

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Andrew Mattox,	:	
Relator,	:	
	:	No. 24AP-703
v.	:	
	:	(REGULAR CALENDAR)
Industrial Commission of Ohio et al,	:	
Respondents.	:	

D E C I S I O N

Rendered on September 29, 2026

On brief: *Bentoff & Duber Co., L.P.A., Brandon Duber, and Erin E. Sawyer; Flowers & Grube, Louis E. Grube, and Michael J. Factor*, for relator. **Argued:** *Louis E. Grube*.

On brief: [*D. Andrew Wilson*], Attorney General, and *Anna I. Isupova*, for respondent, Industrial Commission of Ohio. **Argued:** *Anna I. Isupova*.

On brief: *Dinsmore & Shohl LLP, Eric A. Rich, and John P. Rogers*, for respondent, Armstrong Utilities, Inc. **Argued:** *Eric A. Rich*.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE’S DECISION

DINGUS, J.

{¶ 1} Relator, Andrew Mattox, initiated this action seeking a writ of mandamus ordering respondent, Industrial Commission of Ohio (“commission”), to vacate its order finding that Armstrong Utilities, Inc., d.b.a. Armstrong Cable (“Armstrong”), did not violate a specific safety requirement (“VSSR”).

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this court referred the matter to a magistrate of this court. The magistrate issued

the appended decision, including findings of fact and conclusions of law. The magistrate analyzed the application of Adm.Code 4123:1-3 to the facts and concluded that the commission properly denied Mattox's VSSR application.

{¶ 3} Mattox has filed objections to the magistrate's decision. He does not challenge any of the magistrate's findings of fact, but he argues that the magistrate reached multiple erroneous conclusions of law. Mattox objects to the magistrate's conclusion that " '[b]ecause the affixing of fiber-optic cables to a utility pole does not fit within the definition of construction activity, new construction, or substantial reconstruction, as defined in Adm.Code 4123:1-3[,] . . . the commission properly denied claimant's VSSR application.' " (Mattox's Objs. at 8, quoting Appended Mag.'s Decision at ¶ 32.) He also objects to the magistrate's conclusions that "employers who engage in the 'telecommunications industry' are categorically exempt from complying with the requirements of Adm.Code 4123:1-3[,]" that the phrase "constructing" or "altering" a "structure," as used in Adm.Code 4123-1-3-01(A), excludes the installation of new fiber-optic cable onto a utility pole, and that the installation of new fiber-optic cable onto a utility pole is not "new construction" or a "substantial reconstruction of all or part of an existing structure[,]" for the purpose of Adm.Code 4123:1-3-01(A). (Mattox's Objs. at 8, 11, and 14.) Thus, Mattox generally contends that the magistrate erred in interpreting and applying Adm.Code 4123:1-3. These objections lack merit.

{¶ 4} By way of background, on August 31, 2021, Mattox was working for Armstrong as a premise tech. Armstrong was installing fiber-optic cable to convert its network from coaxial cable, and Mattox was tasked with attaching the new fiber-optic cable to wooden utility poles in a wooded area between a house and the road. Mattox, while in a bucket lift, was electrocuted when he was lowering the bucket and the lift arm came into contact with an electrical cable. Mattox suffered extensive injury from this accident. After his industrial claims were allowed, he filed an application for VSSR, alleging violations of several specific safety requirements, including those contained in Adm.Code 4123:1-3-07(E), which concerns the operation of a hoisting apparatus or construction equipment in close proximity to an overhead electrical conductor.

{¶ 5} The central issue here is whether Adm.Code 4123:1-3-07(E) applied to Mattox's activity when he was injured. Former Adm.Code 4123:1-3-01(A) (effective

Jan. 16, 2020) governs this issue, and this version in effect when Mattox was injured stated, in pertinent part, as follows:¹

The purpose of this chapter of the Administrative Code is to provide safety for life, limb and health of employees engaged in construction activity. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal requirements of this chapter to permit the use of other devices or methods when it is clearly evident the equivalent protection is thereby secured.

