

OPINION OF TRUSTEES

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In Re

Complainant: Surviving Spouse  
Respondent: Employer  
ROD Case No: 95, May 20, 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 payment of an accidental death benefit and hereby render their opinion on the matter.

Background Facts

The employee was shot and killed on December 14, 1979, in an exchange of gunfire with another person. The facts disclose that the employee became involved in an argument while playing pool, went home and obtained a small caliber revolver and returned to the pool room. The argument continued, and the employee and the other player went outside. In an exchange of gunfire, the employee fired his revolver, wounding the other person twice, before the employee was fatally shot.

Although the surviving spouse has received a \$12,000 death benefit, the employer and its insurer have refused to pay the additional accidental death benefit of \$12,000. A representative of the surviving spouse has requested that the Trustees determine whether an accidental death benefit is payable under the terms of the Employer's Benefit Plan.

Dispute

Is the employer responsible for payment of the additional \$12,000 accidental death benefit?

Positions of the Parties

Position of the Surviving Spouse's Representative: The surviving spouse is entitled to a \$12,000 accidental death benefit.

position of the Employer: The employer's insurer states that the deceased employee was the aggressor in the argument, and, therefore, his surviving spouse is not entitled to an accidental death benefit. The employer states that the employee was mentally infirm at the time and, thus,

ineligible for accidental death benefits under the exclusions provision of the Employer's Benefit Plan.

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Pertinent Provisions

Article III B(1) of the Employer's Benefit Plan provides:

(a) Upon the death of such an Employee due to other than violent, external and accidental means, a death benefit in the amount of \$12,000 will be paid in a lump sum.

(b) Subject to (d) below, upon the death of such an Employee due solely to violent, external and accidental means, death benefits in the amount of \$24,000 will be paid in a lump sum.

(d) Accidental death or dismemberment benefits are not payable if caused in whole or in part by disease, bodily or mental infirmity, ptomaine or bacterial infection, hernia, suicide, intentional self-inflicted injury, insurrection, or acts of war.

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Discussion

Under Article III B(1) of the Employer's Benefit Plan, an accidental death benefit is payable if the employee's death is due solely to violent, external and accidental means. Section B(2)(d) lists the circumstances under which a non-natural death is not considered an accident. Therefore, because death by shooting is not listed as being excluded, the employer is liable for the accidental death benefit under the provisions of the Employer's Benefit Plan. This conclusion is in conformity with the applicable state law, where an insurance plan does not contain a "violation of law" clause within its definition of accidental death.

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Opinion of the Trustees

The Trustees are of the opinion that the employer is liable for an additional \$12,000 under the accidental death provision in Article III B(1)(b) and (d).