CCASE:
ENERGY WEST MINING V. SOL (MSHA)
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April 6, 1993

ENERGY WEST MINING COMPANY	:	
	:	
v.	:	Docket No. WEST 91-83-R
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	

BEFORE: Holen, Chairman, Backley, Doyle and Nelson, Commissioners

DECISION

BY THE COMMISSION:

This contest proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act" or "Act"), presents the question of whether Energy West Mining Company ("Energy West") was required to report to the Department of Labor's Mine Safety and Health Administration ("MSHA"), pursuant to 30 C.F.R. 50.20, an injury that occurred to a miner as he was driving his personal car on mine property on his way to work.(Footnote 1) Commission Administrative Law Judge Michael A. Lasher, Jr., upheld the

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1 The cited regulation provides, in pertinent part:

> 50.20 Preparation and submission of MSHA Report Form 7000-1 -- Mine Accident, Injury, and Illness Report.
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> (a) 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....

citation. 13 FMSHRC 1164 (July 1991)(ALJ). For the reasons set forth below, we affirm the judge's decision.

I.

Factual and Procedural Background

The parties in this proceeding stipulated to all the essential facts. The stipulations pertinent on review are as follows:

> 4. Citation No. 3413924 (Joint Exh. 1.) was issued on November 1, 1990 by Inspector Robert L. Huggins, alleging that Energy West violated 30 C.F.R. 50.20 by failing to report an injury sustained by employee Donald Hammond in an automobile accident on mine property on Wednesday, October 3, 1990.
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> 6. At the time of the accident, Mr. Hammond was driving his own personal car on his way to work. He was injured when, after passing through the gate onto company property and driving uphill towards the parking lot, the engine of his car stalled and his brakes failed. The car rolled backwards down the road approximately 150 feet (see Joint Exhs. 3, 4) and turned on its side into a drainage ditch on the side of the road (see Joint Exhs. 5, 6).
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> 7. The accident occurred at 7:30 a.m. as Mr. Hammond was on his way to report for his 8:00 a.m. shift at the mine. Mr. Hammond sustained a strained neck.
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> 8. After the accident, Mr. Hammond did not report to the 8:00 a.m. shift on Wednesday, October 3, 1990. He returned to work on Monday, October 8, 1990.
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> 9. At the time of the accident and at all times relevant to the subject Citation, the road was paved, in good repair with guard rails on one side and a hillside on the other, and in substantially the same condition as the publicly maintained road leading to the entrance of the company property.
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> 10. The accident occurred in daylight during good weather conditions and clear visibility.
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> 11. The condition of the road was not the cause of the accident.
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> 12. Inspector Huggins was present at the Deer Creek Mine on the day of the accident and visited the accident site. He asked Deer Creek Safety Engineer Kevin Tuttle whether Energy West planned to report the

> injury to the Mine Safety and Health Administration. In response, Mr. Tuttle stated his belief that the injury was not reportable, because it occurred while Mr. Hammond was on his way to work, not while he was on the job, and involved Mr. Hammond's personally owned vehicle. Inspector Huggins informed Mr. Tuttle that he would check to see whether MSHA thought the injury was reportable.
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> 13. Shortly thereafter, Inspector Huggins informed Mr. Tuttle that the injury was reportable. On November 1, 1990, Inspector Huggins issued the subject Citation when no accident report was forthcoming. To abate the alleged violation, Mr. Tuttle then completed MSHA Form 7000-1 (Joint Exh. 2) on November 1, 1990 and mailed it to the MSHA Health and Safety Analysis Center, and Inspector Huggins terminated the Citation.

The citation charged Energy West with a non-significant and substantial violation of section 50.20 and, as modified, alleged high negligence.(Footnote 2) The Secretary has not alleged that Energy West was responsible for, or contributed to, the conditions that lead to Hammond's injury.

Energy West filed a notice of contest of the citation and the matter was submitted to Judge Lasher on stipulated facts. After noting that Hammond's injury was not the result of an "accident," as that term is defined by section 50.2(h), the judge evaluated whether Hammond's injury fit within the definition of "occupational injury" as defined by section 50.2(e).(Footnote 3) The judge determined that the stipulations established that Hammond was a miner who, while at the mine, suffered an injury resulting in his inability to perform all his job duties. 13 FMSHRC at 1171. The judge concluded, based on these undisputed facts, that Hammond suffered an "occupational injury" as

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2 The citation alleged the following violation:

> A[n] accident occurred to Donald Hammond on 10-3-90 and a 7000-1 report form was not submitted to the MSHA Health and Safety Analysis Center in Denver, Colorado. Mr. Hammond was involved in an automobile accident that occurred on mine property and Mr. Hammond failed to report to his next shift of work. Mr. Hammond returned to work on 10-8-90.

