

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

January 31, 2000

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket Nos. SE 99-6-R
ADMINISTRATION (MSHA) : through 99-10-R
 : and 99-66
v. :
 :
JIM WALTER RESOURCES, INC. :

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

DECISION

BY THE COMMISSION:

This case involves contest proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act” or “Act”). At issue is whether the Central Supply Shop operated by Jim Walter Resources, Inc. (“JWR”) is a “coal or other mine” under section 3(h)(1) of the Act, 30 U.S.C. § 802(h)(1).¹ JWR refused to allow the Department of Labor’s Mine Safety and Health Administration (“MSHA”) to conduct an inspection of the premises during September 1998. Subsequently, MSHA issued several citations that are the subject of this

¹ Section 3(h)(1) provides:

“[C]oal or other mine” means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, 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 in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

proceeding. Administrative Law Judge Jerold Feldman found that the Central Supply Shop was not a “mine” and dismissed the proceedings against JWR. 21 FMSHRC 494 (May 1999) (ALJ). For the reasons that follow, we reverse the judge’s decision and remand for reassessment of penalties.

I.

Factual and Procedural Background

JWR operates four underground coal mines in a two-county area in Alabama. 21 FMSHRC at 496. In one of those counties, JWR also operates its Central Machine Shop and Central Supply Shop. *Id.* The two facilities, which are adjacent to one another, are not on the property of any one of the coal extraction sites but are located 1 mile from the closest site, 6 miles from two of the sites, and 25 miles from the farthest site. *Id.*

The main function of the Central Machine Shop is to repair and maintain electrical and mechanical equipment used at the nearby JWR mines. *Id.* at 497. Typical jobs include the rebuilding of longwall stageloaders, continuous mining machines, ram cars, scoops, and roof bolters, overhauling longwall shields, and fabricating chutes and hoppers for coal preparation plants at the mines. *Id.* JWR employees deliver equipment from the mines to the Central Machine Shop using JWR vehicles. *Id.* The Central Machine Shop provides its services only to JWR’s mines and related facilities. *Id.*

MSHA has inspected the Central Machine Shop annually since 1982, and JWR paid penalties for 43 violations as a result of such inspections. *Id.* at 496-97. JWR has complied with the Part 50 reporting requirements with regard to that shop. *Id.* at 497. The Central Machine Shop also has a mine identification number. *Id.* at 496.

The primary function of the Central Supply Shop is to warehouse materials and supplies used in JWR’s nearby mines, preparation plants, and the adjacent Central Machine Shop. *Id.* at 498. Central Supply does not sell any of these materials to the public. *Id.* The value of the inventory in the Central Supply is approximately \$12 million, which includes about \$7 million in supplies on consignment. *Id.* Until such time as the goods are used, the vendor has the right to retrieve the goods, although this rarely occurs. *Id.*

Workers at the Central Supply Shop deliver materials and supplies to JWR mines in a company-owned flatbed truck. *Id.* Over 90 percent of inventoried supplies are used directly in JWR’s mining operations. *Id.* Supplies include everything needed to support JWR’s mines, including hard hats, safety glasses, nails, conveyor belts, belt structures, and oil filters. *Id.* The majority of items on the active inventory list are parts for maintaining and repairing machinery and equipment. *See S. Br. in Support of Juris., Ex. B.*

Before the incident at issue in this case, MSHA had not previously inspected the Central Supply Shop. 21 FMSHRC at 497. Nor had JWR secured a mine identification number for the

shop. *Id.* JWR employs 16 salaried and 7 hourly paid workers at the Central Supply Shop. *Id.* at 498. Although the regular hours of the Central Supply Shop are Monday through Saturday, on-call personnel are available to staff the facility around the clock, seven days a week. *Id.* at 499.

On September 23, 1998, MSHA issued five citations for alleged violations in the Central Machine Shop. *Id.* at 501; Order Correcting Sum. Dec. at 2. In addition, MSHA issued three citations for alleged violations in the Central Supply Shop, including JWR's refusal to allow MSHA entry to conduct an inspection, JWR's failure to provide a fire extinguisher on a fork lift, and its failure to have an audible horn on the fork lift. 21 FMSHRC at 502; Order Correcting Sum. Dec. at 2. JWR contested the citations on the basis that neither facility was a "mine" within the meaning of the Act. 21 FMSHRC at 494.

