FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

December 20, 2022

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
v.	:	Docket No. PENN 2019-0094
CONSOL PENNSYLVANIA COAL COMPANY, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

DECISION

BY THE COMMISSION:

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act" or "Act"). At issue is whether the Administrative Law Judge erred in affirming a citation issued by the Department of Labor's Mine Safety and Health Administration ("MSHA") to Consol Pennsylvania Coal Company, LLC ("Consol").

The citation alleges that Consol failed to locate its emergency lifeline "in such a manner for miners to use effectively to escape," in violation of 30 C.F.R. § 75.380(d)(7)(iv).[1] Sec. Ex. 2 (Citation No. 9076458). The citation further states that the lifeline was "located directly above [several hydraulic] hoses." *Id.* The citation was designated as being significant and substantial ("S&S").[2]

In affirming the citation, the Judge found that the evidence in the record established the violation under the language of section 75.380(d)(7)(iv) and Commission caselaw. 43 FMSHRC 120 (Mar. 2021) (ALJ). The Judge also affirmed the S&S designation associated with the

[1] Section 75.380(d)(7)(iv) states that "[e]ach escapeway shall be . . . [p]rovided with a continuous, durable directional lifeline or equivalent device that shall be . . . [l]ocated in such a manner for miners to use effectively to escape." 30 C.F.R. § 75.380(d)(7)(iv).

[2] The S&S terminology is taken from section 104(d)(1) of the Act, 30 U.S.C. § 814(d)(1), which distinguishes as more serious any violation that "could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard." 30 U.S.C. § 814(d)(1).

citation, reiterating several of the same facts supporting the existence of the violation. *Id*. at 133-35. Consol filed a petition seeking discretionary review of the Judge's decision, which the Commission granted. For reasons set forth below, we affirm the Judge's decision.

I.

Factual and Procedural Background

A. Factual Background

Consol operates the Harvey Mine, a bituminous coal mine located in Pennsylvania. On February 21, 2019, MSHA Inspector Joseph Vargo conducted his inspection at the mine. He traveled to the 5A longwall alternate escapeway, via the number two track entry. *Id*. at 122; Tr. 27, 32. The entry is the fastest route out of the section and is traversed daily by three shifts of miners traveling to and from the 5A longwall. Tr. 68-69. It contains a directional lifeline for miners to use in the event of an emergency. At the time of the citation, Vargo counted ten miners working in the area. Tr. 66-67.

Vargo took issue with the fact that the lifeline was hung directly over nine hydraulic hoses, creating what he deemed to be a slipping and tripping hazard. Tr. 33, 39. The hydraulic hoses extended out of a pump car (through a manifold), which had been parked in the 47 ½ crosscut for eight days.[3] Tr. 33, 39, 69-71.

According to Vargo, the hoses extended into the crosscut, blocking the route of the lifeline. Tr. 33, 40. The longest hose extended 43 inches laterally into the path of the escapeway. Sec. Ex. 2 (Vargo's notes), at 3, 5-6; Tr. 43. He measured the heights of the hoses as ranging from 14 to 38 inches (more than three feet) above the mine floor. Consol's witnesses did not dispute these measurements. Tr. 199.

The witnesses all testified that the hydraulic hoses would eventually droop down towards the mine floor and that Consol would typically place either rock dust bags or a metal ramp, if not both, on top of the lowered hoses to level out the walking surface. Tr. 46-47, 94-95, 100, 102. In this scenario, however, only rock dust bags were used where the hoses met the mine floor.

The lifeline was hung from the roof down the middle of the walkway. Tr. 167-68. The lifeline would be attached to roof bolts at various distances, using plastic art clips and zip ties, which would break away in an emergency. The flexible extensions were attached to the roof with an "S" hook. Tr. 168. When the lifeline was stored, it was held up about one foot from the roof by quick-release tension clips or zip ties. Tr. 54, 272.

The lifeline could be pulled diagonally from clips on the roof, with slack that permitted it to stretch out to 54 inches, due to its nylon-based flexibility. Sec. Ex. 2, at 5; Tr. 55, 57-58. The

[3] The pump car was part of the longwall "mule train," which is a series of track-mounted cars. Tr. 36-37. It provides the electrical, emulsion and rock dust needs of the longwall, which are essential to its operations. Tr. 177, 246-47. *See also* CP Ex. 8A-8D (photographs of the hydraulic hoses, taken by Consol after the lifeline was removed).

extensions were similar to a "bungee cord" except that when the lifeline was not in use, it would coil up like an old phone cord. Tr. 168. When deployed, the flexibility of the system was intended to allow miners to navigate past and around the hydraulic hoses and the pump car. Tr. 54-55, 272.

