FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	Docket No. YORK 2018-31-M
v.	:	
RICHMOND SAND & STONE, LLC	:	

BEFORE: Rajkovich, Chairman; Jordan, Young, Althen, and Traynor, 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. (2012) ("Mine Act" or "Act"). The only issue before the Commission is a question of regulatory interpretation: whether a fatal heart attack unrelated to work activities is an "accident" for purposes of the Secretary of Labor's reporting requirements at 30 C.F.R. Part 50.

The single citation at issue alleges that Richmond Sand and Stone ("Richmond") failed to timely notify the Mine Safety and Health Administration ("MSHA") of a fatal heart attack. The relevant standard requires operators to "immediately contact MSHA at once without delay and within 15 minutes . . . once the operator knows or should know that an accident has occurred involving: [a] death of an individual at the mine." 30 C.F.R. § 50.10(a).

The Administrative Law Judge found that the plain language of both the Mine Act[1] and the Secretary's regulations require any death at a mine to be reported immediately and within 15 minutes, regardless of cause. Because a death occurred on-site and the operator did not report it until the next day, the Judge found a violation of section 50.10(a). 41 FMSHRC 12, 16-19 (Jan. 2019) (ALJ). Richmond appeals, arguing that deaths due to natural causes do not fall within the ordinary meaning of "accident" and therefore are not immediately reportable accidents for purposes of section 50.10(a).

I.

Factual and Procedural Background

The material facts are undisputed. An excavator operator at the Richmond Sand and Stone Mine was found slumped over his controls at approximately 2:19 p.m. on October 2, 2017.

[1] *See* 30 U.S.C. §§ 802(k), 813(j); n.3, *infra.*

Nearby miners called 911 and attempted resuscitation. An ambulance squad arrived within five minutes and attempted further resuscitation. All attempts were unsuccessful. Richmond's Health and Safety Director, Peter Robbins, was informed of the occurrence at 2:34 p.m. The miner was transported to the hospital, where he was pronounced deceased at 3:35 p.m. Robbins called MSHA to report the death at 11:21 a.m. the following day. The parties stipulate that the miner died of a heart attack and not as the result of any activity in the course of his employment.

The parties filed cross-motions for Summary Decision, and the Judge granted the Secretary's motion. Relying on the definitions of "accident" in the Mine Act and Part 50, the Judge found that section 50.10(a) unambiguously requires the immediate reporting of any death at a mine. 41 FMSHRC at 16. Accordingly, the Judge found that Richmond failed to timely notify MSHA of an on-site death in violation of the standard, and assessed the minimum $5,000 penalty under section 110(a)(2) of the Mine Act. *Id.* at 17-19. The Judge noted that the Commission ALJ cases cited by Richmond (discussed *infra*) were distinguishable because they involved non-fatal heart attacks cited as reportable injuries rather than deaths. *Id.* at 16. The Judge also rejected Richmond's reliance on ordinary meaning in light of the plain language of the Mine Act and Part 50. *Id.* at 17 n.5.

On appeal, Richmond argues that section 50.10(a) does not require the reporting of fatal heart attacks (or of any deaths due to natural causes) because such deaths do not fall within the ordinary meaning of "accident." According to Richmond, "accident" is not defined in Part 50; therefore, the ordinary meaning should apply. Richmond also suggests that defining a natural cause death as an accident is contrary to the purpose of the Act and that the Secretary's interpretation of the regulation causes confusion for operators.

The Secretary counters that the plain language of Part 50 defines "accident" to include any death at a mine regardless of cause, that ordinary meanings and dictionary definitions are not relevant where the term is expressly defined by the regulation, and that the cited ALJ cases are inapposite as they do not involve the death of a miner. The Secretary adds that if the language were ambiguous, his interpretation would be reasonable and consistent with the purpose of the Act, which delegates to the Secretary the authority to determine the cause of accidents.

II.

Disposition

Richmond was cited for failing to notify MSHA within 15 minutes once it knew or should have known "that an accident has occurred involving: [a] death of an individual at the mine." 30 C.F.R. § 50.10(a). It is undisputed that a death occurred on-site, and that Richmond did not notify MSHA until almost a day after becoming aware of the death. The case turns solely on whether the death was an "accident" for purposes of section 50.10(a). As discussed below, we find that the plain language of the Secretary's Part 50 reporting regulations defines *all* on-site deaths as immediately reportable accidents. Accordingly, Richmond violated section 50.10(a) by failing to timely notify MSHA of a fatal heart attack at the mine.

