CCASE:
SOL (MSHA) V. FREEMAN UNITED COAL MINING
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
July 12, 1984
SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. LAKE 82-89

FREEMAN UNITED COAL MINING
COMPANY

DECISION

This civil penalty proceeding involves the interpretation and application of the requirement in 30 C.F.R. $ 50.20(a) that an operator report to the Department of Labor's Mine Safety and Health Administration ("MSHA") each "occupational injury ... at the mine." 1/ The Commission's administrative law judge concluded that Freeman United Coal Mining Company ("Freeman") violated the regulation, and assessed a civil penalty. 5 FMSHRC 505 (March 1983) (ALJ). For the reasons that follow, we affirm the judge's decision.

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1/ 30 C.F.R. $ 50.20(a) provides in part:

Preparation and submission of MSHA Report Form 7000-1--Mine Accident, Injury, and Illness Report.

Each operator shall maintain at the mine office a supply of MSHA Mine Accident, Injury, and Illness Report Form 7000-1. ... Each operator shall report each accident, occupational injury, or occupational illness at the mine. The principal officer in charge of health and safety at the mine or the supervisor of the mine area in which an accident or occupational injury occurs, or an occupational illness may have originated, shall complete or review the form in accordance with the instructions and criteria in $ 50.20-1 through $ 50.20-7. ... The operator shall mail completed forms to MSHA within ten working days after an accident or occupational injury occurs or an occupational illness is diagnosed.

30 C.F.R. $ 50.2(e) defines an "occupational injury" as follows:

"Occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to

perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job.
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The facts are undisputed and were stipulated below. On February 18, 1982, at about 11:00 p.m., approximately one hour before the beginning of his shift, Fred Albers, a plant cleaner who had worked for Freeman for about 12 years, experienced back pain while putting on his work boots in the wash house at Freeman's Orient No. 6 Mine. He was taken by ambulance to a hospital emergency room and subsequently admitted as an inpatient. Albers, who had a history of back trouble, was diagnosed as having acute lumbosacral (lower back) strain, and was treated with physiotherapy, a muscle relaxant, and a pain reliever. He was discharged from the hospital on February 24, 1982. Albers returned to work on March 10, 1982, after missing 13 work days. Freeman did not report Albers' injury to MSHA.
On March 25, 1982, an MSHA inspector cited Freeman for a violation of 30 C.F.R. $ 50.20(a) because it had not completed and mailed Form 7000-1 to report Albers' injury within ten working days after the occurrence of the injury. Freeman abated the violation the same day by completing and mailing the form to MSHA.
The principal issue considered by the Commission administrative law judge was whether Albers' injury was an "occupational injury" within the meaning of the cited regulation and as that term is defined in section 50.2(e). The judge found that the facts established an occupational injury because (1) there was an injury to a miner; (2) it occurred at a mine; and (3) medical treatment was required and it caused disability. He stated that "the facts it the definition and the definition is controlling." 5 FMSHRC at 508.
In urging reversal, Freeman argues that the section 50.2(e) definition of occupational injury contemplates that there must be a causal nexus between the miner's work and the injury sustained. Freeman contends that Albers' injury was not work-related and, consequently, Freeman was not required to report the injury to MSHA pursuant to section 50.20(a). Freeman argues in the alternative that the regulation is invalid to the extent that it requires reporting injuries lacking a causal nexus with the miner's work. We reject both arguments.
I.
In interpreting the term "occupational injury," as defined in section 50.2(e), we look first to the plain language of the regulation. Absent a clearly expressed legislative or regulatory intent to the contrary, that language ordinarily is conclusive. As noted above, section 50.2(e) defines an occupational injury as 'any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness,

inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job." The term "injury" is not further defined. The ordinary meaning of injury is: "an act that damages, harms,
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or hurts"; or "hurt, damage, or loss sustained." Webster's Third New International Dictionary (Unabridged) 1164 (1977). The remainder of the definition in section 50.2(e) refers only to the location where the injury occurred ("at a mine"), and to the result of an injury ("medical treatment," "death," etc.). Thus, sections 50.2(e) and 50.20(a), when read together, require the reporting of an injury if the injury--a hurt or damage to a miner--occurs at a mine and if it results in any of the specified serious consequences to the miner. These regulations do not require a showing of a causal nexus. Nor does the regulatory history show any intent to require such a specific causal connection. In fact, just the opposite is true. 30 C.F.R. Part 50, in which sections 50.2(e) and 50.20(a) are contained, was originally promulgated by the Department of the Interior's Mining Enforcement and Safety Administration ("MESA," the predecessor agency to MSHA) under the authority of the Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. $ 721 et seq. (1966)(repealed 1977)("Metal Act"), and the Federal Coal Mine Health and Safety Act, 30 U.S.C. $ 801 et seq. (1976)(amended 1977)("Coal Act"). 2/ Part 50 revised and consolidated previously separate reporting requirements under the Part 58 standards for metal and nonmetal mines and the Part 80 standards for coal mines. 42 Fed. Reg. 55568 (October 17, 1977). When promulgated by MESA, section 50.2(e) deleted the Parts 58 and 80 requirement that an occupational injury arise out of and/or in the course of work and added the present requirement that, to be reportable, an occupational injury need only occur at a mine. See 42 Fed. Reg. 65534. MESA's deletion of a more specific work-related criterion militates against our according such a construction to these regulations. See, e.g., U.S. v. Guthrie, 387 F.2d 569, 571 (4th Cir. 1967). We conclude that the above-noted regulatory history and the plain language of the section 50.2(e) definition of occupational injury control in construing the related reporting requirement of section 50.20(a). 3/

II.