Vargo acknowledged that, in addition to the miners being able to extend 54 inches due to the lifeline's flexibility, the length of the miners' arms (approximately 18-24 inches) would afford them additional flexibility while still maintaining contact with the lifeline. Tr. 97. Troy Hellen, the mine's Respirable Dust Coordinator, testified that, at the area where the citation was issued, miners "would never have to [let] go of the lifeline." Vargo testified, however, that even with the lifeline's extensions, there was still a slip, trip, and fall hazard underfoot from the hoses and the existence of uneven rock dust bags. Tr. 57-58, 100.

Vargo issued the citation in question, which alleged that the lifeline's location failed to allow miners to effectively escape in the event of an emergency.[4] Tr. 34, 48. He noted that it was reasonably likely that a miner would trip and fall over the hoses, potentially creating a "domino effect" in which other miners behind would also fall, possibly dropping their self-rescuers or hitting other objects in the process. Tr. 59-60; 63. He believed that miners would be walking quickly and may not be able to see where they are going, particularly in the event of smoke. Tr. 64. Vargo expressed specific concern about miners having difficulty maneuvering in a smoke-filled environment because their headlamps, flashlights, and reflectors would not help with such limited visibility. Tr. 64. Both Hellen and Consol Safety Inspector Chase Shaffer acknowledged that such limited visibility would create difficulty seeing obstacles in the mine. Tr. 187; 222; 250-51. Vargo concluded that a slip, trip, and fall hazard therefore existed, which was reasonably likely to cause injuries, including bruises, dislocations, sprains, lacerations, and contusions, with at least one person affected. Tr. 62-63.

Hellen acknowledged that he had received internal injury reports at the mine stating that in two recent prior instances, a slip, trip, and fall hazard had occurred, which had led to a twisted ankle in one scenario and the need for three stitches in the other. Tr. 203-204. The mine's history of assessed violations showed 230 violations in the 15-month period prior to the issuance of the citation. Sec. Ex. 4. The Judge characterized seven of those violations as involving a "similar standard."[5] 43 FMSHRC at 136. No other conditions were cited along the primary and secondary escapeways when the citation was issued. The mine was on a five-day spot inspection for methane. Tr. 25-27; 30 U.S.C. § 813(i).

[4] The citation alleged that "[t]he continuous durable directional lifeline located at 47½ crosscut No. 2 track entry in the 5A operating longwall section MMU 001-0 is not located in such a manner for miners to use effectively to escape." Sec. Ex. 2.

[5] The Judge did not define what was meant by the phrase "similar standard," nor did the decision identify which violations might meet that criteria. The certified Violations History Report revealed that Consol was cited for one violation of 30 C.F.R. § 75.380(d)(7)(iv) (the same lifeline standard at issue here), as well as one violation of 30 C.F.R. § 75.380(d)(1) (requiring maintenance of the escapeway to avoid tripping hazards). Sec. Ex. 4.

Vargo testified that the condition had existed for eight days prior to the citation. Tr. 70. He found that three shifts of miners would have traveled through the number two track entry up and back each day while the condition existed. Tr. 69. MSHA proposed a penalty of $768.

B. The Judge's Decision

In affirming the violation, the Judge concluded that, despite the possible 54-inch extension in the lifeline, it was not "located in such a manner for miners to use effectively to escape." The Judge credited Vargo's testimony that under emergency circumstances and with limited visibility, the protruding hoses posed a tripping hazard that could cause injury. 43 FMSHRC at 131-32.

The Judge rejected Consol's argument that MSHA cited the wrong standard. *Id*. at 132-33. The Judge's holding was limited to "conditions that specifically relate[d] to the lifeline and whether miners could have used it as an effective means of escape." *Id*. at 132.