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3 Section 50.2(e) provides:

> 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.

defined in section 50.2(e) and that Energy West was required to report this occupational injury to MSHA pursuant to section 50.20. He rejected Energy West's contention that the injury was not reportable because of the lack of a "causal nexus" to Hammond's work at the mine. The judge based this conclusion on the Commission's decision in Freeman United Coal Mining Co., 6 FMSHRC 1577 (July 1984). 13 FMSHRC at 1172. The Commission granted Energy West's Petition for Discretionary Review and permitted the American Mining Congress ("AMC") to file an amicus curiae brief.

II.

Disposition of the Issues

The Secretary interprets section 50.20 to require each mine operator to report to MSHA all injuries that occur at the operator's mine site, including injuries that are not directly work-related. Energy West(Footnote 4) objects to that approach and argues that, since it is undisputed that Hammond's injury was not work-related, reporting the injury to MSHA was not required.

Energy West argues that the Secretary's interpretation of the injury reporting provisions exceeds the scope of the Mine Act because his interpretation requires mine operators to report non-work-related injuries to MSHA under section 50.20. Energy West also argues that the Secretary's interpretation of the regulation is unreasonable because it conflicts with the overall purposes of Part 50 and leads MSHA to calculate inherently flawed rates of injury occurrence ("incident rates"). It argues that, the information gathering provisions of Part 50 were developed so that incident rates could be calculated by the Secretary pursuant to section 50.1. It maintains that, by requiring mine operators to report non-work-related injuries that occur before or after the miners' shifts, while prohibiting operators from including such off-shift time as part of the total number of employee hours worked under section 50.30-1(g)(3), MSHA calculates an incident rate under section 50.1 that is "flawed and untrustworthy for its intended purpose." AMC Br. 10.

Energy West relies heavily on the regulatory history of Part 50 to support its position. It argues that when the Department of the Interior ("Interior") consolidated injury reporting in Part 50 it did not "sever the existing linkage between work-related injuries and the filing of reports." AMC Br. 16. It argues that the preambles to the proposed and final rule are "devoid of any statement or indication" that "a dramatic substantive change" was being made "that would require, for the first time, the reporting of non-work-related, as well as work-related, injuries." AMC Br. 17. Energy West points to language in the preamble to the final rule stating that MSHA "seeks data only respecting injuries whose occurrence rate it can affect and diminish." E.W. Br. 21; AMC Br. 18. Energy West contends that the Commission should reconsider its decision in Freeman.

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4 Unless otherwise noted, the arguments of the AMC are included in our discussion of Energy West's position.

In Freeman, the Commission concluded that section 50.20 requires operators to report to MSHA certain injuries that occur to miners at mines. 6 FMSHRC at 1579. The Commission held that "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."(Footnote 5) Id. The Commission determined that the Secretary's regulations "do not require a showing of a causal nexus" between the injury and the miner's work. Id. The Commission also indicated that the definition of occupational injury in section 50.2(e) and the regulatory history of that section "control in construing the related reporting requirement of section 50.20(a)." Id. Finally, the Commission concluded that the Secretary's interpretation of section 50.20(a) "is consistent with and reasonably related to the statutory provisions under which it was promulgated." 6 FMSHRC at 1580.

In Consolidation Coal Co., 14 FMSHRC 956 (June 1992)("Consol"), the Commission examined MSHA's calculation of incident rates under Part 50.(Footnote 6) The operator in that case had reported to MSHA the total amount of time that it estimated miners were present at its mine, not simply the hours worked. It argued that MSHA's Part 50 reporting requirements, as interpreted by the Secretary, leads MSHA to calculate inaccurate incident rates. The Commission determined that mine operators are required to report to MSHA, as "total employee-hours worked" under section 50.30-1(g)(3), the number of employee-hours reflected in the operators' payroll records and that operators are not permitted to add to those hours the time miners spend on mine property before and after their shifts. 14 FMSHRC at 966-68. The Commission noted that the "incident rates calculated by MSHA are flawed because the injury and accident information that mine operators are required to submit does not correlate with the data that mine operators must report for employee hours worked." 14 FMSHRC at 968. The Commission held, however, that any flaws in MSHA's calculation of incident rates did not excuse Consol's violation of the regulation:

> Incident rates provide a general picture of the safety record of a mine operator. The assertion that MSHA's method of calculating incident rates is less than perfect or that there may be better methods does not

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5 As set forth in section 50.2(e), an injury with serious consequences is one "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." Hammond's injuries resulted in at least one of these serious consequences because he was unable to work on the day after the accident. Stip. 8.

