



FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE COMMISSIONERS

April 19, 2022

Honorable Richard Burr, Ranking Member,
United States Senate Committee on Health, Education, Labor & Pensions
217 Russell Senate Office Building
Washington DC 20510

Sent via Electronic Mail

Re: Substantive Responses to Chairman Arthur R. Traynor's 4/5/2022 Letter

Dear Senator Burr:

This letter is to provide substantive responses to the letter written to you by Chair Arthur R. Traynor III dated April 5, 2022. Mostly, my responses herein are limited to the references to me made by Chair Traynor. But before addressing the allegations about me, please allow me to begin with a few preliminary observations. Chair Traynor accuses multiple long-tenured Commission employees of misconduct, ranging from the mundane (an employee was not available to Chair Traynor during working hours) to the serious (millions of dollars in improper contracting and procurement). I have never observed, nor do I have any information that would lead me to believe that any of the excellent employees singled out by Chair Traynor ever engaged in any of the misconduct he describes, or any other misconduct. During my tenure as Commissioner, I have formed the firm opinion that the people named in Chair Traynor's letter are experts at their jobs, honest and hard-working, and credits to our Commission. Also, I have been provided a copy of substantive responses to Chair Traynor's letter written by my colleague, Commissioner William I. Althen. Commissioner Althen, a learned, fair and thoughtful man, is likewise a credit to his Office and the Commission as a whole. I trust you will consider his responses in conjunction with mine.

In his April 5, 2022 letter, Chair Traynor suggests that I subverted federal hiring practices during the selection process of a Chief ALJ. In fact, proper and agreed-upon hiring practices were followed. All Commissioners, including Chair Traynor, approved the process to form a Review Panel to vet all applicants for the Chief ALJ job. And, all Commissioners, including Chair Traynor approved to accept from the Review Panel a list of the three best candidates, from whom the Commissioners would select the new Chief ALJ. This process was precisely followed and all Commissioners, including Chair Traynor, agreed upon one particular candidate (Glynn Voisin), who was ultimately hired, and who currently serves most capably as the Chief ALJ. No one other than the Review Panel and the Commissioners had any role in the selection of Judge Voisin. He

was selected purely on his credentials and merit.

Chair Traynor goes on to suggest that I involved myself in the ALJ assignment of a case from which I was recused. I have had no involvement in any case from which I have been recused. On one occasion, it was learned that a retired Chief ALJ who had returned to the Commission for a limited assignment (assistance with the selection of the new Chief ALJ) was attempting to exceed the scope of his limited assignment by requesting the assignment of cases. This was reported to me during the time that I was serving as Chair of the Commission. Thus, it fell to me as Chair to clarify that the retired ALJ was not to be assigned any cases. My directive in this regard was general and was not specific to any particular case with which the retired ALJ may have been attempting to involve himself.

Chair Traynor next suggests that I collaborated with and expressly approved unethical and criminal misconduct by two Commission employees. I am unaware of any unethical or criminal misconduct by the two employees named nor by any of our other Commission employees, and I do not believe that any unethical or criminal misconduct occurred. Thus, I could not have collaborated with and/or expressly approved any such behavior.

Chair Traynor suggests that after the position of Chair passed from me to him, I approved approximately \$20,000 in benefits to an employee in a fraudulent abuse of a pandemic relief program. I granted no approvals to any employee of any fraudulent benefits either during my tenure as Chair or after my term as Chair ended. While I was Chair, I was sometimes called upon to approve Commission expenditures that were related to the pandemic. These expenditures were in no way fraudulent.

Chair Traynor states that I and Commissioner Althen countermanded certain directions that he secretly gave to the Commission's General Counsel. He implies that this action was improper. He is wrong. The directions he gave to our General Counsel were contrary to the decision of the majority of the Commissioners. Chair Traynor sought to have the General Counsel comply with the view of the minority rather than the view of the majority. The General Counsel was simply reminded of his duty to comply with the decision of the majority of the Commissioners.

