that the mission of FMSHRC has been derailed by political interference, a hostile work environment, and inappropriate management practices. We request documents and information to better understand how your tenure as chair of FMSHRC has impacted the ability of the Commission to carry out its statutorily mandated mission.

According to documents obtained by Committee Republicans, you have taken unprecedented measures to unilaterally control and politicize the review of cases prepared by career FMSHRC attorneys. On February 9, 2022, in an email sent to career general counsel Michael McCord, you indicated that you personally would assign cases to attorneys in the Office of General Counsel. This action represented such a deviation from precedent that you indicated that the email and policy should remain “completely confidential” and threatened Mr. McCord with disciplinary action, including termination from federal service, if he ever told anyone about the email or the policy.¹ This new policy and the threatening manner in which it was implemented raise important questions as to the underlying motive.²

In addition, we understand you have been involved in personnel decisions without consulting your fellow Commissioners, which is outside of the normal procedure. Specifically, you ordered suspensions of current employees, such as Mr. McCord and Ms. Lisa Boyd; you also directed the hiring of Ms. Leslie Bayless to be chief operating officer of the Commission.³ These actions suggest an additional attempt on your part to control the Commission.

¹ E-mail from Arthur Traynor, Chair, FMSHRC to Michael McCord, Gen. Counsel, FMSHRC (Feb. 9, 2022 8:54 AM) (on file with the Committee)

² Fed. Mining Safety & Health Rev. Comm’n, *FMSHRC Strategic Plan 2022-2026* at 5 (Jan. 2022).

³ For malfeasance, see *Daugherty v. Ellis*, 142 W.Va. 340, 97 S.E.2d 33, 42.

Mr. McCord has filed a report with the Office of Special Counsel and invoked both the Whistleblower Protection Act and No-FEAR Act in response to your conduct.⁴ However, it appears that through your continued written threats to Mr. McCord and your subsequent suspension of his duties, you are retaliating against him in violation of the protections embedded in these two acts.⁵ Subsequently, without consultation from the other Commissioners, you initiated investigations of other employees and replaced Mr. McCord with an acting general counsel of your choosing. Your fellow Commissioners have sounded the alarm on your conduct, noting that it goes against established precedent regarding the autonomy of a Chair in a multi-member commission like FMSHRC.⁶

These allegations demonstrate that as Chair of FMSHRC your inappropriate actions endanger the important mission of the Commission. In order to assist Committee Republicans in further oversight of the allegations of politicization, hostile work environment, and inappropriate management practices, please make arrangements to provide a staff level briefing no later than May 12, 2022. Additionally, we request that you provide the following information no later than May 19, 2022.

1. All communications, from January 20, 2021, to present, between yourself and General Counsel Michael McCord;
2. All communications, from January 20, 2021, to present, between yourself and Executive Director Lisa Boyd;
3. All communications, from January 20, 2021, to present, between yourself and Chief Operating Officer (COO) Leslie Bayless, as well as documents and communications relating to hiring a COO;
4. All documents and communications, from January 20, 2021, to present, pertaining to any investigation conducted by yourself, COO Bayless, or any third party entity regarding any employee of FMSHRC;
5. All documents and communications, from January 20, 2021, to present, referring or relating to changes of policies and procedures for general counsel duties, specifically the process for assigning staff to cases;

⁴ Whistleblower Prot. Act of 1989, 5 U.S.C. 2302(b)(8)-(9), Pub. L. 101-12, § 7515; Notification & Fed. Emp. Antidiscrimination and Retaliation Act of 2002, Pub. L. 107-174, 116 Stat. 566.

⁵ Letter from William Althen, Comm'r, FMSHRC & Marco Rajkovich, Comm'r, FMSHRC, to Patty Murray, Chairwoman, S. Comm. on Health, Educ., Labor, & Pensions (Mar. 17, 2022).

⁶ Letter from William Althen, Comm'r, FMSHRC & Marco Rajkovich, Comm'r, FMSHRC, to Patty Murray, Chairwoman, S. Comm. on Health, Educ., Labor, & Pensions (Feb. 15, 2022); *Id* at 2; *Div. of Powers and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole*, 24 Op. O.L.C. 102-109 (2000).

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6. All documents and communications, from January 20, 2021, to present, between or among yourself and any employee of the U.S. Department of Justice Office of Legal Counsel; and
7. All documents and communications, from January 20, 2021, to present, between or among yourself and any employee of the Executive Office of the President, including but not limited to the White House Counsel's Office.

Thank you for your consideration of this important issue. To make arrangements to schedule a staff-level briefing and deliver documents, please contact the Republican staff at (202) 225-5704. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer
Ranking Member
House Committee on Oversight and Reform



Ralph Norman
Ranking Member
Subcommittee on Environment

cc: The Honorable Carolyn Maloney, Chairwoman
House Committee on Oversight and Reform

The Honorable Ro Khanna, Chairman
Subcommittee on Environment