Activities within the scope of this chapter, generally referred to herein as "construction", include the demolition, dismantling, excavation, construction, erection, alteration, repair, painting, decorating, glazing, cleaning, and pointing of buildings and other structures and the installation of machinery or equipment and all operations in connection therewith; the excavation, construction, alteration and repair of subways, sewers, tunnels, trenches, caissons, conduits, pipelines, roads and all operations pertaining thereto; the moving of buildings, signs, and other structures; and to the construction, alteration, repair, or removal of wharfs, piers, abutments, or any other construction, alteration, repair, or removal work carried on, in, about, or over water.

This chapter covers construction activities of employees whose employer engages in such work as its principal business. It also covers employees of other employers when the activities are performed in the course of new construction or substantial reconstruction of all or part of an existing structure, as well as substantial demolition or razing of an existing structure, but does not cover employees of such other employers when the activities are performed in the ordinary course of maintenance work.

{¶ 6} As set forth in this rule, Adm.Code Chapter 4123:1-3 "covers construction activities of employees whose employer engages in such work as its principal business," and "[a]ctivities within the scope of this chapter, generally referred to herein as 'construction', include: the demolition, dismantling, excavation, construction, erection, alteration, repair, painting, decorating, glazing, cleaning, and pointing of buildings and other structures and the installation of machinery or equipment and all operations in

¹ Effective June 30, 2025, this rule was amended. The second sentence of the first paragraph was removed and there were multiple non-substantive changes made. Nonetheless, the operative version in this matter is the one quoted herein.

connection therewith[.]” Adm.Code 4123:1-3-01(A). This Chapter “also covers employees of other employers when the activities are performed in the course of new construction or substantial reconstruction of all or part of an existing structure, as well as substantial demolition or razing of an existing structure.” *Id.*

{¶ 7} We first address Mattox’s contention that the magistrate erred in concluding that “employers who engage in the ‘telecommunications industry’ are categorically exempt from complying with the requirements of Adm.Code 4123:1-3.” (Mattox’s Objs. at 8.) In his decision, the magistrate noted that “by common definition, claimant was engaged in the telecommunications industry,” and that “Adm.Code 4123:1-5-23(F) specifically sets forth approach distances to exposed energized conductors for the telecommunications industry.” (Appended Mag.’s Decision at ¶ 29.) The magistrate further noted that Armstrong’s operations manager testified that Armstrong was a telecommunications company not involved in the construction industry, and the manager stated that Adm.Code 4123:1-3 does not apply to it. Mattox construes the magistrate’s decision as finding that Adm.Code 4123:1-3 can never apply to an employer engaged in the telecommunications industry, and that because the employer here, Armstrong, was engaged in the telecommunications industry, not the construction industry, Adm.Code 4123:1-3 did not apply. We do not construe the magistrate’s decision as making such a broad finding. And this issue is ultimately inconsequential to the disposition of this action because, as found by the magistrate, the language of Adm.Code 4123:1-3-01(A) did not apply to the circumstances surrounding Mattox’s injury.

{¶ 8} For construction activities of employees whose employer engages in such work as its principal business, Adm.Code 4123:1-3-01(A) applies in circumstances involving those activities identified in the second paragraph of that rule. Tracking that language, Mattox argues that he was engaging in “constructing” or “altering” a “structure.” For this purpose, a “[s]tructure” means “that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.” Adm.Code 4123:1-3-01(B)(27). Identified as a “structure” under this definition, an installed wooden utility pole still must have been in the process of being constructed or altered for this provision to apply, as Mattox argues. The magistrate determined that attaching fiber-optic lines to, and stringing those lines

between, the poles is not a construction or alteration (or any other of the listed activities) of the poles themselves. Mattox argues that he altered the pole because he made it different without changing it into something else. But, as the magistrate observed, Mattox's usage of the word "alteration," and other derivations of the word "alter," is beyond any reasonable common usage. Affixing fiber-optic cable to a wooden utility pole does not alter the pole itself, such as by shortening the pole or reducing its diameter. Thus, we agree with the magistrate's rejection of Mattox's alteration argument.