The Judge also affirmed the S&S designation associated with the citation. *Id*. at 133-35. In doing so, he reiterated several of the same facts supporting the existence of the violation. He found that during an evacuation emergency with limited visibility, a slip, trip, and fall hazard was "particularly" likely. *Id*. at 134. The Judge relied on testimony from both Vargo and the Consol witnesses explaining the difficulty miners have in maneuvering under limited visibility conditions. *Id*. He found that the fall injuries from a tripping hazard were "reasonably likely," citing to several examples of "strains, sprains, and fractures." *Id*. at 134-35. The Judge also noted that "fallen miners or equipment dislodged during the fall could become obstacles to others attempting to escape, increasing the likelihood of an injury occurring." *Id*. at 135. Finally, the Judge held that the trip-and-fall injuries would be reasonably likely to be serious, because of the fall itself, as well as it potentially delaying evacuation of other miners or creating a need for additional rescue efforts. *Id*.

II.

Disposition

A. We Affirm the Judge's Finding of a Violation.

The mandatory safety standard at 30 C.F.R. § 75.380(d)(7)(iv) requires lifelines to be "[l]ocated in such a manner for miners to use effectively to escape." The Judge found that the lifeline was located directly above hydraulic hoses which protruded into the escapeway and, therefore, the location of the lifeline would prevent miners from effectively escaping. 43 FMSHRC at 131-32.

We affirm the Judge's finding of a violation; the plain language of the standard prohibits locating the lifeline above hazards which impede effective escape. Where the language of a regulatory provision is clear, the terms of that provision must be enforced as they are written unless the regulator clearly intended the words to have a different meaning or unless such a

meaning would lead to absurd results.[6] *See Dynamic Energy, Inc*., 32 FMSHRC 1168, 1171 (Sept. 2010) (citations omitted). The Commission has noted that "[s]ection 75.380 contains extensive requirements as to the location and physical attributes of escapeways so that miners, including those disabled in a mine accident and needing assistance, can quickly and safely get from the start of the escapeway to the surface."[7] *The American Coal Co*., 29 FMSHRC 941, 948 (Dec. 2007).

The undisputed record evidence establishes that the lifeline was located directly above hydraulic hoses which extended out into the escapeway. 43 FMSHRC at 122-23, citing to Tr. 27, 33-43, 57-58 64, Sec. Ex. 2; CP Ex. 8A-8D (the photographs). The hoses extended out into the escapeway up to 43 inches laterally and up to 38 inches above the mine floor. The Judge found that the hoses were trip and fall hazards, which may cause injuries to miners or delay the evacuation of miners in an emergency situation. 43 FMSHRC at 122, 131-33, 135 (crediting the testimony of Inspector Vargo). In an emergency situation the mine may be filled with smoke, limiting visibility. Accordingly, the Judge concluded the location of the lifeline over trip and fall hazards prevented miners from effectively escaping the mine. We affirm the Judge's finding of a violation because it is supported by substantial evidence.[8]

Consol's arguments that the Judge erred in affirming a violation of the mandatory safety

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[6] MSHA promulgated the emergency mine evacuation safety standards at section 75.380 as a final rule in December 2006. Emergency Mine Evacuation, 71 Fed. Reg. 71430 (2006). The rule was promulgated after Congress amended the Mine Act, enacting the Mine Improvement and New Emergency Response Act of 2006 ("MINER Act"), in response to three multiple-fatality mine disasters. Pub. L. No. 109–236, 120 Stat. 493 (2006). The MINER Act, in part, required operators to provide flame resistant and directional lifelines in escapeways "to enable evacuation." Pub. L. No. 109–236, 120 Stat. 493 (2006), *codified at* 30 U.S.C. § 876(b)(2)(E)(iv).

[7] In reaching his conclusion of a violation, the Judge referenced two Commission cases, *Black Beauty Coal Co*, 36 FMSHRC 1121 (May 2014) and *American Coal Co.*, 29 FMSHRC 941 (Dec. 2007). 43 FMSHRC at 132. Based on those cases, the Judge determined that the Commission has interpreted "effectively" to mean "quickly and safely" for purposes of section 75.380(d)(7). *Id.* While these prior decisions reasonably suggest that safe and quick egress are appropriate considerations in the context of lifeline and other emergency provisions, Commission precedent has not narrowly defined "effective" to mean "quick and safe." Nor do we find it necessary or appropriate to adopt such a narrow interpretation here.