It is well settled that when considering the validity of an administrative regulation, the proper standard of review is whether the regulation is consistent with, and reasonably related to, the statutory

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2/ After the Mine Act took effect on March 9, 1978, the Secretary of Labor made only minor nomenclature changes in Part 50. 42 Fed.

Reg. 65535 (December 30, 1977); 43 Fed. Reg. 12318 (March 24, 1978).
3/ In oral argument before the Commission, both Freeman and the American Mining Congress, as amicus curiae, argued that the Part 50 reporting requirements apply only to preventable work-related injuries. In Freeman's view, it could not have prevented the injury involved in this case. However, the Secretary asserts that it is the compilation of data regarding all injuries occurring at mines chat provides MSHA with a basis for determining which injuries may be prevented.
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provisions under which it was promulgated and is not in conflict with any other statutory provisions. See Sewell Coal Co., 3 FMSHRC 1402, 1405-08 (June 1981). 4/ Section 111(b) of the Coal Act and sections 4 and 13 of the Metal Act broadly empowered the Secretary of the Interior to require operators to maintain and submit accident, injury, and illness data, without imposing limitations on the types of data. Similarly, the legislative histories of these Acts discussed the reporting requirement in extremely broad terms. See S. Rep. No. 411, 91st Cong., 1st Sess. 92 (1959), reprinted in Senate Subcommittee on Labor and Public Welfare, 94th Cong., 1st Sess., Legislative History of the Federal Coal Mine Health and Safety Act of 1969 at 218 (1975), and Legislative History of the Federal Metal and Nonmetallic Mine Safety Act, 1966 U.S. Code Cong. and Ad. News 2856-57. We conclude that section 50.20(a) is consistent with and reasonably related to the statutory provisions under which it was promulgated. 5/

III.

The Secretary asserts that Freeman is precluded under the Mine Act from challenging the regulation's validity because the operator did not raise the question below. 30 U.S.C. $ 823(d)(2)(A)(iii). We disagree. Before the administrative law judge, Freeman asserted that the Mine Act "should not be applied in an unreasonable, illogical manner as attempted here." Freeman argued further that an interpretation of the regulation which does not require that an occupational injury be work-related "stretches the application of the Act and is not in compliance with the intention and purpose of the Act." We find that these broad statements "afforded the administrative law judge an opportunity to pass" upon the question, as required by 30 U.S.C. $ 823(d)(2)(A)(iii).

4/ This is essentially the same standard of review applied by courts of appeals for judging the validity of rules promulgated pursuant to informal notice and comment rulemaking. (Section 50.20(a) was the product of informal rulemaking.) See, e.g., Nat'l Indus. Sand Ass'n. v. Marshall, 601 F.2d 689, 696-700 (3d Cir. 1979), citing Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971); and

American Mining Congress v. Marshall, 671 F.2d 1251, 1254-55 (lOth Cir. 1982).

5/ Freeman's argument that section 50.20(a) conflicts with section 103(e) of the Mine Act, 30 U.S.C. $ 813(e), which requires the Secretary to minimize burdensome reporting requirements, is unpersuasive because there is no evidence as to this alleged burden. Nor is there support for Freeman's argument that the requirement as interpreted needlessly duplicates the state workers' compensation reports that the operator is required to file. Workers' compensation statutes differ both in purpose and effect from the Mine Act and, in any event, in promulgating section 50.2(e), MESA expressly rejected reliance for reporting purposes on diverse state workers' compensation criteria. See 42 Fed. Reg. 65534. For these same reasons we would not find state workers' compensation statutes analogous.

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The Secretary also asserts that we lack authority to review the validity of the cited regulation. Previously, we have rejected the same argument by the Secretary in the context of the validity of a mandatory safety standard promulgated under section 101(a) of the Coal Act. See Sewell Coal Co., 3 FMSHRC at 1405. Although the present case involves a reporting regulation promulgated under sections 508 and 111(b) of the Coal Act and sections 4 and 13 of the Metal Act, our reasoning in Sewell applies. We conclude that a challenge to the validity of a regulation promulgated under the Coal and Metal Acts can be raised and decided in adjudication before this Commission.

Accordingly, applying the regulation thus construed to the undisputed facts of this case, we affirm the judge's findings that a reportable injury occurred because there was an injury to a miner, which occurred at a mine, and which required medical treatment. We note that this injury also resulted in an "inability to perform all job duties...." Therefore, we affirm the judge's conclusion that Freeman violated $ 50.20(a) by not reporting this occupational injury to MSHA.

Rosemary M. Collyer, Chairman
Frank F. Jestrab, Commissioner
A. E. Lawson, Commissioner
L. Clair Nelson, Commissioner

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