{¶ 9} Because the circumstances at issue were not covered under the second paragraph of Adm.Code 4123:1-3-01(A), the issue resolves to whether these circumstances were covered under the language of the third paragraph of that rule relating to activities of employees whose employer does not engage in construction activities as its principal business. These situations are covered under this rule "when the activities are performed in the course of new construction or substantial reconstruction of all or part of an existing structure[.]" Adm.Code 4123:1-3-01(A). Mattox argues that his activities were performed in the course of "new construction" or "substantial reconstruction" of all or part of the utility poles. For this purpose, "[s]ubstantial" is defined as "construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed." Adm.Code 4123:1-3-01(B)(28). Regarding whether he engaged in "new construction," Mattox relies on his unavailing assertion that he was altering the utility poles—as a form of "construction." As to whether his activities were performed in the course of "substantial reconstruction," Mattox argues that by affixing fiber-optic cables, Armstrong was updating the means of information transmission so as to prolong the life of the utility poles. But this argument assumes, without any evidentiary support, that affixing fiber-optic cables to utility poles, also used to carry electrical lines, prolongs the useful life of the poles. Again, as the magistrate found, Mattox's contention that his affixing of fiber-optic cables to utility poles constituted "new construction" or "substantial reconstruction" of all or part of those poles goes beyond any reasonable usage of those terms.

{¶ 10} Following our independent review of this matter, we find that the magistrate has properly determined the pertinent facts and appropriately applied the law. For the reasons set forth above, we overrule Mattox's objections to the magistrate's decision.

Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we deny Mattox's request for a writ of mandamus.

*Objections overruled;
writ of mandamus denied.*

BEATTY BLUNT and EDELSTEIN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Andrew Mattox,	:	
	:	
Relator,	:	
	:	
v.	:	No. 24AP-703
	:	
Industrial Commission of Ohio et al,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on January 12, 2026

Bentoff & Duber Co., L.P.A., Brandon Duber, and Erin E. Sawyer, and Flowers & Grube, Louis E. Grube, and Kendra N. Davitt, for relator.

Dave Yost, Attorney General, and Anna Isupova, for respondent Industrial Commission of Ohio.

Dinsmore & Shohl, LLP, Eric A. Rich, and John P. Rogers, for respondent Armstrong Utilities, Inc.

IN MANDAMUS

{¶ 11} Relator Andrew Mattox (“claimant”), has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio (“commission”) to vacate its order that found Armstrong Utilities, Inc., d/b/a Armstrong Cable (“employer”), did not violate a specific safety requirement (“VSSR”).

Findings of Fact:

{¶ 12} 1. Claimant was employed as a premise tech for the employer. On August 31, 2021, claimant was in a bucket truck stringing fiber-optic cable onto wooden telephone poles in a wooded area. The employer was installing the fiber-optic cable to convert its network from coaxial cable, and claimant was attaching the new fiber-optic cable to two poles between a house and the road. Another employee, Jacob Horvath, was on the ground assisting. Claimant saw there were electrical lines intertwined through the trees above him. The electrical lines were energized and carrying 7,200 volts and located about one foot above where the fiber-optic cable was to be installed, although he was taught that the lines were to be separated by three feet. Claimant testified he was keeping an eye on the electrical line and had been trained to stay two to three feet away from power lines. While lowering the bucket, a tree limb caught the electrical cable, and the cable touched the arm of his bucket lift. Claimant was severely electrocuted through his hand, which was touching the bucket's joystick. Claimant's workers' compensation claim was allowed for numerous conditions, including various burns, transhumeral amputation of the left humerus, and flexor tendon injuries of the right hand, as well as emotional and psychological conditions.

{¶ 13} 2. On August 15, 2022, claimant filed an application for VSSR. The application alleged violations of several specific safety requirements, including Adm.Code 4123:1-3-07(E), which is at issue in the present case. Adm.Code 4123:1-3-07(E) contains requirements for workers operating certain construction equipment in proximity to overhead electric conductors.

