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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 02-024 – February 15, 2006

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and  
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

### Background Facts

The Complainant was recalled to work by the Respondent effective July 9, 1996. According to the Respondent, the Complainant was scheduled to work 44 days (from July 9, 1996, to August 31, 1996) but only reported to work for 15 of those days. The Complainant was notified by letter dated August 20, 1996, that he was awarded Social Security Disability Insurance (SSDI) benefits effective May 12, 1996. The Complainant was awarded Sickness and Accident Benefits effective September 1, 1996. The Complainant was laid off on September 29, 1996.

The Complainant was notified by letter dated March 24, 2005, that he was awarded a UMWA 1974 Pension Plan Deferred Vested Enhanced pension, effective July 1, 2004, based on 24 years of credited service. The Complainant was advised to contact his last signatory employer, the Respondent, regarding his eligibility for health benefits coverage as a Pensioner. The Respondent has refused to provide health coverage to the Complainant as a Pensioner.

### Dispute

Is the Respondent required to provide health benefits coverage for the Complainant as a Pensioner?

### Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner because he meets the requirements under the Employer Benefit Plan to receive coverage as a Pensioner.

Position of the Respondent: The Respondent is not required to provide health benefits coverage for the Complainant because of the following reasons: 1) The Social Security Administration determined the Complainant to be disabled and unable to engage in employment prior to the date

he was recalled by the Respondent, thus, as a result the Complainant could not have performed classified work and the Respondent was not the employer who last employed the Complainant in a classified job; 2) The Complainant failed to inform the Respondent that he had applied for SSDI benefits and instead fraudulently claimed to be physically fit to perform his job, which forfeited the Complainant's right to health benefits from the Respondent; and 3) The Respondent's damages from the Complainant's breach of fiduciary duty offsets the Complainant's claim for health benefit coverage.

#### Pertinent Provisions

Article XX Section (c)(3)(i) of the 2002 National Bituminous Coal Wage Agreement states in pertinent part:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust whose last signatory classified employment was with such Employer and who are not eligible to receive benefits from a plan maintained pursuant to the Coal Act. . . .

Article I (2), (4) and (5) of the 2002 Employer Benefit Plan provides:

#### ARTICLE I DEFINITIONS

The following terms shall have the meanings herein set forth:

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 2002, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II

B of this Plan. . . . "Pensioner" shall not mean any individual entitled to benefits under section 9711 of the Internal Revenue Code of 1986, as amended by the Coal Industry Retiree Health Benefit Act of 1992.

Article II B. (1) of the 2002 Employer Benefit Plan provides:

Article II - Eligibility

The persons eligible to receive health benefits pursuant to Article III are as follows:

B. Pensioners

Health benefits under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
  - (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
  - (b) December 31, 2001, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I (5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

Discussion

Article XX(c)(3)(i) of the 2002 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Pensioners whose last signatory classified employment was with such Employer. Article II B. (1) of the Employer Benefit Plan establishes that an individual who is receiving a pension under the 1974 Pension Plan (with certain exemptions not relevant here) is eligible for health benefits coverage under the Employer Benefit Plan.

The Respondent is signatory to the 2002 Wage Agreement which provides under Article XX(c)(3)(i) that a signatory Employer is required to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Pensioners whose last signatory classified employment was with such Employer. The Respondent employed the Complainant

from July 9, 1996, until his layoff on September 29, 1996. Subsequently the Complainant was awarded a UMWA 1974 Pension Plan Deferred Vested Enhanced pension effective July 1, 2004, based on 24 years of credited service. Because the Complainant is receiving a pension under the 1974 Pension Plan, he meets the eligibility requirements of Article II B. (1) and is entitled to health benefits coverage from his last signatory employer, the Respondent.

The Respondent raised three issues concerning the Complainant. The first issue raised by the Respondent involves identifying the last signatory employer of the Complainant. An employer's challenge of a pension eligibility decision such as the assignment of the pensioner's last signatory employer must be raised in a separate procedure authorized by Article XX (g) of the Wage Agreement and may not be addressed by the Trustees in the ROD process. The assignment of the Respondent as the Complainant's last signatory employer was reviewed under a separate procedure and the Respondent was confirmed to be the Complainant's last signatory employer.

The second issue raised by the Respondent is the Respondent's responsibility to provide coverage for the Complainant who was eligible for SSDI benefits at the time he was recalled. The Complainant was recalled by the Respondent on July 9, 1996. The Complainant was notified by letter dated August 20, 1996, that he was eligible for SSDI benefits effective May 12, 1996. Therefore, at the time of his recall the Complainant had not yet been awarded SSDI benefits. Under the Resolution of Dispute process, the Trustees have jurisdiction to review the provision of health benefits coverage under Article XX of the Wage Agreement. However, the administration or management of panel records and decisions relating to hiring and recalls are not within the scope of the Trustees' jurisdiction.

Finally, the Respondent argues that its "damages as a result of" the Complainant's "breach of his fiduciary duty serves as a complete offset to his claim for coverage." There are no facts in this case that indicate that the Complainant is a fiduciary, and there is no provision in the Employer Benefit Plan providing for offset.

#### Opinion of the Trustees

The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner, effective July 1, 2004, consistent with the terms of the Employer Benefit Plan.