

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 9 - March 14, 1980

Board of Trustees: Harrison Combs, 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 concerning benefit coverage for the Employee and his dependents under the Employer's Benefit plan and hereby render their opinion on the matter.

Background Facts

The Employee, born December 1, 1950, was injured on October 9, 1978 while employed by Employer A and covered by Employer A's benefit plan. He continued working until November 30, 1978 and has not worked since that date. The Employee received Sickness and Accident Benefits through Employer A's insurer beginning December 7, 1978; these benefits continued until August 15, 1979.

On February 1, 1979, Employer A, a signatory to the NBCWA of 1978, sold the mine to Employer B, also a signatory. Employer B retained all of A's employees, including the Complainant, and provided them benefit coverage as required by the Agreement.

On April 7, 1979, Employer B closed the mine and gave separation notices to the Employees, including the Complainant. B continued to provide benefit coverage for the Complainant and other Employees, as required by the Employer's Benefit Plan to May 1, 1979, at which time coverage was canceled for all employees. However, based on information submitted in support of another dispute (ROD #73), B continued to provide coverage through another benefit plan for the widow of an employee killed in a mining accident on March 14, 1979 while in B's employ. In a letter to that widow, dated October 5, 1979, Employer B stated that if B resumed production and started another group plan, the widow's coverage would be transferred back to that group. Subsequently, the widow advised that she had received a letter from Employer B advising that B had liquidated all assets and filed a Dissolution on December 18, 1979. In the letter, B stated the widow's health benefit coverage was being terminated as the company was no longer in business.

Following his injury sustained on October 9, 1978, while employed by Employer A, the Complainant filed a claim for Workers' Compensation, naming both A and B as defendants. The Commission issued an award on September 4, 1979, finding that Employer A was liable for that coverage.

Dispute

Is either Employer A or Employer B responsible for providing benefit coverage for the Employee after May 1, 1979? If so, for what period? If neither Employer is responsible, is the Employee eligible for coverage under the 1974 Benefit Plan and Trust?

Positions of the Parties

Position of Employee: The Employee believes that under the terms of the NBCWA of 1978, either Employer A or Employer B should provide coverage. He does not state the basis for this belief, however, and asks if neither Employer is responsible, would the Funds provide coverage.

Position of Employers: Employer A states that a part of the agreement of sale, B agreed to retain all of A's employees, active and disabled; therefore B is obligated to provide benefit coverage to the Complainant Employee.

Employer B contends it is not liable for Complainant's coverage for any period as the Complainant never worked for B and was disabled the entire period that B operated the mine; moreover, B claims the company closed its books and went out of business immediately after the mine shut down. B further contends any benefit payments made in Complainant's behalf were paid in error and should be refunded.

Pertinent Provisions

- (1) Employers Benefit Plan - Article II C(3)
- (2) Employers Benefit Plan - Article III E(1)(a)(b)

Discussion

The Plan provides coverage for any disabled employee who "is receiving Sickness and Accident Benefits pursuant to the Wage Agreement". Employer Benefit Plan, Article II, paragraph C(3). Moreover, the Plan provides for continued coverage for an employee who ceases work because of disability for the greater of (1) the period of eligibility for S&A benefits, or (2) 30 days after the date an employee with fewer than 500 hours last worked. Employer Benefit plan, Article III, paragraph E(1)(a),(b).

The Complainant was covered by A's Plan as an active employee until December 7, 1978. On that date, he began receiving S&A benefits from A and was therefore eligible for health benefits under Article II, paragraph C(3) of the Plan as disabled employee receiving S&A benefits. Although A's insurance policy was terminated when the mine was sold, A's insurance carrier

continued providing S&A to the Complainant through August 15, 1979. In the absence of an agreement by B to retain Complainant as an employee and to assume his benefit coverage, A would clearly be liable for Complainant's coverage through August 15, 1979.

It appears, however, that B agreed to retain Complainant as an employee and to assume his benefit plan coverage. A's Insurance Clerk has advised the Funds that B agreed, upon purchase of mine No. 1, to take over all debts and assets and all employees, active and disabled. The Funds has not seen a copy of the sales agreement. It is clear, however, that B acted in accordance with the terms of the agreement. Beginning February 1, 1979, the date of the sale, B covered all of A's former employees, including Complainant and his dependents, under its benefit plan. The Complainant was covered under Article II, paragraph C(3) as a disabled employee receiving S&A benefits. Accordingly, Article III E (1)(a), the provision applicable to continuation of benefits for employees who cease work because of layoff, does not limit his period of coverage. Rather, Article II C(3) requires B to continue Complainant's coverage for the period he received S&A benefits.

Finally, B's claim that the company went out of business on April 1, 1979 is unsubstantiated. The company continued to provide benefits through December 18, 1979 to the widow of a former employee. If, in fact, the company went out of business, there is no indication that it did so before that date. Accordingly, B was obligated to provide Complainant with health coverage through August 15, 1979.

Opinion of the Trustees

It is the opinion of the Trustees that Complainant was an employee of B from February 1, 1979, through April 7, 1979. Therefore, the terms of the Employer Benefit Plan require B to provide coverage for Complainant through August 15, 1979, when he received his last S&A benefit payment.