With regard to the Central Machine Shop, the judge regarded as controlling the Commission's decision in *U.S. Steel Mining Co.*, 10 FMSHRC 146 (Feb. 1988), in which the Commission held that a centrally located repair shop was covered by MSHA's surface mine regulations. 21 FMSHRC at 500-01. In addition, the judge considered it significant that maintenance of mine equipment was an integral part of the mining process and was one of the activities generally performed by mine operators. *Id.* at 501.² Thus, the judge held that the Central Machine Shop was subject to Mine Act jurisdiction. *Id.*

In addressing the Central Supply Shop, the judge first noted that MSHA's enforcement history was "inconsistent" because the agency had not previously sought to assert jurisdiction. *Id.* Further, the judge noted that, while the Mine Act's coverage is broad, in order to qualify as a "miner" under section 3(g) of the Act, 30 U.S.C. § 802(g),³ one must work in a mine. *Id.* at 501-02 (quoting *National Indus. Sand Ass'n v. Marshall*, 601 F.2d 689, 704 (3d Cir. 1979)). The judge reasoned that some activities might be covered, if on mine property, but would not be covered if outside mine property. *Id.* at 502 (citing *Oliver M. Elam, Jr., Co.*, 4 FMSHRC 5 (Jan. 1982)). Finally, the judge noted that individuals performing supply activities were not exposed to hazards normally associated with mining. *Id.* Therefore, the judge concluded that the Central Supply Shop was not "a coal or other mine" under section 3(h) of the Mine Act. *Id.*

II.

Disposition

The Secretary argues that the Central Supply Shop is a mine under the plain language of section 3(h)(1) of the Mine Act. S. PDR at 7-9.⁴ Alternatively, the Secretary argues that her

² JWR has not appealed the judge's conclusion that the Central Machine Shop is a mine.

³ Section 3(g) defines "miner" as "any individual working in a coal or other mine."

⁴ The Secretary designated her petition for review as her brief.

interpretation of the Act is permissible and consistent with Congressional intent that the Act's definition of a mine be expansively interpreted. *Id.* at 9-12. The Secretary asserts that the judge's reliance on several cases was misplaced, in particular his analogy to cases interpreting who is a "miner." *Id.* at 12-15 & n.4. Finally, the Secretary contends that her interpretation is entitled to deference even though MSHA had not previously sought to assert jurisdiction over the Central Supply Shop. *Id.* at 16-18.

JWR's primary argument on review is that the judge's findings are supported by substantial evidence. JWR Br. at 8-9. It further argues that the judge's decision is in accordance with Commission precedent, because there are no cases on point in the Secretary's favor. *Id.* at 10. Finally, JWR argues that the judge's legal conclusions are correct. More particularly, JWR argues in support of the judge's conclusion that the Mine Act's definition of a "mine" does not apply to the Central Supply Shop because the facilities and equipment there are not used in the work of preparing coal. *Id.* at 10-11. JWR also contends that the judge correctly concluded that the Secretary's position is not reasonable because the activities performed in the Central Supply Shop are not of a type normally performed in coal mines. *Id.* at 11.

The first inquiry in statutory construction is "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984); *Thunder Basin Coal Co.*, 18 FMSHRC 582, 584 (Apr. 1996). If a statute is clear and unambiguous, effect must be given to its language. *See Chevron*, 467 U.S. at 842-43; *accord Local Union 1261, UMWA v. FMSHRC*, 917 F.2d 42, 44 (D.C. Cir. 1990). In ascertaining the plain meaning of the statute, courts utilize traditional tools of construction, including an examination of the "particular statutory language at issue, as well as the language and design of the statute as a whole," to determine whether Congress had an intention on the specific question at issue. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *Local Union 1261, UMWA v. FMSHRC*, 917 F.2d at 44; *Coal Employment Project v. Dole*, 889 F.2d 1127, 1131 (D.C. Cir. 1989).

The definitions of coal mine and coal preparation in sections 3(h) and 3(i) are "broad," "sweeping," and "expansive." *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589, 591-92 (3d Cir. 1979), *cert. denied*, 444 U.S. 1015 (1980) ("[T]he statute makes clear that the concept that was to be conveyed by the word ['mine'] is much more encompassing than the usual meaning attributed to it — the word means what the statute says it means."⁵ Under section 3(h)(1), "coal or other mine" includes "lands, . . . structures, facilities, equipment, machines, tools or other property

⁵ In addition, the legislative history of the Mine Act emphasizes that "what is considered to be a mine and to be regulated under this Act [shall] be given the broadest possible interpretation, and . . . doubts [shall] be resolved in favor of inclusion of a facility within the coverage of the Act." S. Rep. No. 95-181, at 14 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Resources, 95th Cong., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 602 (1978).