{¶ 14} 3. A hearing was held on the matter before a staff hearing officer ("SHO"). Claimant, Horvath, and Danny Yagersz, the operations manager for the employer, testified. As pertinent here, Yagersz testified that the employer was a telecommunications company and not involved in the construction industry. Yagersz stated that, because the employer is a telecommunications company, Adm.Code 4123:1-3-07(E), a construction code, does not apply to the employer.

{¶ 15} On March 15, 2024, the SHO issued an order denying the application and finding the following: (1) the employer's business and the activity involved do not fall within the definition of "construction," as specified in Adm.Code 4123:1-3-01(A), because claimant was stringing fiber-optic line; Yagersz testified that the employer is not engaged

in the construction business; and claimant's testimony regarding his duties are consistent with telecommunications; (2) the telephone poles to which the fiber-optic lines were being attached are not "structures"; therefore, the safety rules set forth in Chapter 3 do not apply; (3) there was insufficient evidence that claimant was demolishing, dismantling, excavating, constructing, erecting, altering, repairing, painting, decorating, glazing, cleaning, or pointing the structure or installing machinery; thus, Adm.Code 4123:1-3 regarding construction does not apply.

{¶ 16} 4. Claimant filed a request for reconsideration, which the commission denied on May 31, 2024.

{¶ 17} 5. On November 25, 2024, claimant filed the present petition for writ of mandamus.

Conclusions of Law and Discussion:

{¶ 18} The magistrate recommends that this court deny claimant's petition for writ of mandamus.

{¶ 19} In order for this court to issue a writ of mandamus, a claimant must establish the following three requirements: (1) that relator has a clear legal right to the relief sought; (2) that respondent has a clear legal duty to provide such relief; and (3) that relator has no adequate remedy in the ordinary course of the law. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967).

{¶ 20} To establish a VSSR, a claimant must prove that: (1) there exists an applicable and specific safety requirement in effect at the time of the injury; (2) the employer failed to comply with the requirements; and (3) the failure to comply was the proximate cause of the injury in question. *State ex rel. Trydle v. Indus. Comm.*, 32 Ohio St.2d 257 (1972).

{¶ 21} The commission's factual determinations are final but its legal interpretations of specific safety requirements are not. *State ex rel. Berry v. Indus. Comm.*, 2025-Ohio-4720, ¶ 31. Thus, the Ohio Constitution does not require that courts defer to the commission's legal interpretations of safety laws. *Id.* If the text of a safety statute or a rule promulgating a specific safety requirement is clear, courts should apply it as written, just as courts should do when interpreting other sections of the Revised Code or the

Administrative Code. *Id.* If the text is ambiguous, courts “ ‘may consider the [commission’s] interpretation only for its persuasive power.’ ” *Id.*, quoting *In re Application of Alamo Solar I, L.L.C.*, 2023-Ohio-3778, ¶ 14. Interpreting text involving common words used in their ordinary sense is a task “ ‘routinely performed by courts’ ” and “ ‘well within the judiciary’s core competence,’ ” and even when the text involves “ ‘technical meaning uniquely within the competency of the agency,’ ” “ ‘it remains the judiciary’s role to independently interpret the law.’ ” *Id.*, quoting *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 2022-Ohio-4677, ¶ 47.

{¶ 22} Accordingly, questions regarding the weight and credibility of the evidence are within the discretion of the commission as the exclusive fact-finder. *State ex rel. Armstrong Steel Erectors, Inc. v. Indus. Comm.*, 2015-Ohio-4525, ¶ 16. The commission also has “substantial leeway to draw inferences from the evidence before it.” *State ex rel. McBee v. Indus. Comm.*, 2012-Ohio-2678, ¶ 10. The court is limited to a determination of whether there is some evidence in the record to support the commission’s decision. *State ex rel. Burton v. Indus. Comm.*, 46 Ohio St.3d 170, 172 (1989).

{¶ 23} Because a VSSR is a penalty, it must be strictly construed, and all reasonable doubts concerning the interpretation of the safety standard are to be construed against its applicability to the employer. *Burton* at 170. Furthermore, a safety requirement must be specific enough to plainly apprise an employer of its legal obligations to its employees. *Frank Brown & Sons, Inc. v. Indus. Comm.*, 37 Ohio St.3d 162.

