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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 267, July 27, 1982

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 health and other non-pension benefits for a disabled Employee under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

### Background Facts

The Employee worked for the Employer from October 29, 1980, until December 20, 1980. On December 20, 1980, he was injured in a mine accident and has not worked since that time as a result of the injury. By letter dated May 7, 1982, the Employee's physician states that the Employee has been totally disabled since the mine accident. The Employee received Workers' Compensation benefits for five weeks until he made a claim for permanent total disability benefits. He has applied for Social Security Disability benefits, but has not yet received a decision.

The Employer provided him with benefits coverage from his last date worked until April 1, 1981. The Employer was signatory to the National Bituminous Coal Wage Agreement of 1978 and has signed the 1981 Agreement. Although the Employer closed the mine where the Employee last worked, he is currently operating other mines.

### Dispute

Is the Employer responsible for the provision of benefits coverage to the Employee beyond April 1, 1981?

### Positions of the Parties

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Position of the Employee: He feels that the Employer should provide benefits for 52 weeks from the date last worked.

Position of the Employer: The Employer has not replied to correspondence and could not be contacted by telephone.

#### Pertinent Provisions

Article XI, Section (b) of the National Bituminous Coal Wage Agreement of 1978 which provides in pertinent part:

Any Employee with six (6) months or more of classified employment with the Employer who becomes disabled as a result of sickness or accident, so as to be prevented from performing his regular classified job, and whose disability is certified by a physician legally licensed to practice medicine, shall be eligible to receive Sickness and Accident Benefits under this plan. An Employee whose disability is the result of a mine accident suffered while he has been a classified Employee of the Employer shall be eligible to receive Sickness and Accident Benefits effective with his first day of classified employment. Benefits will not be payable for any period during which the Employee is not under the care of a licensed physician.

Article XI, Section (c) of the National Bituminous Coal Wage Agreement of 1978 which provides in pertinent part:

Benefits for disability resulting from an accident, either on or off the job, shall be payable for a maximum of 52 weeks, regardless of the length of the Employee's classified employment with the Employer at the time of the accident.

Article XI, Section (d) of the National Bituminous Coal Wage Agreement of 1978 which provides in pertinent part:

Payment of Sickness and Accident Benefits shall not be made for any days during an Employee's disability for which he receives wage allowances pursuant to this Agreement, but the duration of Sickness and Accident Benefits for which the Employee is eligible shall be extended by an equal number of days.

Article III, Section E. (1) of the Employer's Benefit Plan, as adopted in 1978, 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:

Number of Hours Worked for the Employer in the 24 Calendar Month Period Prior to the Date Last Worked	Continuation from the <u>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.

Article III, Section E. (2) of the Employer's Benefit Plan, is adopted in 1973, which provides:

In the event of an economic strike at the expiration of the 1978 Bituminous Coal Wage Agreement, the Employer will advance the premiums for its health, vision care, and life and accidental death and dismemberment insurance coverage for the first 10 days of such strike. Such advanced premiums shall be repaid to the Employer by such Employees through a check-off deduction upon their return to work. Should such a strike continue beyond 30 days, the Union or such Employees may elect to pay premiums themselves.

Question and Answer P-16, adopted by the Trustees pursuant to their authority under the United Mine Workers of America 1974 Benefit Plan, which provides in pertinent part:

Introduction

Article XI of the NBCWA provides compensation for lost earnings to protect eligible Employees against financial hardship resulting from sickness or accident suffered on or off the job. Section (b) of that Article contains the eligibility requirements the Employee

must satisfy to receive the compensation. Other sections of that Article describe the procedures for filing claims and making payments.

The 1974 Benefit and pension Plans also contain special provisions for periods during which the participant receives Sickness and Accident Benefits (S&A Benefits),

The following issues arise under these Plan provisions;

- (1) Q. May a participant receive pension credit and health benefits for periods he was eligible for S&A Benefits but did not receive such payments because of offsetting compensation or failure to file a timely notice of disability with the Employer?
  - A. Yes. For periods that the participant meets all of the requirements and limitations of Section (b) of Article XI of the NBCWA and claims credit based on S&A, he will be considered as "constructively receiving" S&A Benefits. Constructive receipt of S&A Benefits is the same as actual receipt of S&A Benefit payments for all purposes under the 1974 Benefit and Pension Plans.

Article II, Section A. (2) of the Employer's Plan, as amended in 1981, which provides:

Benefits under Article III shall be provided to any employee who:

(2) is on layoff or disabled from the Employer and had continuing eligibility as of the effective date of the Wage Agreement for coverage under the 1978 Employer's Benefit Plan ("prior plan") is a laid off or disabled employee. Coverage for such Laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan.

#### Discussion

Under Article III. Section E. (1) of the Employer's Benefit Plan, as amended in 1978, health and other non-pension benefits coverage are provided to disabled Employees for the period of eligibility for Sickness and Accident benefits. Under Article II, Section A. (2) of that Plan, as amended in 1981, such coverage is continued for the period when the Employee would have been eligible under the prior Plan.

The Employee became disabled on December 20, 1980, as the result of an accident and has not returned to work. His disability has been certified by his physician. Therefore, he would be eligible to receive Sickness and Accident benefits under Article XI, Section (b) of the National Bituminous Coal Wage Agreement of 1978 from December 21, 1980 through December 31, 1981.

Consequently, under the Employer's Benefit Plan, the Employee would be eligible for continuation of health and other non-pension benefits coverage from December 21, 1980,

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through December 31, 1981. However, during the period of the economic strike, which commenced on March 27, 1981, the Employer would only be responsible for advancing the Employee's insurance premiums for the first 30 days of the strike, but would not be responsible for paying the cost of the Employee's coverage during the strike period.

Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for the provision of benefits coverage following the Employee's last work date, December 20, 1980, through December 31, 1981 (excluding the strike period).