Chair Traynor suggests that I interfered with an investigation of the General Counsel by the Bureau of the Fiscal Service (BFS). Without approval of a majority of the Commissioners, and without even informing any of the other Commissioners, Chair Traynor or someone on his behalf, alleged improper conduct on the part of the General Counsel and threatened discipline which could have been referred to BFS. When I received information about this (not from Chair Traynor), I contacted BFS to determine if what I was hearing was true. The person with whom I spoke at BFS had no knowledge of any such action and mentioned no investigation involving our General Counsel. I then informed that person that no such discipline had been approved by a majority of the Commissioners. According to Chair Traynor, at some subsequent time, BFS determined to take no action. I have no knowledge whether this is accurate. If it is accurate, I have no knowledge as to why BFS made the decision to take no action.

Chair Traynor suggests that I "repeatedly" attempted to evade accountability. My actions as both Chair and Commissioner have been transparent. Throughout my tenure I have remained

accountable to my fellow Commissioners, the Administration and the Congress.

Chair Traynor suggests that I “repeatedly” attempted to thwart outside investigations. Other than those recently described in Chair Traynor’s letter, I am not aware of any “outside investigations.” And, I have in no way attempted to thwart any valid investigatory efforts by anyone outside (or inside) the Commission.

Chair Traynor suggests that I “repeatedly” attempted to shield certain employees. I have never improperly shielded any employee. As is the duty of any Chair and/or Commissioner, I have fully supported the work of good and valuable Commission employees.

Chair Traynor suggests that I “repeatedly” spurned any attempts to cooperate or resolve his apparent concerns. In fact, I have made repeated efforts to cooperate with Chair Traynor and to understand and discuss all of his concerns. Unfortunately, Chair Traynor has often chosen to unilaterally act, sometimes without legitimate authority, sometimes against the decision of the majority of his fellow Commissioners, and sometimes in secret.

Chair Traynor suggests that I attempted to prevent the hiring of a Chief Operating Officer (COO) for the Commission. The Commission has never before had a COO. The Commission has employed an Executive Director. Chair Traynor unilaterally, secretly, and without authority, selected and hired a COO and then began shifting duties away from our long-tenured Executive Director. When I discovered what Chair Traynor had done, I voiced my objection, but took no other steps to “prevent the hiring.”

Chair Traynor implies that I improperly used letterhead with the title “Office of the Commissioners.” In fact, within our Commission, my physical location is always referred to in the Commission phone directory as the “Office of the Commissioners.” My use of this title in my letterhead is no more or less improper than Chair Traynor’s letterhead, which contains the title “Office of the Chairman.”

Chair Traynor states that the content of my letter dated March 17, 2022, addressed to the Honorable Patty Murray, Chair, U.S. Senate Committee on Health, Education, Labor & Pensions, contained “wild hyperbole.” I dispute this characterization and fully reaffirm the accuracy of the unfortunate facts set forth in that letter, as well as those in my February 15, 2022 letter to Chair Murray.

Chair Traynor states that I do not appear to want an actual resolution to the issues raised in the above referenced letters written to Chair Murray. Nothing could be further from the truth. My attempts to resolve these issues with Chair Traynor have been unsuccessful. Thus, my need to seek the intervention of your Committee in the hope of an “actual resolution” via an independent investigation was necessitated.

Finally, Chair Traynor notes that I would not agree to what amounts to a binding arbitration process concerning the division of duties among the Commissioners of our Commission. But the division of duties within our Commission is clearly delineated in the Federal Mine Safety and Health Review Act (the Mine Act). Neither I as Commissioner nor Chair Traynor as Chair have

the authority to modify the Mine Act via binding arbitration or by any other method. We simply cannot bind ourselves, and future Commissioners and Chairs, to the directives of an arbitrator that may be in contravention of the Mine Act.

If you have any questions or concerns about any of the matters that have been brought to your attention and/or to the attention of your Committee, I remain available for further discussions.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Marco M. Rajkovich Jr.', with a stylized flourish at the end.

Marco M. Rajkovich Jr., Commissioner
Federal Mine Safety and Health Review Commission