{¶ 24} A court’s duty is to give effect to the words used in a statute, not to delete or insert words. *State v. Maxwell*, 2002-Ohio-2121, ¶ 10. If the words in a statute are “ ‘free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.’ ” *State v. Hairston*, 2004-Ohio-969, ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus.

{¶ 25} Courts apply the same rules of statutory construction to administrative rules. *McFee v. Nursing Care Mgmt. of Am., Inc.*, 2010-Ohio-2744, ¶ 27, citing *State ex rel. Brilliant Elec. Sign Co. v. Indus. Comm.*, 57 Ohio St.2d 51, 54 (1979) (finding the “ordinary meaning rule” of statutory construction applies equally to administrative rules). Thus, “ [t]he interpretation of statutes and administrative rules should follow the principle

that neither is to be construed in any way other than as the words demand.’ We must read undefined words and phrases in context and construe them in accordance with rules of grammar and common usage.” *State ex rel. Turner v. Eberlin*, 2008-Ohio-1117, ¶ 14, quoting *Morning View Care Ctr.-Fulton v. Dept. of Human Servs.*, 2002-Ohio-2878, ¶ 36 (10th Dist.).

Adm.Code 4123:1-3-07(E) provides the following:

(E) Proximity to overhead electric conductors.

When it is necessary to move or operate cranes, derricks, or any other type of hoisting apparatus or construction equipment within twenty feet (6.1 meters) of an electrical conductor carrying one hundred ten volts or more, the employer shall do at least one of the following:

- (1) Arrange with the owner of the conductor, or the owner’s authorized representative, to deenergize the conductor;
- (2) Arrange with the owner of the conductor, or the owner’s authorized representative, to move the conductor;
- (3) Arrange with the owner of the conductor, or the owner’s authorized representative, to guard the conductor from accidental contact, and the employer shall designate an employee to act as signalman to direct the operator in the movement of derricks, cranes, or any other type of hoisting apparatus or construction equipment; or
- (4) Install an insulated type guard about the boom or arm of the equipment and a dielectric insulator link between the load and the block, and the employer shall designate an employee to act as a signalman to direct the operator in the movement of derricks, cranes, or any other type of hoisting apparatus or construction equipment.

{¶ 26} In the present case, claimant’s sole argument is that there was no evidence to support the SHO’s decision to deny the VSSR application pertaining to Adm.Code 4123:1-3-07(E). Specifically, claimant asserts the following: (1) there was no evidence to support the SHO’s determination that the employer’s business and the activity involved on the date of injury do not fall within the definition of “construction” as specified in Adm.Code 4123:1-3-01(A); (2) the employer’s sole defense was that Adm.Code 4123:1-3-07(E) did not apply because claimant was engaged in maintenance and/or

telecommunications work rather than work falling under construction regulations; (3) even if claimant was engaged in telecommunications, nothing in the administrative code directs that telecommunications work cannot also qualify as construction work, and when an employer is not engaged in construction as a principal business, Adm.Code 4123:1-3-01(A) still applies when the activities are performed in the course of new construction or substantial reconstruction of all or part of an existing structure rather than in the ordinary course of maintenance work; (4) the work performed by claimant falls within the construction regulations because he was permanently affixing new fiber-optic cable to a utility pole as part of the conversion of the cable network; (5) “structure” is defined by Adm.Code 4123:1-3-01(B)(27) as “that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner”; (6) wooden power poles are “structures” and fall within the scope of “construction,” as held in *State ex rel. Pole Sprayers, Inc. v. Indus. Comm.*, No. 79AP-48 (10th Dist. Aug. 28, 1979); (7) “substantial” reconstructions means “construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed,” Adm.Code 4123:1-3-01(B)(28); (8) thus, claimant’s work was either new construction or substantial reconstruction of the existing structure of the employer’s network and/or the utility poles rather than mere maintenance work; (9) the act of permanently affixing fiber-optic cable to utility poles, which are themselves structures, constitutes an “alteration” and a “substantial reconstruction” of all are part of the “existing structure” of a utility pole; (10) by attaching new fiber-optic cable on the telephone pole, claimant was constructing a new structure of a fiber-optic network and permanently altering the existing structure of the utility pole to incorporate fiber-optic transmission lines, and, thus, there was sufficient evidence that claimant was constructing or altering the structure consistent with Adm.Code 4123:1-3-01(A); and (11) the employer did not comply with Adm.Code 4123:1-3-07(E)(1) through (4), which provides, in pertinent part, that when it is necessary to move or operate cranes, derricks, or any other type of hoisting apparatus or construction equipment within twenty feet of an electrical conductor carrying one hundred ten volts or more, the employer must arrange with the owner of the conductor to deenergize, move, or guard the conductor, or insulate the boom or arm of the equipment and assign a signalman to direct the operator in movement.

