

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 316, December 20, 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 payment of a dismemberment benefit to the Employee by the Employer under the terms of the Employer's Benefit Plan effective March 27, 1978, and hereby render their opinion on the matter.

Background Facts

The Employee has worked for the Employer from October 1, 1970, to the present, except for those periods during which he was unable to work due to the sequelae of a comminuted (broken or crushed into small pieces) fracture of the lower right leg which he sustained at work on December 2, 1975.

Two and one-half weeks after he was discharged from the hospital following the accident, the Employee developed an abscess in his right leg and was readmitted to the hospital for drainage of the abscess. The wound continued to drain, and it was eventually discovered that he had developed osteomyelitis (infection of the bone) as a result of the accident. He was hospitalized on at least nine different occasions for related treatment. In October 1980, the Employee was again hospitalized and an attempt was made to fuse his ankle. During this hospitalization it was determined that amputation of the leg was necessary due to the osteomyelitis. Subsequently, on November 12, 1980, his leg was amputated between his knee and ankle. The Employee was provided with an artificial limb and returned to work for the Employer on October 19, 1981.

During the 24-month period immediately prior to October 13, 1980, the Employee had worked more than 2,000 hours in classified employment for the Employer. At the time of the amputation, November 12, 1980, the Employee was receiving Sickness and Accident benefits pursuant to Article XI of the National Bituminous Coal Wage Agreement of 1978.

Dispute

Is the Employer responsible for payment of a dismemberment benefit to the Employee?

### Positions of Parties

Position of Employee's Representative: The Employer's insurance policy limits payment for dismemberment to a period of one year from the date of the accident, which is not in accordance with the Wage Agreement.

Position of Employer: The dismemberment benefit is not payable because the Employee's amputation was caused in part by a bacterial infection and was not due solely to violent, external and accidental means.

### Pertinent Provisions

Article II. C. (3) of the Employer's Benefit Plan, effective March 27, 1978, which provides:

#### C. Disabled Employees

In addition to disabled Pensioners who are receiving pension benefits and are therefore entitled to receive health benefits under paragraph B of this Article II, health benefits under Article III shall also be provided to any Employee who:

- (3) Is receiving Sickness and Accident Benefits pursuant to the Wage Agreement.

Life and accidental death and dismemberment insurance shall be provided to Employees described in (3) above.

Article III. B. (1) (c) and (d) of the Employer's Benefit Plan, effective March 27, 1978, which provides:

#### B. Life and Accidental Death and Dismemberment Insurance

##### (1) Active Employees

Life and accidental death and dismemberment insurance will be provided for Employees, as described in Article II, Section A and C (3), in accordance with the following schedule:

- (c) If an Employee shall lose two or more members due to violent, external and accidental means, such Employee shall receive a \$12,000 dismemberment benefit. If an Employee shall lose one member due solely to violent, external and accidental means, such Employee shall receive a \$6,000 dismemberment benefit. A member for the purpose of the above is (i) a hand at or above the wrist, (ii) a foot at or above the ankle or (iii) total loss of vision of one eye.

(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.

Article III. Section E. (1) of the Employer's Benefit Plan, effective March 27, 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 coverages are as follows:

Number of Hours Worked For The Employer In The 24 Calendar Month Period Prior to The Date Last Worked _____	Period of Coverage Continuation From the Date Last Worked _____
- 2,000 or more hours	Balance of month plus 12 months
- 500 or more hours 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 coverages 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.

Discussion

Article III. B. (1) (c) of the Employer's Benefit Plan, effective March 27, 1978, provides that a \$6,000 dismemberment benefit will be paid to an Employee who loses a member due solely to

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violent, external and accidental means. Under Article III. B. (1) (d) of the Employer's Benefit Plan, a member is defined as a foot at or above the ankle.

It is clear that the Employee's work-related accident caused him to obtain treatment for his injured leg on nine separate occasions during the period December 2, 1975 to November 12, 1980.

The Funds' medical staff has reviewed the medical records of this case and determined that the chronic infection which finally necessitated amputation of the Employee's leg was a direct result of his accident. Because the Employee lost a body member, as defined in the Employer's Benefit Plan, due to an accident, he is entitled to a dismemberment benefit.

#### Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for the payment of a dismemberment benefit of \$6,000 to the Employee.