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. *See Dynamic Energy, Inc.*, 32 FMSHRC 1168, 1171 (Sept. 2010) (citations omitted). In the event that the language is

ambiguous, deference to the Secretary's interpretation may be appropriate if the interpretation is reasonable, authoritative, within the Secretary's expertise, and reflects fair and considered judgment. However, questions of deference do not arise unless the regulation is determined to be genuinely ambiguous after all the traditional tools of construction are exhausted. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415-19 (2019). Here, the relevant regulatory language is clear and unambiguous.

The Secretary's Part 50 reporting regulations address three types of events—accidents, occupational injuries, and occupational illnesses. 30 C.F.R. § 50.1. While operators must report all three types of events, "accidents" as defined in the regulation are subject to the more stringent requirements of immediate reporting, investigation, and scene preservation. 30 C.F.R. §§ 50.10-50.12. Contrary to Richmond's argument, 30 C.F.R. § 50.2 clearly defines the three types of events, including "accidents." Those definitions contain a clear and specific definition of an "accident:"

> Definitions.
> . . .
> (h) Accident means:
>
> (1) A death of an individual at a mine;
> (2) An injury to an individual at a mine which has a reasonable potential to cause death;
> (3) An entrapment of an individual for more than 30 minutes or which has a reasonable potential to cause death;
> . . . .

30 C.F.R. § 50.2 (emphasis added).

In turn, Section 50.10 requires immediate notification of an "accident." Indeed, it expressly requires notification of a death of an individual at a mine:

> The operator shall immediately contact MSHA at once without delay and within 15 minutes . . . once the operator knows or should know that an accident has occurred involving:
>
> (a) A death of an individual at the mine;
> (b) An injury of an individual at the mine which has a reasonable potential to cause death;
> (c) An entrapment of an individual at the mine which has a reasonable potential to cause death; or
> (d) Any other accident.

30 C.F.R. § 50.10 (emphasis added).

It is difficult to imagine a stronger case for plain meaning than where the regulation itself provides and then uses a definition.[2] Had the drafters wished, they could have excluded natural deaths or otherwise indicated an intent to limit the scope of the term "accident" to deaths resulting from mining activities. They did not qualify or limit the unmistakably clear word "death." Instead, the *only* qualifier provided by the drafters is that the death must occur "at the mine." All on-site deaths are thus reportable accidents pursuant to the plain language in Part 50.[3]

Richmond's claim that the definition in section 50.2(h) does not actually define "accident" clearly fails. "Accident" *is* defined explicitly. 30 C.F.R. § 50.2(h). Even were that definition inconsistent with ordinary usage, the express definition in the regulation takes precedence. *Island Creek Coal Co.*, 20 FMSHRC 14, 19 (Jan. 1998) ("*In the absence of an express definition* . . . the Commission has relied on the ordinary meaning of the word to be construed.") (emphasis added); *cf.* 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction §§ 47:7, 47:28 (7th ed. 2018) (Statutory definitions are usually binding "even if the definition varies from a term's ordinary meaning.")

Moreover, requiring the reporting of all deaths serves an important purpose that is consistent with the Secretary's obligations under both Part 50 and the Mine Act. The purpose of Part 50 is to "implement MSHA's authority to investigate, and to obtain and utilize information pertaining to, accidents, injuries, and illnesses occurring or originating in mines." 30 C.F.R. § 50.1; *see also* 30 U.S.C. § 813(a) (grant of authority). This serves the "urgent need to provide more effective means and measures for improving the working conditions and practices in . . . mines in order to prevent death and serious physical harm." 30 U.S.C. § 801(c). In other words, reporting requirements allow the Secretary to gather and analyze data that will improve miner safety. *See* Mine Accident, Injury and Illness Reports, 44 Fed. Reg. 52,827, 52,827 (Sept. 11, 1979) (Part 50 "was intended to achieve the statutory objective of acquisition and analysis of accident, injury and illness data for the purpose of reducing mine safety and health hazards").

In order to determine whether steps can be taken to prevent future occurrences, the Secretary must be able to gather complete and accurate information regarding the causes of deaths at mining sites. *See* 30 U.S.C. § 813(a) (directing the Secretary to obtain information related to "the causes of accidents, and the causes of diseases and physical impairments"). The cause of a death is not always immediately obvious; it may not initially be clear whether the event resulted from a factor within the operator's control.

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[2] The interpretive significance of definition sections has been recognized in the statutory context. *Cf.* 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 47:7 (7th ed. 2018) ("When a legislature does define statutory language, its definition usually is binding . . . . A statute itself furnishes the best evidence of its own meaning."). Logically, a regulation itself would also provide the most direct evidence of its own intended meaning.

