

OPINION OF TRUSTEES

In Re

Complainant: Surviving Spouse
Respondent: Employer
ROD Case No: 46 - November 26, 1979

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 the provision of life insurance and health benefits for the survivors of the deceased Employee by the Employer and hereby render their opinion on the matter.

Background Facts

The Employee began working for the Employer on February 13, 1979 and continued to February 23, 1979. On that date, the road leading to the mine became impassable and the Employee, along with other employees, was told by his foreman that the road was unsafe and the employees went home with the understanding that they would be recalled when the road was repaired. Some of the employees were recalled within two to three weeks, but the Employee was not recalled. On March 11, 1979, the Employee died of gunshot wounds.

Upon receipt of the life insurance claim filed by the Employee's surviving spouse, the Employer denied responsibility, first claiming that the Employee had been fired for not returning to work after February 23, 1979. Later the Employer indicated that the Employee had quit his job and further stated that since there was a 17-day period between the Employee's last work date and date of death, he was not entitled to coverage.

The representative of the surviving spouse states that no discharge slip was prepared for the Employee and he did not sign a quit slip; also, the Local Union had not been notified that the Employee had been terminated. According to the representative, a grievance cannot be filed with respect to the question of termination of employment as the Employee is deceased. Affidavits have been submitted from a co-worker and from the foreman of the Employee averring that the employees were sent home because of the condition of the road leading to the mine.

The Employer has declared bankruptcy. The company phone number is unlisted and correspondence directed to the last address of the Employer has been returned by the Post Office marked "OUT OF BUSINESS."

Dispute

(1) Is the Employer responsible for the provision of life insurance and health benefits for the eligible survivors of the deceased Employee?

(2) Is a homicide considered to be an accidental death under the Employer's Benefit Plan?

Positions of the Parties

Position of the Surviving-Spouse's Representative: The representative contends that the Employee retained his employment status from the date of his last work day to the date of his death. Therefore, he was eligible for all benefits under the Employer's Plan.

Position of the Employer: The Employer has not responded to the Funds' request for a statement as to his position.

Pertinent Provisions

- (1) Article II A (4) of Employer's Benefit Plan
- (2) Article III E (1) (a) of Employer's Benefit Plan
- (3) Article III E (1) (e) of Employer's Benefit Plan
- (4) Article III B (1) (a) of Employer's Benefit Plan
- (5) Article III B (1) (b), (d) of Employer's Benefit Plan

Discussion

The Employee was eligible for health benefits under the Employer's Plan as of the first day he began employment, February 13, 1979, in accordance with Article II A (4). He had worked less than 500 hours as of February 23, 1979 and was therefore eligible for continuation of health and life and accidental death insurance coverage for 30 days from that date, pursuant to Article III E (1)(a) if he was, in fact, laid off on February 23. If he quit or was discharged, his coverage for these benefits would terminate as of the date last worked, as provided in Article III E (1)(e).

Based on the information submitted, the Employee did not quit and was not discharged; he reported for work on February 23, 1979 and was directed by his immediate supervisor to go home because of a hazardous condition existing at the mine. These circumstances indicate he was laid off by the Employer and was therefore eligible for continued benefit coverage for 30 days, up to March 26, 1979. Since his death occurred on March 11, 1979, within the 30-day period, his benefit coverage was in effect and his surviving spouse is eligible for the benefits provided under the Employer's plan.

With respect to the amount of the benefit, the Employer's Plan provides for life insurance in the amount of \$24,000 payable upon the death of an Employee "due solely to violent, external and accidental means" (Article III B (I)(b)); otherwise the life insurance payment is \$12,000. The Plan does not provide accidental death coverage in certain specified circumstances, including deaths due to suicide and intentional self-inflicted injuries. Homicidal deaths are not excluded, however. There is no question but that the Employee's death was violent and external. Therefore, the death is an accidental death under the Plan.

Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for payment of the \$24,000 accidental death benefit to the named beneficiary of the deceased Employee; the Employer is also responsible for providing health benefits to the eligible surviving dependents of the deceased Employee for a period of 60 months.