{¶ 27} The threshold issue that must be addressed first is whether claimant's activity fell within the definition of "construction activity," as set forth in Adm.Code 4123:1-3-01(A), so as to fall under the purview of the regulations in Chapter 4123:1-3, entitled "Construction." Adm.Code 4123:1-3-01(A) provides, in pertinent part, the following:

(A) Scope.

The purpose of this chapter of the Administrative Code is to provide safety for life, limb and health of employees engaged in construction activity. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal requirements of this chapter to permit the use of other devices or methods when it is clearly evident the equivalent protection is thereby secured.

Activities within the scope of this chapter, generally referred to herein as "construction", include the demolition, dismantling, excavation, construction, erection, alteration, repair, painting, decorating, glazing, cleaning, and pointing of buildings and other structures and the installation of machinery or equipment and all operations in connection therewith; the excavation, construction, alteration and repair of subways, sewers, tunnels, trenches, caissons, conduits, pipelines, roads and all operations pertaining thereto; the moving of buildings, signs, and other structures, and to the construction, alteration, repair, or removal of wharfs, piers, abutments, or any other construction, alteration, repair, or removal work carried on, in, about, or over water.

This chapter covers construction activities of employees whose employer engages in such work as its principal business. It also covers employees of other employers when the activities are performed in the course of new construction or substantial reconstruction of all or part of an existing structure, as well as substantial demolition or razing of an existing structure, but does not cover employees of such other employers when the activities are performed in the ordinary course of maintenance work.

{¶ 28} The SHO here concluded the employer's business and the activity involved do not fall within the definition of "construction," as specified in Adm.Code 4123:1-3-01(A). The magistrate agrees. None of the descriptions in Adm.Code 4123:1-3-01(A)

describe the type of work being performed by claimant. Adm.Code 4123:1-3-01(A) indicates that the chapter applies to those engaged in “construction activity.” The provision then provides that “construction” includes “the demolition, dismantling, excavation, construction, erection, alteration, repair, painting, decorating, glazing, cleaning, and pointing of buildings and other structures and the installation of machinery or equipment and all operations in connection therewith,” and “the excavation, construction, alteration and repair of subways, sewers, tunnels, trenches, caissons, conduits, pipelines, roads and all operations pertaining thereto; the moving of buildings, signs, and other structures, and to the construction, alteration, repair, or removal of wharfs, piers, abutments, or any other construction, alteration, repair, or removal work carried on, in, about, or over water.” None of these descriptions describe the actions claimant was engaged in.

{¶ 29} Initially, by common definition, claimant was engaged in the telecommunications industry. Claimant was attaching new fiber-optic cables between utility poles to reach a private residence. Adm.Code 4123:1-3-01(A) contains no language that can be construed as covering the telecommunications industry, and Adm.Code 4123:1-5-23(F) specifically sets forth approach distances to exposed energized conductors for the telecommunications industry. Indeed, Yagersz, the operations manager for the employer, testified that the employer was a telecommunications company and not involved in the construction industry. Yagersz stated that, because the employer is a telecommunications company, Adm.Code 4123:1-3-07(E), a construction code, does not apply to the employer.

