

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

HARRY WILEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Case No: 2:25-cv-00227

ROBERT F. KENNEDY, JR., in his official
Capacity as Secretary of Health and Human
Services, and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

DEFENDANTS' RENEWED MOTION TO DISMISS

Pursuant to the Article III of the United States Constitution and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants, by and through undersigned counsel, renew their previously filed Motion to Dismiss, (ECF No. 14), for the following reasons:

1. Plaintiff brings claims challenging the Coal Workers' Health Surveillance Program's ("CWHSP's") failure to adjudicate a radiographic image of his chest sent in November 2024.

2. All Plaintiff's other claims derive from that initial allegation, including those related to staffing levels of the National Institute for Occupational Safety and Health's ("NIOSH's") Respiratory Health Division ("RHD") and its ability to maintain the CWHSP and carry out its other ancillary duties under the Mine Act.

3. Even before the Court held its preliminary injunction hearing on May 7, 2025, Defendants demonstrated that Plaintiff lacked standing to pursue his claims because the

submission he made to NIOSH in November 2024 was adjudicated in December 2024, and Plaintiff had no other pending correspondence or submission before the CWHSP.

4. Nevertheless, the Court entered a preliminary injunction “requiring full restoration of the NIOSH Respiratory Health Division, rescission of the [Reduction in Force (‘RIF’) notices], and compelling continued health surveillance through the CWHSP and the job transfer program under 30 U.S.C. § 843” (ECF No. 36 at 31.)

5. Since the Court’s preliminary injunction order, a significant change in circumstances now renders Plaintiff’s claims moot—assuming they were not moot already.

6. First, Plaintiff sent additional medical evidence to the CWHSP in the form of x-rays and CT scans after the Court’s preliminary injunction hearing, which were reviewed by the CWHSP’s chest radiologist to determine whether Plaintiff’s lungs had changes consistent with coal workers’ pneumoconiosis.

7. The CWHSP sent the results of that review to Plaintiff in a letter dated May 27, 2025, and as of the date of this filing, the CWHSP has no outstanding requests related to Plaintiff.

8. Because the CWHSP adjudicated the other medical examinations Plaintiff submitted for review following the preliminary injunction hearing, the injury complained of in the Amended Complaint still does not exist.

9. Thus, Plaintiff has no concrete injury.

10. Without a concrete injury, Plaintiff lacks standing under Article III of the United States Constitution to pursue this case, and this Court lacks subject matter jurisdiction over the above captioned civil matter.

11. Additionally, the relevant RIF notices issued by Defendant U.S. Department of Health and Human Services (“HHS”) on April 1, 2025, such as those issued to RHD employees as alleged in the Amended Complaint, have been revoked by HHS.

12. No RHD employee at the NIOSH-Morgantown, West Virginia, facility who received a RIF notice on April 1, 2025, has been separated from HHS pursuant to the planned agency RIF.

13. Because all NIOSH RHD full-time civilian employees received notices from HHS that their RIF notices were revoked and have not been separated from HHS pursuant to the planned RIF, all allegations in the Amended Complaint related to the RIF notices issued April 1, 2025, are now moot.

14. Further, operations under contracts needed for RHD to carry out its responsibilities under the CWHSP and the job transfer program have been restored, and RHD is communicating with partners and constituents as needed to carry out RHD’s work under the Mine Act.

15. For example, the CWHSP is providing black lung screenings to coal miners at no cost to the miners through NIOSH-approved health facilities and its mobile health unit, and RHD has scheduled monthly mobile unit surveys through September 2025.

16. Overall, the CWHSP is operational at the same degree it was pre-suit, mooting the Amended Complaint.

17. The claims in the Amended Complaint are further barred by Defendants’ sovereign immunity from such claims, and they should be dismissed.

18. Finally, although the Amended Complaint takes issue with—and the scope of the Court’s preliminary injunction enjoins—part of HHS’s planned RIF and reorganization, the Supreme Court recently made clear that such a challenge and order is improper.

19. Thus, the Court does not have the ability to provide any relief broader than that which affects Plaintiff personally.

20. As Plaintiff suffers from no injury in fact, there is no remedy for this Court to award.

21. Therefore, this case must be dismissed.

In further support of this Renewed Motion, Defendants present the Second Declaration of John J. Howard, which was attached to Defendants' Response in Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint. (*See* ECF No. 52-1.) The attachments to that declaration are the subject of a pending Motion to Seal. (*See* ECF No. 53.)

Defendants will file a separate memorandum of law that will cite relevant legal authority in further support of this Renewed Motion.

Therefore, Defendants again request that Plaintiff's Amended Complaint, (ECF No. 10), be dismissed and that this case be removed from the Court's docket. Defendants request such other and further relief as the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2025, I electronically filed the foregoing **DEFENDANTS' RENEWED MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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