

SEPTEMBER 26, 2018 | MSHA LEADERSHIP, RULEMAKING & STANDARDS

FMSHRC Reverses Judge's Interpretation of MSHA Suspended Loads Standard, But Upholds Citation

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On April 25, 2018, the Federal Mine Safety and Health Review Commission ("FMSHRC" or "Commission") released a long-awaited decision in the appeal of [MSHA v. Sims Crane "spreader bar" case](#). This follows a [May 2016 ruling](#) by an FMSHRC Administrative Law Judge ("ALJ"). The ALJ held that, for the purposes of standard [30 C.F.R. 56.16009](#), a spreader bar was considered a suspended load, and therefore it was a violation for a miner to be beneath a spreader bar at any time ([For a more detailed review of the ALJ decision see our September 2016 analysis.](#)).



While the Commission rejected the ALJ's, and the Secretary's, interpretation of 56.16009 – *that the presence of a miner within the fall zone of a spreader bar for any purpose violates section 56.16009* – miners do not have the unfettered go-ahead to work, stand, or travel beneath suspended loads, which include spreader bars.

At issue before the Commission was:

"Whether the presence of a miner within the fall zone of a spreader bar for any purpose violates section 56.16009."

Review of MSHA Program Policy and Regulations

In determining this matter, the Commission reviewed not only the underlying facts and section 56.16009, but also looked to other MSHA regulations and a [Program Policy Letter \("PPL"\)](#) issued by the agency on February 6, 2017. MSHA issued the PPL following the ALJ's decision, and in doing so provided the Commission with a significant support for reversing the ALJ, and Secretary's interpretation of the standard.

After reviewing the regulation, and PPL, the Commission determined that miners could work beneath suspended loads, including spreader bars, without violating section 56.16009. In part, the MSHA PPL states:

"...it is occasionally necessary for miners, including riggers, to stand near load attaching equipment in order to attach and detach this equipment to the object or materials being hoisted."

This PPL contradicts the argument the Agency was pursuing before the Commission: *that the presence of a miner within the fall zone of a spreader bar for any purpose is a violation of section 56.16009*. The Commission also referred to other Mine Act regulations in the decision. Notably FMSHRC looked to section [56.14211](#), which allows miners to perform work below raised components of mobile equipment, when the *"component has been adequately blocked or mechanically secured to prevent accidental lowering."* *Mechanically secured to prevent accidental lowering* is the key phrase in the regulation when attaching and detaching materials while working with a crane. To be in compliance, the lifting mechanisms must be secured in some manner to comply with the Commission's reading.

FMSHRC stated that applying the strict interpretation of section 56.16009, advocated for by the Secretary, would render working conditions expressly permitted by section 56.14211 a violation of the Mine Act.

Therefore, when also adhering to section 56.14211, this decision allows miners to perform rigging activities *"required for the safe and efficacious lifting"* of materials while remaining in compliance with MSHA regulations. However, the Commission was sure to note that *"section 56.16009 prohibits miners from being in a fall zone when they are not engaged in rigging work."*

OSHA Regulations and Upholding the Citation

It is worth mentioning that during the hearing before the ALJ, the operator argued it maintained compliance with established Occupational Safety and Health Administration ("OSHA") regulations, which do not consider a spreader bar as part of the "load." The ALJ dismissed this argument, stating the OSHA regulations "are not dispositive" for determining whether or not the operator violated an MSHA standard. It is not uncommon for operators, especially contractors, to make this argument against MSHA violations, however, doing so is typically ineffective as MSHA regulations alone govern the mine site.

For a twist, despite the Commission's rejection of the ALJ's interpretation of the standard, and finding against MSHA, FMSHRC upheld the citation. The Commissioners did so because the operator's employee walked beneath the spreader bar after the inspector instructed him not to, and it was not in furtherance of, or part of, rigging activities.

All operators, and their employees, should take note that when a MSHA inspector gives instruction or warning against an activity he or she determines to be unsafe or in violation, it is best to adhere to this instruction. While the inspector's interpretation, and violation, may be found in error, acting in direct defiance of said instruction can still be a violation.

Conclusion

In sum, this was a significant victory for operators engaging in lifting and rigging activities, with the Commission clarifying, and limiting, an overly burdensome interpretation by MSHA. As a whole, MSHA regulations are ambiguous and allow for greater interpretation in the field than other federal regulations, such as OSHA standards, but the guidance provided in this matter will govern the regulation of 56.16009 moving forward.