. . . used in, or to be used in, . . . the work of preparing coal” 30 U.S.C. § 802(h)(1). In light of the Mine Act’s expansive language, we conclude that the Central Supply Shop is a mine under the definition of section 3(h)(1).

We further conclude that the language of the statute is clear. The stipulated record is equally clear in establishing that the Central Supply Shop is a dedicated off-site facility of a (multiple) mine operator where employees receive, stock, maintain, and deliver equipment, tools, and supplies used at JWR’s coal extraction sites, preparation plants, and Central Supply Shop, including, inter alia, rock dust, line curtains, hard hats, machine parts, and conveyor belts.⁶ Consequently, there is Mine Act jurisdiction because a “mine” includes “facilities” and “equipment . . . used in or to be used in” JWR’s mining operations or coal preparation facilities.⁷

Our result is consistent with Commission case law. The Commission has stated, “[t]he definition [of ‘coal or other mine’] is not limited to an area of land from which minerals are extracted, but also includes facilities, equipment, machines, tools and other property used in the extraction of minerals from their natural deposits and in the milling or preparation of the minerals.” *Harless, Inc.*, 16 FMSHRC 683, 687 (Apr. 1994) (citation omitted). In *Harless*, the Commission rejected the operator’s argument that its sand dredging operation was not a “mine” because it was not “an area of land from which minerals are extracted” and did not employ miners who worked underground. *See id.* at 686-88. In this proceeding, the judge failed to consider *Harless* in reasoning that the activities of JWR employees were not covered by the Mine Act because they were performed “off mine site property.” 21 FMSHRC at 502.

Similarly, in *W.J. Bokus Indus., Inc.*, 16 FMSHRC 704, 708 (Apr. 1994), the Commission held that MSHA properly cited equipment in a storage garage that was shared by a sand and gravel operation and an asphalt plant. The Commission rejected the argument that title to the cited equipment was determinative and found it significant that the cited equipment was “used or to be used in mining and that . . . the cited conditions could affect miners in the garage.”⁸ *Id.*

⁶ The status of many items in JWR’s Central Supply Shop, as equipment “used in, or to be used in,” extracting or preparing coal, would not necessarily have been evident until it was delivered to JWR or another mine operator. Supplies such as nails, hard hats, conveyor belts and machinery parts or equipment stored by a manufacturer, distributor, or commercial vendor, are generally fungible and thus can be used in any number of industries, until they are to be used in mining.

⁷ This case does not involve, and we therefore do not address, whether an off-site supply warehouse operated by a vendor, mining equipment manufacturer, or distributor would be covered under the Act, or even whether an off-site facility operated by a mining company or subsidiary that is open for ‘commercial’ business would be covered.

⁸ In *Bokus*, the Commission did not reach the issue of whether the garage was a structure or facility used in mining and, therefore, was a “mine” within the meaning of section 3(h)(1) of

U.S. Steel, 10 FMSHRC 146, on which the judge relied in affirming MSHA’s jurisdiction over the Central Machine Shop, is suggestive, if not determinative, of the outcome of MSHA’s assertion of jurisdiction over the Central Supply Shop as well. U.S. Steel operated a central machine shop away from any of its mines. *Id.* at 147. In concluding that the shop itself was a “mine,” the Commission reasoned, “the Shop consists of ‘lands . . . structures, facilities, equipment, machines, tools, or other property’” used in extracting or preparing coal and, therefore, was a mine. *Id.* at 149.⁹ The Commission’s reasoning applies with equal force to the Central Supply Shop, which contained equipment, machines, tools, or other property used in JWR’s mining and coal preparation activities. S. Br. in Support of Juris., Ex. B.

