

OPINION OF TRUSTEES

Complainant: Surviving Spouse
Respondent: Employer (Insurance Carrier)
ROD Case No: 155, February 23, 1981

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 to the surviving spouse of the Employee by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion of the matter.

Background Facts

The deceased Employee was employed as a Surface Electrician for the Employer. While working on March 6, 1980, the Employee sustained an injury to his right knee. Corrective surgery to remove the right medial meniscus (cartilage) of his knee was performed on March 20, 1980. The Employee was subsequently discharged from the hospital.

Eighteen days after the surgery, on April 7, 1980, the Employee was seen in the emergency room complaining of cough, fever, and weakness. A diagnosis of "pneumonia and pleuritic involvement" was made and treatment rendered. He was readmitted to the hospital on April 10, 1980 (21 days after surgery), with a one week history of cough, fever, and weakness. The admission x-rays revealed an extensive pneumonia. The admitting diagnosis was "bronchopneumonia, worsening and convalescence from arthrotomy of right knee; rule out pulmonary emboli." On April 16, 1980, a pulmonary consultant examined the Employee and found: (1) Left pleuritic pain with hemoptysis, two weeks, (2) WIC's 11,000, (3) fever, (4) sputum bloody but not purulent, (5) right calf doughy and slightly tender compared to the left, (6) large modular infiltrate in the left lower lobe, (7) right effusion and infiltrate. The consultant's impression was multiple pulmonary thrombo-emboli, for which the Employee was treated. However, the Employee's condition worsened and he died on April 24, 1980.

The Autopsy Report shows the following comment: "The patient died of massive pulmonary emboli which appear to be originating in the left pelvic venous drainage." The final anatomical diagnosis lists first "multiple bilateral pulmonary emboli with multiple focal infarctions of lower lobes of both lungs" and secondly, "ante mortem thrombus material in left internal iliac vein" as causes of death. This report also indicates that the Employee was in otherwise apparent good health before the accident. The death certificate lists the immediate cause of death as

"Pulmonary Embolus", and the condition which gave rise to the immediate cause as "left iliofemoral thrombophlebitis".

The deceased Employee's beneficiary was paid a \$12,000.00 life insurance benefit, as the Employee's death was determined by the Employer to be a result of natural causes, from other than violent, external and accidental means.

Dispute

Is the Employer responsible for the payment of an accidental death benefit?

Position of the Parties

Position of Surviving Spouse: According to the Plan, an accidental death benefit will be paid of an Employee loses his life within 90 days of a bodily injury caused by an accident. The spouse feels that the Employer should consider the Employee's death as an accident because he would not have died had he not injured his knee while working at the mine. In addition, under an individual life insurance policy the spouse had received payment for an accidental death benefit as a result of her husband's death.

Position of the Employer: It is clear that the cause of the Employee's death was the blood clot originating in the left leg. However, the mine injury sustained by the Employee was to his right knee. Therefore, there is no evidence to support the cause of death as being a direct result of the injury received on the job. According to the Employer's Plan, in order to qualify for accidental death benefits, death must be as a direct result of bodily injury caused by an accident. Thus, accidental death benefits are not payable in this case.

Pertinent Provisions

Article III, Section B (1) (b) (d) of the Employer's Benefit Plan which provides:

B. Life and Accidental Death and Dismemberment Insurance

(1) (b) Active Employees

Subject to (d) below, upon the death of an Employee due solely to violent, external, and accidental means, life insurance in the amount of \$24,000 will be paid to the Employee's named beneficiary.

(1) (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.

Discussion

Under Article III, Section B(1) (b) of the Employer's Plan, the Employee's beneficiary is entitled to \$24,000.00 in accidental death benefits if the Employee's death was "due solely to...accidental means". At issue in this case is the question of whether the Employee's death was due to the injury sustained to his right knee while working on March 6, 1980. The Employer claims that the Employee died as a result of natural causes that were not the direct result of the knee injury received on the job. The Employee's widow contends that her husband's death was the direct result of the accidental injury which occurred in the course of his employment.

The Employee's injury necessitated surgery to his right knee on March 20, 1980. Following the surgery the Employee was readmitted to the hospital on April 10, 1980. On April 16, 1980, pulmonary consultants diagnosed the Employee as having multiple pulmonary thromboemboli. The Employee died on April 28, 1980. Thus, the issue is whether the emboli were a result of the operation on the Employee's right knee.

A pulmonary embolism occurs when a thrombus (an aggregation of blood, frequently causing vascular obstruction at the point of formation) becomes detached from its site of origin, which is frequently in the deep veins of the calf, and is carried to the pulmonary arteries. Pulmonary Thromboembolism is a common complication in post-operative, bed-ridden patients and often becomes symptomatic during the 4th through the 14th days after surgery.

The medical data in this case supports the spouse's position. The Employee was healthy prior to his surgery on March 20, 1980. When he was readmitted to the hospital on April 10, 1980, he had a one-week history of cough, fever, and weakness, beginning approximately 14 days after surgery. This time frame and these symptoms support the presentation of post-operative pulmonary thromboemboli.

The Employer contends that the emboli originated in the left leg, which was in no way involved in the injury of and subsequent surgery to the right knee. The Autopsy Report indicates that a thrombus was present in the left leg. However, further review of the medical documentation, specifically the pulmonary consultants' report of April 16, 1980, reveals that the right calf was "doughy.....slightly tender compared to the left". This supports the position that a deep-vein thrombophlebitis of the right calf was present during the Employee's last hospital admission. As discussed above, a pulmonary embolism occurs when the thrombus detaches from its site of origin and is carried to the pulmonary arteries. Thus, it is reasonable to conclude that the pulmonary emboli ultimately causing the Employee's death has its origins in the deep veins of the right calf. The emboli progressed from the right calf to the left internal iliac vein, ultimately lodging in the pulmonary arteries, causing multiple focal infarctions of the lower lobes of both lungs which led to his death.

Because the Employee's mine accident necessitated the March 20, 1980 surgery and the Employee died as a result of complications from surgery, it is clear that his death was the direct result of the mine accident, and not the result of natural causes. Because the Employee died

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within 90 days of the mine injury, his beneficiary is entitled to accidental benefits under the Employer's Plan.

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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) of the Employer's Plan.