[3] The Judge also relied on text of the Mine Act that defines accident to include "injury to, or death of, any person." 30 U.S.C. § 802(k).

Requiring immediate notification of *all* accidents as defined in section 50.2, including all deaths, preserves evidence, thereby ensuring that the Secretary will have an opportunity to determine the cause.[4] This promotes the accuracy and efficacy of the reporting program.[5] The Secretary can easily exclude data points ultimately found to be irrelevant. The Secretary cannot include relevant data points that are not reported. The plain text of the regulation is consistent with the purpose of Part 50.

Richmond cites two inapposite ALJ decisions for the proposition that heart attacks are not reportable accidents. *Hanson Aggregates Midwest*, 35 FMSHRC 2412, 2416 (Aug. 2013) (ALJ); *Vulcan Constr. Materials LP*, 35 FMSHRC 2868, 2874 (Aug. 2013) (ALJ). Both decisions found that *non-fatal* heart attacks are not accidents pursuant to section 50.10(b), because they are not *injuries* as defined in section 50.2(h)(2). The issue here is whether a *fatal* heart attack must be reported under section 50.10(a) because it is a *death at a mine* as clearly defined in section 50.2(h)(1).

Notably, both decisions cited by Richmond recognize this distinction and explicitly state that a fatal heart attack would be an immediately reportable accident. *Hanson*, 35 FMSHRC at 2416 n.10; *Vulcan*, 35 FMSHRC at 2885-86. Other Commission Judges have implicitly held that on-site fatalities due to natural causes are immediately reportable accidents under section 50.10(a). *E.S. Stone & Structure*, 33 FMSHRC 515, 520 (Jan. 2011) (ALJ); *Premier Chemicals LLC*, 29 FMSHRC 686, 691-92 (Aug. 2007) (ALJ).[6]

As a final matter, to the extent Richmond's claim of "confusion to mine operators" may be interpreted as a notice argument (Reply Br. at 2), section 50.10(a) provides adequate notice of its objectives and requirements. Where the meaning of a standard is clear from the regulation's

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[4] Requiring all deaths to be reported will inevitably result in the reporting of some deaths that are not related to mining activities. However, this should not impede the accuracy of the data, as the irrelevant reports can simply be excluded from the analysis. *See* MSHA, *Non-chargeable Mining Deaths*, https://arlweb.msha.gov/Fatals/NonChargeables/NonChargeableFatalshome.asp (last visited Aug. 7, 2019).

[5] The Commission and the D.C. Circuit have recognized a similar interest in the context of reportable injuries under 30 C.F.R. § 50.20. The Commission held that all on-site injuries are reportable regardless of causal nexus, noting that the Secretary has an interest in compiling all on-site injury data in order to determine which injuries may be prevented. *Freeman United Coal Mining Co.*, 6 FMSHRC 1577, 1579, 1579 n.3 (July 1984). The D.C. Circuit similarly found it "not unreasonable" for the Secretary to require the reporting of all on-site non-trivial injuries "in order to gather information necessary to carry out his rulemaking function under the Act." *Energy West Mining Co. v. FMSHRC*, 40 F.3d 457, 461 (D.C. Cir. 1994).

[6] Both decisions turn on whether the operator's notification was timely. *E.S. Stone*, 33 FMSHRC at 520 (finding a violation where the operator failed to timely report a fatal heart attack); *Premier Chemicals*, 29 FMSHRC at 691-92 (finding no violation where the operator took reasonable time to investigate before reporting a death due to natural causes). This requires an implicit assumption that the fatalities were subject to the immediate notification requirement.

plain language, it follows that the standard provides adequate notice to operators. *See, e.g.*, *Dynamic Energy, Inc.*, 32 FMSHRC at 1172; *Jim Walter Resources, Inc.*, 28 FMSHRC 983, 988 n.6 (Dec. 2006). Here, Part 50 explicitly defines "a death of an individual at a mine" as an accident, and all accidents as immediately reportable. 30 C.F.R. §§ 50.2(h)(1), 50.10. Given the plain language of Part 50, the obvious purpose of the reporting requirement, and Commission case law, a reasonably prudent person in the mining industry clearly had fair notice that all on-site deaths are immediately reportable accidents for purposes of Part 50.

III.

Conclusion

For the foregoing reasons, we find that the plain language of MSHA's reporting regulations at 30 C.F.R. Part 50 unambiguously defines any on-site death as an "accident" subject to the immediate reporting requirement in section 50.10(a). Accordingly, Richmond's failure to timely notify MSHA of a fatal heart attack at the mine site violated the standard. The Judge's decision is affirmed.

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