



UMWA HEALTH AND RETIREMENT FUNDS

2121 K Street, NW • Suite 350 • Washington, DC 20037 • Telephone: 202.521.2200

April 29, 2005

Re: Guidelines for awarding pension credit for back pay

Dear Sir or Madam:

The Trustees of the UMWA 1974 Pension Trust occasionally must decide whether a participant is entitled to pension credit for hours that correspond to a back pay settlement or award. Because such settlements and awards often raise questions as to a participant's eligibility for such credit, on January 28, 2003, the Trustees adopted the enclosed "Guidelines for Awarding Pension Credit Based on Back Pay Awards or Settlement Agreements." The guidelines are based principally on rules established under the 1974 Pension Plan and regulations issued by the Department of Labor. They are intended to clarify the types of awards or settlements that may qualify for back pay pension credit, and to detail the information that the settlement or award should contain in order for pension credit to be granted. Although these guidelines have been distributed previously, they will be re-distributed periodically for your ongoing reference. They also will be posted on the Funds' web site, www.umwafunds.org, so that you may access them through the Internet.

We hope that the guidelines will be of assistance to you.

Sincerely,

A handwritten signature in cursive script that reads "Lorraine Lewis".

Lorraine Lewis
Executive Director

Enclosure

Guidelines for Awarding Pension Credit
Based on Back Pay Awards or Settlement Agreements

The following guidelines, which are based on Article I.A. of the UMWA 1974 Pension Plan, Department of Labor regulations, and Funds' past practice, describe requirements for the grant of pension credit when back pay has been awarded or agreed to by an employer.

1. The text of the back pay award or settlement agreement must include a provision that entitles the participant to back pay. The parties are permitted through mitigation of damages, however, to reduce the amount of back pay an employer is required to pay. For example, if it is determined that a miner is entitled to back pay because an employer failed to properly hire him off a recall panel, the amount of back pay the employer is required to pay may be reduced if the miner otherwise earned wages during the period in question, and, despite the reduction, the miner would be granted the full amount of pension credit.
2. A back pay award or settlement agreement that provides only that a miner is to receive a certain amount of pension credit as settlement of a dispute is not acceptable.
3. The back pay award or settlement agreement must expressly reflect the participant's entitlement to back pay. It is preferred that the words "back pay" be included in the award or agreement, but it is not mandatory. If the text of the award or agreement can be construed unambiguously to include back pay, the applicant will be entitled to credit. It must be clear from the text of the agreement that the intent is to provide an individual with payment for lost wages. Phrases such as "make whole" in connection with the miner's compensation interest shall be considered to encompass back pay.
4. The back pay award or settlement agreement should, in addition to providing for an entitlement to back pay, include a reference to the period that the back pay covers and the number of hours that are to be credited to the recipient of the back pay. While this is not a required element of an award or agreement, Funds' Eligibility Services staff must determine the amount of pension credit to grant the participant, which would be accomplished either by applying the terms of the award or agreement or by conducting an investigation. The number of hours to be credited must be commensurate with the period the participant would have worked in a classified job.
5. Eligibility Services must be able to establish from the award or surrounding facts and circumstances that the individual would have been working in a classified job during the period in question. The fact that an individual actually worked during this period in a nonclassified position does not deprive the miner of entitlement to credit, although such work and earnings can be used to mitigate damages.

(January 28, 2003)