[8] "Substantial evidence" only requires "such relevant evidence as a reasonable mind might accept as adequate to support [the Judge's] conclusion." *Rochester & Pittsburgh Coal Co*., 11 FMSHRC 2159, 2163 (Nov. 1989) (*quoting Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). The Commission has long held that a Judge's credibility determination is entitled to great weight and may not be overturned lightly. *See Farmer v. Island Creek Coal Co*., 14 FMSHRC 1537, 1541 (Sept. 1992); *Penn Allegh Coal Co*., 3 FMSHRC 2767, 2770 (Dec. 1981); *Consol Pennsylvania Coal Co., LLC*, 43 FMSHRC 145, 151 (Apr. 2021).

standard at section 75.380(d)(7)(iv) are unpersuasive. Consol asserts that the safety standard only requires the lifeline to be in an accessible location, e.g., accessible height, accessible position, etc.[9] Consol contends that the standard's requirements do not address hazards or obstructions. PDR at 14-18.[10]

We reject Consol's interpretation as it fails to account for the standard's plain language directive to select an *effective* location. A lifeline located above hazards and obstructions impedes escape. 43 FMSHRC at 132 ("even if miners never lost contact with the lifeline, its position would have required escaping miners to identify the protruding hoses as an obstacle and maneuver around them in order to escape quickly and safely."); *see also Cumberland Coal Res*., 33 FMSHRC 2357, 2361 (Oct. 2011), *aff'd* 717 F.3d 1020 (D.C. Cir 2013) (the "suspension of the lifelines by numerous J-hooks above cables and above track equipment did not comply with [the safety standard]."). Obstructions – whether necessary equipment or otherwise – must not impede effective use of the lifeline pursuant to section 75.380(d)(7)(iv).

B. <u>The Judge Properly Declined to Rely on any Abatement Considerations in Finding the Violation.</u>

To abate the citation, the lifeline was re-routed from the "walkway" side of the "mule train" to the "tight side" of the "mule train." Consol argues that its original lifeline placement was appropriate as compared to what Consol states is the less-safe abatement method of hanging the lifeline on the "tight side" of the mule train.[11]

Section 104(a) of the Act provides that inspectors issue citations for mandatory health and safety standards, and then separately notes that "the citation shall fix a reasonable time for the abatement of the violation." 30 U.S.C. § 814(a). Whether or not abatement occurs has no bearing on the underlying violation, but rather on whether the operator is subsequently issued a failure to abate order under section 104(b). *See Western Industrial, Inc*., 25 FMSHRC 449, 453 (Aug. 2003) (holding the abatement method is irrelevant in determining whether violation

[9] While Consol argues that miners would not lose contact with the lifeline due to its lowered height and "accessibility," it concedes that this standard covers a lifeline's "location." Section 75.380(d)(7)(iv) is not solely limited to "height" and "accessibility."

[10] Nor are we persuaded by Consol's additional contentions that the Judge erred in affirming the citation because a different subsection of section 75.380 also may prohibit locating the lifeline near tripping hazards, and that the Judge's finding of a violation is unsupported because the escapeway was clear enough that it could have passed a stretcher test. *See* PDR at 20-22. Whether or not a different subsection of the standard would have also been applicable, has no bearing on whether the Secretary established a violation of section 75.380(d)(7)(iv) in this proceeding. Whether the escapeway met MSHA's separate stretcher clearance standard under 30 C.F.R. § 75.380(d) does not mean that it met the lifeline standard.

[11] While (as explained below) abatement and occurrence of a violation are distinct issues, we note that it is contrary to the fundamentals of safety for any abatement, regardless of who chose it or how it was implemented, to expose miners to a *worse* condition due to increased obstructions creating potential hazards.

occurred); *Bluestone Coal Corp*., 19 FMSHRC 1025, 1030 (Jun. 1997) ("We agree with the Secretary that the abatement requirements are irrelevant to the issue of whether the operating speed of Payne's truck violated the standard."). Simply put, whether and how a violation is abated is irrelevant to whether a violation occurred in the first place.

C. The Judge Properly Found the Violation to be S&S.

The "significant and substantial" terminology is taken from section 104(d) of the Mine Act, 30 U.S.C. § 814(d), and refers to more serious violations. A violation is S&S if, based on the particular facts surrounding the violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature. *See Cement Div., Nat'l Gypsum Co.*, 3 FMSHRC 822, 825 (Apr. 1981). In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (Jan. 1984), the Commission further explained:

> In order to establish that a violation of a mandatory safety standard is significant and substantial under *National Gypsum*, the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard -- that is, a measure of danger to safety -- contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

Id. at 3-4 (footnote omitted); *accord Buck Creek Coal, Inc. v. MSHA*, 52 F.3d 133, 135 (7th Cir. 1995); *Austin Power, Inc. v. Sec'y of Labor*, 861 F.2d 99, 103 (5th Cir. 1988) (approving *Mathies* criteria).