The judge’s reliance on the Commission’s decisions in *Oliver Elam*, 4 FMSHRC at 5, and *Dilip K. Paul v. P.B. - K.B.B., Inc.*, 7 FMSHRC 1784 (Nov. 1985), is misplaced. The central issue in *Elam* was whether the operator of a commercial dock was engaged in the “work of preparing coal,” within the meaning of sections 3(h)(1) and 3(i), 30 U.S.C. § 802(h)(1) and (i), when it loaded coal onto barges. 4 FMSHRC at 6. In concluding that *Elam*’s facility was not a “mine,” the Commission reasoned that coal preparation activities are generally undertaken to make coal suitable for a particular use or to meet market specifications. Although *Elam* performed some of the functions included in the Act’s definition of coal preparation, these were done solely to facilitate its loading of coal onto barges. *Id.* at 8. In contrast to the operator in *Elam*, it was stipulated that JWR operated coal mines and coal preparation facilities. 21 FMSHRC at 496. There is no issue here concerning whether the Central Supply Shop was involved in the “work of preparing coal;” rather the basis for jurisdiction is the presence of equipment and facilities used in the extraction process. Thus, *Elam* and its progeny are inapplicable to determining whether the Central Supply is a “mine.”

Paul is also readily distinguishable. That case, involving a complaint of discrimination, arose at the office of an engineering firm charged with designing a ventilation plan and shaft for storing nuclear waste. *Id.* at 1786-87. In dismissing the complaint, the Commission found it significant that there was only a preliminary engineering design, which “never left the drawing board,” and therefore there was literally no mine in existence. *Id.* at 1787. In short, neither *Elam* nor *Paul* is dispositive of any issue in this proceeding.¹⁰

the Mine Act. 16 FMSHRC at 708.

⁹ The Commission also noted that the shop had a mine identification number and a history of citations. 10 FMSHRC at 149.

¹⁰ *Cyprus Empire Corp.*, 15 FMSHRC 10, 14 (Jan. 1993), was also cited by the judge to support the statement that in order to qualify as a “miner” an employee must work in a mine. The issue in that case was whether striking employees at a mine could have their designated walkaround representative accompany an MSHA inspector. *Id.* at 15. Thus, the primary issue was whether *striking employees* were miners. *See id.* at 14.

Finally, in concluding that the Secretary's interpretation was unreasonable, the judge relied on the fact that the supply functions performed by JWR employees at the Central Supply Shop are generally performed by vendors not exposed to mine hazards. 21 FMSHRC at 502. However, the judge indicated that these same warehouse activities would be covered if the Central Supply Shop was located on the site of one of JWR's underground mines. *Id.* Coverage of JWR's Central Supply Shop employees should not be different because a mine operator has centralized supply room operations for four of its mines at a single offsite warehouse. In any event, the hazards to which miners are exposed are not limited to the hazards of underground mines, but include improperly maintained equipment and supplies that are used in mining. *See Bokus*, 16 FMSHRC at 708 (cited conditions of gas cylinders used in mining could affect miners in the garage where they were stored).¹¹ Moreover, the stipulated record shows that Central Supply Shop employees were regularly on the sites of JWR's underground mines to deliver supplies (21 FMSHRC at 498), and thus were exposed to the same hazards as miners who work in surface facilities or operations on site.

¹¹ It is apparent that, even under the judge's holding that the Central Machine Shop was a "mine," JWR's equipment and supplies would be covered if stored in the Central Machine Shop. However, as *Bokus* indicates, whether a mine operator's equipment is covered by the Mine Act is not determined by its location but rather by its function — that is, whether it is used in extracting or preparing coal. 16 FMSHRC at 708.

III.

Conclusion

For the foregoing reasons, we reverse the decision of the administrative law judge and conclude that the Central Supply Shop is a “mine” within the meaning of section 3(h)(1) of the Mine Act. We remand the proceeding to the judge for the assessment of the appropriate penalties, taking into consideration the penalty criteria of section 110(i), 30 U.S.C. § 820(i).¹²

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

¹² Notwithstanding that JWR agreed to pay the proposed penalties in the event that it lost on the issue of jurisdiction over the Central Supply Shop, the judge is required to make “[f]indings of fact on each of the statutory criteria [that] not only provide the operator with the required notice as to the basis upon which it is being assessed a particular penalty, but also provide the Commission and the courts . . . with the necessary foundation upon which to base a determination as to whether the penalties assessed by the judge are appropriate, excessive, or insufficient.” *Sellersburg Stone Co.*, 5 FMSHRC 287, 292-93 (Mar. 1983), *aff’d*, 736 F.2d 1147 (7th Cir. 1984).

Distribution

Jack Powasnick, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd., Suite 400
Arlington, VA 22203

Guy R. Hensley, Esq.
Jim Walter Resources, Inc.
P.O. Box 133
Brookwood, AL 35444

Administrative Law Judge Jerold Feldman
Federal Mine Safety & Health Review Commission
Office of Administrative Law Judges
5203 Leesburg Pike, Suite 1000
Falls Church, VA 22041