{¶ 30} As for the language in Adm.Code 4123:1-3-01(A), the provision relates to the erection and demolition of buildings and other structures. Because claimant’s activity clearly did not relate to a building, it must have related to a “structure” in one of the ways set forth in Adm.Code 4123:1-3-01(A) for the construction provisions in that chapter to apply. It does not. Claimant argues that “structure” is defined by Adm.Code 4123:1-3-01(B)(27) as “that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner,” and wooden power poles are “structures” that fall within the scope of “construction,” citing *Pole Sprayers, Inc.*, supra. However, Adm.Code 4123:1-3-01(A) specifically applies to the “demolition, dismantling, excavation, construction, erection,

alteration, repair, painting, decorating, glazing, cleaning, and pointing of . . . structures.” Here, claimant was not engaged in any of these activities with regard to the utility poles themselves. Attaching fiber-optic lines to, and stringing fiber-optic lines between, utility poles does not fit within the definition of any of these listed terms. The “structure,” i.e., the utility pole, itself is not demolished, dismantled, excavated, constructed, erected, altered, repaired, painted, decorated, glazed, cleaned, or pointed by the affixing thereto of a fiber-optic line. Claimant’s most attractive argument, that claimant’s activity constituted an “alteration” of the utility pole, would be to strain the definition of the term beyond normal usage. The magistrate cannot find that the act of attaching a fiber-optic cable to a wooden pole is an alteration of the pole itself. For this reason, *Pole Sprayers, Inc.*, does not apply to the present case, as that case involved evidence and testimony that the employer inspected, repaired, maintained, and painted wooden utility poles, which is work that fits squarely within the terms included in the section and dissimilar to the work with which the employer in the present case was tasked. Instead, here, the employer was simply attaching fiber-optic cables to utility poles and was not inspecting, repairing, maintaining, or painting the poles.

{¶ 31} Claimant further argues that, even if he was engaged in telecommunications, nothing in the administrative code directs that telecommunications work cannot also qualify as construction work. Claimant asserts when an employer is not engaged in construction as a principal business, the “catchall” provision in Adm.Code 4123:1-3-01(A) still applies when the activities are performed in the course of new construction or substantial reconstruction of all or part of an existing structure. Claimant points out that “substantial” reconstruction means “construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed,” Adm.Code 4123:1-3-01(B)(28); thus, he claims, his work here was either new or substantial reconstruction of the existing structure of the employer’s network and/or the utility poles. Claimant asserts that the act of permanently affixing fiber-optic cable to utility poles, which are themselves structures, constitutes a new construction or substantial reconstruction of all or part of the existing structure of a utility pole because the attachment of new fiber-optic cable on the telephone pole constructs a new structure of a fiber-optic network or is a substantial reconstruction of the pole. Again, claimant’s usage of these terms under these circumstances strains how they are commonly used. The

attachment of fiber-optic cable to a wooden utility pole is not a new construction itself or a new construction of the utility pole and does not extend the wear, usage, or shock of the existing utility pole so as to constitute a substantial reconstruction. Claimant uses awkward linguistics in his attempt to fit the activity of stringing fiber-optic cables into the terms “new construction” or “substantial reconstruction,” and it is unpersuasive.

{¶ 32} Given the above findings, claimant’s contention that the employer did not comply with Adm.Code 4123:1-3-07(E)(1) through (4) must be rejected. Adm.Code 4123:1-3-07(E)(1) through (4) provides, in pertinent part, that when it is necessary to move or operate cranes, derricks, or any other type of hoisting apparatus or construction equipment within twenty feet of an electrical conductor carrying one hundred ten volts or more, the employer must arrange with the owner of the conductor to deenergize, move, or guard the conductor, or insulate the boom or arm of the equipment and assign a signalman to direct the operator in movement. Because the affixing of fiber-optic cables to a utility pole does not fit within the definition of construction activity, new construction, or substantial construction, as defined in Adm.Code 4123:1-3, the magistrate concludes the commission properly denied claimant’s VSSR application.

{¶ 33} Accordingly, it is the magistrate’s recommendation that this court deny the claimant’s petition for writ of mandamus.

/S/ MAGISTRATE

THOMAS W. SCHOLL III

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b). A party may file written objections to the magistrate’s decision within fourteen days of the filing of the decision.