The Commission has emphasized that it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. *U.S. Steel Mining Co*., 6 FMSHRC 1834, 1836 (Aug. 1984). The application of step two of the *Mathies* test requires a determination of "whether [the] hazard was reasonably likely to occur given the particular facts surrounding this violation." *Newtown Energy, Inc.*, 38 FMSHRC 2033, 2041 (Aug. 2016). Furthermore, the Commission has emphasized that in evacuation standards, the third and fourth steps of *Mathies* should be evaluated in the context of an emergency. *Cumberland*, 33 FMSHRC at 2370, *aff'd* 717 F.3d 1020 (D.C. Cir. 2013). With respect to the third step, an evaluation of the reasonable likelihood of injury should be made assuming continued normal mining operations. *See U.S. Steel Mining Co*., 7 FMSHRC 1125, 1130 (Aug. 1985).

Here, the lifeline was hung from the roof down the middle of the walkway, attached to roof bolts at various distances, allowing it to break away in an emergency. Nine hydraulic hoses extended out of a pump car through a manifold at the subject location. The lifeline was hung directly over those hoses with no ladders, stairways, ramps, or similar facilities present. While this condition existed, the testimony was that three shifts of miners would have traveled through the area up and back each day for a total of eight days. There was testimony that under emergency conditions, miners would be walking quickly and may not be able to see where they are going, particularly in the event of smoke. The Inspector testified to miners having difficulty maneuvering in a smoke-filled environment since their headlamps, flashlights, and reflectors

would not help with such limited visibility. Consol witnesses acknowledged that such limited visibility would create difficulty seeing obstacles in the mine.

As discussed, the first step of *Mathies* was met since substantial evidence plainly supports a violation—the location of the lifeline led miners directly to an unaddressed obstruction.

Regarding the second step of *Mathies*, the obstruction created "a discrete safety hazard—that is, a measure of danger to safety—contributed to by the violation." *Mathies*, 6 FMSHRC at 3-4. Assuming an emergency evacuation, there was a likelihood that miners following the lifeline into the path of the hoses would be tripped up and impeded in efforts to evacuate the area, given the existence of the violation and continued normal mining operations. The Judge found that even if it were possible for miners to pull the lifeline around the hoses, miners would need to "identify the protruding hoses as an obstacle and maneuver around them." 43 FMSHRC at 132. Substantial evidence supports the ALJ's conclusions regarding the cited violation's contribution to a discrete safety hazard.

Having determined that the second step of *Mathies* was met, we now turn to the third step. In the third and fourth steps, the violation is no longer the explicit concern of the analysis; the question instead is whether the previously identified hazard is reasonably likely to result in a reasonably serious injury. *See Cumberland Coal Res., LP*, 33 FMSHRC 2357, 2365, 2370 (Oct. 2011), *aff'd*, 717 F.3d 1020 (D.C. Cir. 2013) (*citing Musser Eng'g, Inc. & PBS Coals, Inc.*, 32 FMSHRC 1257, 1280-81 (Oct. 2010). Substantial evidence supports the ALJ's finding of a reasonable likelihood that the hazard identified in the second step would have resulted in an injury of a reasonably serious nature, under the third and fourth step of *Mathies*. The Judge cited to other cases where injuries resulted from tripping and falling. 43 FMSHRC at 134-35.[12] The Judge also found that any delay in escaping a mine during an emergency is likely to result in serious injury or death.

Consol argues that not every emergency evacuation citation should be S&S. We certainly agree. *Cumberland*, 33 FMSHRC at 2369 ("Because the particular facts in a case may not establish that a violation of an evacuation standard contributes to a hazard which is reasonably likely to result in injury, not every violation of an evacuation standard will be S&S.") *citing Rushton Mining Co*., 11 FMSHRC 1432, 1436 (Aug. 1989) (reasoning that the Secretary failed to establish that an escapeway violation contributed to the existence of a "discrete safety hazard" in an emergency situation requiring evacuation in view of the specific facts of the violation). In contending that the violation was not S&S, however, Consol does not argue that the Judge misapplied the law, but simply reiterates its argument that no violation