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6 MSHA calculates the incident rate for a mine by dividing the total number of occupational injuries, occupational illnesses and accidents reported in a calendar quarter (multiplied by a constant: 200,000) by the total number of employee-hours worked during the quarter. 30 C.F.R. 50.1; Consol, 14 FMSHRC at 959.

> excuse mine operators from complying with the data submission requirements of Part 50.

14 FMSHRC at 969.

We have reviewed again the relevant provisions of Part 50 and the regulatory history and we decline to overrule or modify our holding in Freeman as urged by Energy West.(Footnote 7) We hold that, despite the fact that the regulation requires the reporting of injuries that are not directly work-related, MSHA's injury reporting requirements in section 50.20(a) do not exceed the Secretary's broad authority to obtain from mine operators information relating to safety conditions and the causes of accidents. See section 103 of the Mine Act, 30 U.S.C. 813.

As stated in Consol, the Commission's task is not to devise the best method of monitoring injuries sustained by miners but to determine whether the Secretary's method, as implemented by the regulations, is reasonable. 14 FMSHRC at 969. The Secretary uses a mine site test for reportable injuries. As a consequence, a work-related injury that occurs off mine property is not reportable, while a non-work-related injury that occurs on mine property is reportable. While such reporting requirements do not focus precisely on injuries that MSHA may seek to diminish, the requirements are not so arbitrary as to be unreasonable.(Footnote 8) The Secretary's geographic approach is consistent with the jurisdiction conferred upon him under section 3(h)(1) of the Mine Act, 30 U.S.C. 802(h)(1), which defines "coal or other mine" in geographic terms.(Footnote 9) Moreover, it is not unreasonable for the Secretary to require the

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7 The statement in the preamble to the final rule, that MSHA sought only data concerning "injuries whose occurrence rate it can affect and diminish," relates to Interior's rejection of a suggestion that work-related injuries that occur off mine property should be reported. 42 Fed. Reg. 65, 534 (December 30, 1977). In response to that comment, the Secretary stated that he did not have jurisdiction over injuries that occur off mine property "regardless of whether the injured miner was engaged in his employer's business at the time of the injury." Id. Thus, the statement in the preamble relied on by Energy West does not suggest that the Secretary intended to exempt mine operators from reporting non-work-related injuries that occur on mine property.

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8 The Secretary argues that reportable, non-work-related injuries "are rare events" that occur infrequently. S. Br. 34. We note that Energy West did not present any evidence to show that it has experienced a significant number of such injuries at its mine.

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9 Section 3(h)(1) of the Mine Act states in pertinent part:

> "coal or other mine" means (A) an area of land from which minerals are extracted ..., (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment,

reporting of all designated injuries at mines so that MSHA can decide whether an investigation of the injury is necessary or whether regulatory action is indicated.(Footnote 10) The cause of an injury may not be obvious and MSHA may need to evaluate whether it should seek to reduce the risk of similar injuries. In section 103 of the Act, 30 U.S.C. 813, Congress granted to the Secretary broad investigation and information gathering authority. MSHA would abdicate its responsibilities under the Act were it to rely solely on the mine operator's determinations, as urged by Energy West, that an injury was not work-related.

We have determined that the Secretary's requirement that injuries occurring at mines be reported to MSHA is reasonable, in part, because such injury reports enable MSHA to obtain a comprehensive overview of the safety and health conditions at each mine. As in Consol, however, we are concerned that the goal of improving mine safety can be unnecessarily compromised when MSHA's injury statistics are inaccurate. In our view, the purposes of the Mine Act would be better served if the Secretary, in calculating incident rates, were to exclude injuries that are not work-related.

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9(...contiued)

> machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits....

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10 If an operator believes that an injury is not work-related, it may state its belief in the report submitted to MSHA. Section 9 of the reporting form (MSHA Form 7000-1) requires an operator to "Describe Fully the Conditions Contributing to the Accident/Injury/Illness." The Secretary's criteria at section 50.20-6(a)(3) direct operators to "[d]escribe what happened and the reasons therefore" and to "clearly specify the actual cause or causes of the ... injury."

III.

Conclusion

For the foregoing reasons, the judge's decision is affirmed.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner