

OPINION OF TRUSTEES

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In Re

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Complainant: Employee  
Respondent: Employer  
ROD Case No: 193, March 26, 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 the continuation of coverage for an Employee by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

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This 51 year old Employee had worked for the Employer, as a truck driver, for more than four years. His last date of employment was June 27, 1980, the day before commencement of the miners' annual vacation. The Employer had reported more than 2,000 classified hours for the Employee during the 24 month period immediately prior to the date that he last worked.

The Employee was hospitalized on July 11, 1980, one day before the miners annual vacation ended. He underwent major colon surgery on July 14, 1980. On that date the Employer was sent a doctor's slip dated July 11, 1980, indicating that the Employee was entering the hospital for major surgery and would be off work indefinitely.

The Employer provided the Employee with four weeks of Sickness and Accident benefits and health benefits through August 31, 1980.

The Employer states that he received a notice from the Employee's physician advising that the Employee could return to work on September 14, 1980. The Employee did not return to work on that date nor any subsequent date and was terminated effective September 14, 1980. Copies of statements from the Employee's physician, however, dated September 30, 1980 and October 9, 1980, indicate that the Employee remained unable to return to work.

On September 14, 1980 the union filed a grievance asking for an additional nine weeks of Sickness and Accident benefits. The grievance eventually resulted in arbitration.

The Arbitrator ruled that no event had occurred under Article XI, Section (b) of the National Bituminous Coal Wage Agreement of 1978, such as discharge or retirement, which caused the Employee's eligibility for Sickness and Accident benefits to cease. Consequently, the Employer was directed to pay the Employee an additional nine weeks of Sickness and Accident benefits.

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Dispute

Is the Employer responsible for the provision of 12 months of continuation of health and other non-pension benefits for the Employee and his dependents?

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Position of the Parties

Position of the Employee: The Employee claims that based on the number of classified hours he had worked, he is eligible for 12 months of continuation of benefits.

Position of the Employer: The Employer received a return to work slip from the Employee's physician stating the Employee could return to work on September 14, 1980. The Employee did not return to work at that time or after. Therefore, he was terminated as of that date. Also, the Employee did not comply with Article XI, Section (e) of the NBCWA of 1978 in that he did not give written notice of disability to the Employer.

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Pertinent Provisions

- Article III, E (1) (a), (b), (e) of the Employer's Benefit Plan which provides:

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 coverage is as follows:

<u>Number of Hours Worked for the Employer in the 24 Calendar Month Period Prior to the Date Last Worked</u>	<u>Period of Coverage Contin- uation from the Date Last Worked</u>
- 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.

(e) Quit or Discharge

If an Employee quits or is discharged, health, vision care, life and accidental death and dismemberment insurance will terminate as of the last date worked.

- Article XI, (Sickness & Accident Benefits), Section (e) of the NBCWA of 1978 provides as follows:

To be eligible for payment of benefits, the Employee must give written notice of disability to the Employer, including certification by a licensed physician upon request by the Employer, within 21 days after the day claimed as the first day of disability. The Employer shall be responsible for promptly forwarding the Employee's claim to an acceptable insurance carrier as described in section (f) of this Article, unless the Employer elects to provide benefits directly, in which case any undisputed claim shall be paid within fourteen days of receipt of the Employer's claim.

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Discussion

According to Article III, Section E (1) (b) of the Employer's Plan, if an Employee ceases work because of disability, an Employee will be eligible to continue health and other non-pension benefits while disabled for the greater of (1) the period of eligibility for Sickness and Accident Benefits, or (ii) the period as set forth in the schedule in Article III, E (1) (a). The Employer had reported more than 2,000 hours of classified employment for the Employee during the 24 month period prior to June 27, 1980. Under this provision, the Employee would be eligible to receive continuation of coverage for the balance of June, 1980 plus 12 months.

The Employer states, however, that under Article III E (1) (e) the Employee is not eligible for additional coverage because he was terminated on September 14, 1980. There is no evidence in the file, however, to verify that the Employee was terminated for cause. In fact, the Arbitration Award of December 17, 1980 concluded that the Employee was eligible for 13 weeks of Sickness and Accident Benefits because "no event had occurred under Article XI, Section (b), such as discharge or retirement, which caused his eligibility to cease".

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Additionally, the Employee continued to inform the Employer of his condition after September 14, 1980, by submitting a letter from his physician dated September 30, 1980, which states that the Employee remained under the physician's care following colon surgery performed on July 15, 1980, and would not be able to return to work. On October 9, 1980, the physician further stated in a second letter that the Employee would be followed on a monthly basis and hopefully would be "ready to return to work in the near future". Therefore, the Employee's eligibility for continuation of coverage, which began June 27, 1980, was not interrupted or destroyed by discharge and the Employee remains eligible for continuation of coverage.

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Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for continuation of health and other non-pension benefit coverage to the Employee and his dependents from June 27, 1980 for up to a one year period, subject to the terms of the Employer's Plan.