[12] References were made to *Maple Creek Mining, Inc*., 27 FMSHRC 555, 562-63 (Aug. 2005) (affirming a Judge's finding that a trip and fall in a mucky escapeway would lead to leg or back injuries); *Buffalo Crushed Stone Inc*., 19 FMSHRC 231, 238 n.9 (Feb. 1997) (finding that slipping on a walkway would reasonably result in head injuries or finger or wrist fractures); *S. Ohio Coal Co*., 13 FMSHRC 912, 918 (Jun. 1991) (affirming a Judge's conclusion that a trip-and-fall accident would result in injuries such as "sprains, strains, or fractures").

occurred. For instance, Consol repeats its view that miners would "never lose contact with the lifeline," that miners could use the lifeline to effectively escape and that rock dust bags mitigated the hazard the hoses posed. PDR at 30-32. Nevertheless, the path of the lifeline led directly to the hoses, not the rock dust bags. Miners would still be led directly to an obstruction, and not to the means to navigate that obstruction.

Consol claims that "the vast majority of falls cause no injuries," arguing that gloves would protect miners. Whether or not that may be true as a statistical matter, this case turns upon the circumstances of miners attempting to escape during an emergency. *See, e.g., Knox Creek Coal Corp*., 36 FMSHRC 1128, 1133 (May 2014), *aff'd*, 811 F.3d 148 (4th Cir. 2016) (holding that the Secretary was not required to produce quantitative evidence of the frequency of hazardous malfunctions for S&S). No rationale is provided as to how gloves would protect miners from serious injuries to the hands (or the body, as a whole) when encountering obstructions during an emergency.

Finally, Consol claims that the Judge misstated the facts in asserting that "the location of the pump car constantly changes," and that there is "simply no evidence of this in the record." CP Reply. Br. at 13.[13] Consol asserts that although the pump car retreats as the longwall retreats, the "basic *setup* does not change – the pump car is parked at a crosscut so the hydraulic lines can go through the crosscut." *Id*. It claims that the "mule train and pump car are always in this position relative to the section." *Id*. Based on this assertion, Consol claims that the trained miners would take appropriate precautions to avoid the protruding hoses, in the event of an emergency.

Commission precedent holds that miner precaution is not a relevant consideration under the *Mathies* test. *Sec'y of Labor v. Consolidation Coal Co*., 895 F.3d 113, 118 (D.C. Cir. 2018); *Newtown Energy, Inc*., 38 FMSHRC 2033, 2044 (Aug. 2016); *Eagle Nest, Inc*., 14 FMSHRC 1119, 1123 (July 1992). Furthermore, while most of the miners had worked there consistently for a lengthy period, not all of them did – and of course additional turnover can always occur. Tr. 261-62. There is also evidence that contractors may have been working in the section. Tr. 262. Any miners new to the section, or any of these contractors, would necessarily have had less experience with the environment of the section to know how to react when escaping the mine in an emergency scenario—particularly when utilizing a lifeline leading directly to the obstruction of the protruding hoses.

Accordingly, we affirm the Judge's S&S determination.

[13] Of record testimony, however, is Vargo's disagreement with the assertion that the pump car always ends up in a crosscut. Tr. 102-03.

III.

Conclusion

For the reasons stated above, we affirm the Judge's finding that the operator violated the lifeline standard in 30 C.F.R. § 75.380(d)(7)(iv) and the S&S determination.

Mary Lu Jordan, Chair

William I. Althen, Commissioner

Marco M. Rajkovich, Jr., Commissioner

Timothy J. Baker, Commissioner

Distribution:

Winfield Wilson
Division of Mine Safety and Health
U.S. Department of Labor, Office of the Solicitor
201 12th Street South – Suite 401
Arlington, VA 22202-5450
wilson.winfield@dol.gov

James P. McHugh
Hardy Pence PLLC
P.O. Box 2548
Charleston, WV 25329
jmchugh@hardypence.com

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
U.S. Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Scott.Emily.T@dol.gov

April Nelson, Esq.
Associate Solicitor
U.S. Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Melanie Garris
Civil Penalty Compliance Division Chief
U.S. Department of Labor, Office of Assessments
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@dol.gov

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520 N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Administrative Law Judge John Lewis
Federal Mine Safety & Health Review Commission
Office of the Chief Administrative Law Judge
7 Parkway Center
875 Greentree Road, Suite 290
Pittsburgh, PA 15220
jlewis@fmshrc.gov