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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No. 4. June 28, 1979.

Board of Trustees: Julius Mullins, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute about Employee's eligibility for extended health and other non-pension benefits from an Employer and hereby render their opinion on the matter.

Background Facts

Employee sustained a compensable back injury while lifting rock in the Employer's mine on August 23, 1977 and was off work due to the injury for 53 weeks. During the 24-month period prior to August 23, 1977, Employee had worked more than 2,000 hours.

Employee received Workmen's Compensation for his August 1977 injury up to September 27, 1978 and was then offered a 5% permanent partial settlement for the August 23, 1977 injury. Employee, however, refused the settlement offer and returned the check accompanying the offer.

Employee returned to work on August 30, 1978 and worked on August 30 and 31 and September 1 and 5, 1978, Employee alleges that he re-injured his back at work on September 5, 1978 and has been off work since then, without medical coverage. During the 24-month period prior to September 5, 1978, Employee had worked 1,300 hours; he worked 32 of these hours after his return to work on August 30, 1978.

Employee filed a Workmen's Compensation claim based on the alleged re-injury of September 5, 1978, but that claim is still pending.

Employee was not paid Sickness and Accident Benefits because the Workmen's Compensation claim, which will be the basis for the decision about whether Employee is eligible for additional Sickness and Accident Benefits, is still pending.

Question or Dispute

Is the Employer required to provide health and other non-pension benefits to the Employee and his eligible dependents based on the Employee's work with the Employer during the period August 30, 1978 through September 5, 1978?

If so, for which period is the Employee eligible for an extension of such benefits: (1) the 30 days following September 5, 1978, or (2) the remainder of the month of September, 1978 and the six months next following?

#### Positions of the Parties

Employee's Position: Employer is required to provide health and other nonpension benefits to Employee and his eligible dependents based on his period of work beginning August 30, 1978, pursuant to the terms of the Employer Plan, Section 3, Article IIA.(2)(3) and (4), since Employee returned to work on that day.

Furthermore, Employee is entitled to an extension of such benefits for the period September 5, 1978 through March 30, 1979, pursuant to Section 3, Article IIA. and Article IIIE.(1) of the Employer Plan, since Employee ceased work on September 5, 1978 due to an occupational disability and had worked 1,300 hours for the Employer during the 24-month period prior to September 5, 1978.

Employer's Position: Employer is not required to provide health and other non-pension benefits to the Employee or his dependents for any periods because Employee had been absent from work more than 12 months when he returned to work on August 30, 1978 and he worked only four days thereafter when he stopped working again because of a disability for which maximum Sickness and Accident Benefits have been allowed.

In the alternative, if Employee is determined to be eligible for such benefits based on his work for the Employer from August 30, 1978 through September 5, 1978, Employee's eligibility can be extended for a maximum of 30 days following September 5, 1978 since Employee worked only 32 hours during that seven day period. Employee had already used the other 1,268 hours he worked from September 5, 1976 through August 23, 1977 to cover his period of unemployment between August 23, 1977 and August 30, 1978.

#### Pertinent Provisions of Employer Plan

Section 3, Article II provides, in part:

A. Employees

Benefits under Article III shall be provided to any Employee who:

\* \* \* \*

- (2) is on layoff or disabled from the Employer and had continued eligibility as of March 27, 1978, for coverage under the United Mine Workers of America 1974 Benefit Plan ("prior Plan") as a laid-off or disabled

employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan.

- (3) Except as provided in paragraph (2) above, any Employee of the Employer who is not actively at work\* for the Employer on March 27, 1978, will not be eligible for coverage under the Plan until he returns to active employment with the Employer...
- (4) A new Employee will eligible for health benefits from the first day worked with the Employer.

Section-3, Article III provides, in part:

E. General Provisions

(1) Continuation of Coverage

(a) Layoff

If an Employee ceases work because of layoff, continuation of health, vision care, life and accidental death and dismemberment insurance coverages is as follows:

Number of Hours Worked for the Employer in the Calen- dar Month Period Prior to the Date Last Worked	Period of Coverage Continuation from Date Last Worked
2,000 or more hours	Balance of month plus 12 months
500 or more but less than 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

(b) Disability

Except as otherwise provided in Article II, section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, vision care, life and accidental death and dismemberment insurance coverage while disabled for the greater of (i) the period of eligibility for Sickness and Accident Benefits, or (ii) the period as set forth in the schedule in (a) above.

Discussion

During the 24-month period prior to August 23, 1977, Employee had worked more than 2,000 hours and on that basis would have been eligible for continued 1974 Benefit Plan coverage for 12 months, through August 31, 1978. He received Workmen's Compensation based on the August 23, 1977 injury, therefore, Employee was eligible for up to 52 weeks of continued benefits coverage beginning August 24, 1977 based on his eligibility for Sickness and Accident Benefits as a result of the mine accident.

When Employee returned to work on August 30, 1978 his continued eligibility for benefits coverage had expired under both of the alternatives set forth above. When Employee returned to work on August 30, 1978, he became eligible for benefits as an employee returning to active work pursuant to Section 3, Article IIA.(2) of the Employer Plan. Since the Employee did return to work after the original period of his entitlement had expired, his eligibility for continued benefits is based only upon the number of hours he worked after the expiration of that period. Therefore, since Employee worked only 32 hours after he returned to work on August 30, 1978, his eligibility for health and other non-pension benefit coverage continued for 30 days from September 5, 1978, pursuant to the schedule in Section 3, Article IIIE.(1)(a) of the Employee Plan.

Opinion of the Trustees

The Trustees are of the opinion that the Employer is required to provide health and other non-pension benefits to the Employee and his eligible dependents for the period August 30, 1978 through October 4, 1978, subject to the limitations provided in the Plan, pursuant to the NBCWA of 1978, Article XX, Section (C).

In the event that the Employee is determined to be entitled to additional Sickness and Accident Benefit eligibility based on the alleged mine injury of September 5, 1979, the Employee will be eligible for benefit coverage while receiving or eligible to receive such Sickness and Accident Benefits.

However, since that determination apparently rests upon the decision in a pending Workmen's Compensation claim, the Trustees have no basis for an opinion on that aspect of this dispute.