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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 81-382 - April 30, 1984

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 ("UMWA") 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 a laid-off disabled Employee under the terms of the Employer's Benefit Plan. The Trustees hereby render their opinion on the matter.

### Background Facts

The Complainant, whose birthdate is December 4, 1928, states that he satisfies the pension eligibility requirements of the UMWA 1974 Pension Plan. He incurred a compensable injury while performing classified work for the Respondent on July 3, 1978, for which he was awarded temporary partial Workers' Compensation benefits. He returned to work for short periods of time through October 4, 1978, but was unable to perform his usual work due to his disabling condition. On May 3, 1982, he returned to work with permanent restrictions and continued to perform "light duty" work until November 24, 1982, when the mine was temporarily closed and the Complainant was laid off. The Respondent states that Workers' Compensation benefits were not reinstated at that time, because the Complainant was off work due to a lay-off. Following his lay-off, the Complainant was provided continued coverage for six months, through May 31, 1983, based on his hours worked for the Respondent during the 24 calendar month period prior to November 24, 1982.

Prior to the time the mine re-opened on June 6, 1983, the Complainant was examined by a company physician, who stated that the previous work restrictions would still apply. Consequently, when the mine reopened, the Respondent voluntarily reinstated the Complainant's Workers' Compensation benefits. The Complainant was re-examined by a different physician selected by the Respondent on June 8, 1983, who subsequently requested that the Complainant be x-rayed on June 15, at which time he was released for work. The mine at which the Complainant was employed began its annual vacation on the date his release was effective, so he returned to work on July 11, 1983, the date the mine resumed operation. Following his shift, the Complainant claims to have been told by the mine superintendent not to return to work because there was no restricted work available for the Complainant. The Respondent suspended the Complainant's Workers' Compensation benefits for July 11, 1983, the day he returned to work,

but reinstated these benefits on July 12, 1983. The Respondent states, however, that it reinstated the Workers' Compensation benefits under protest and has since filed a petition to terminate the Complainant's benefits based on information which indicates that the Complainant's disability is not work-related. This claim is currently under consideration. The Complainant has informed the Trustees that he applied for Social Security Disability Insurance benefits, but his application was denied based on a finding that he is not totally disabled.

The Respondent advises that the Complainant is still restricted in his work capabilities. Due to his lack of seniority, however, there are no restricted jobs available for which he can be recalled. The Respondent also states that, although the Complainant is receiving Workers' Compensation benefits, the reason for his not working is because he is on lay-off and not because of his being disabled.

During the 24 consecutive calendar month period immediately prior to his date last worked, the Complainant worked 708 hours. On this basis, the Respondent has provided continuation of coverage for the Complainant for the balance of the month from his date last worked, July 11, 1983, plus 6 months, through January 31, 1984.

#### Dispute

Is the Respondent responsible for the provision of benefits coverage for the Complainant beyond January 31, 1984?

#### Positions of the Parties

Position of the Complainant: As the Complainant is within four (4) years of retirement and is disabled due to a work-related injury for which he is currently receiving Workers' Compensation benefits, his benefits coverage should be reinstated and all medical bills from November 24, 1982, through the present should be paid.

Position of the Respondent: The Complainant was provided benefits coverage based on his hours worked. The basic reason for the Complainant's absence from work is lay-off because he did not have sufficient seniority to retain his previous light duty position at the time of recall. Further, although the Complainant is currently being paid Workers' Compensation benefits, these benefits were initiated for coverage of a temporary partially disabling condition. This award has formally been challenged on the grounds that the Complainant's disability is unrelated to his employment.

#### Pertinent Provisions

Article I (1), (2) and (4) of the Employer's Benefit Plan provide:

#### Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (coal company).
- (2) "Wage Agreement" means the National Bituminous Coal Agreement of 1981, as amended from time to time and any successor agreement....
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder....

Article II C. (2) and (3) of the Employer's Benefit Plan provide:

#### Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

##### 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 be provided to any Employee who:

- (2) Becomes totally disabled due to a compensable disability within four years of the date the Employee would be eligible to receive a pension under the 1974 Pension Plan or any successor thereto, as long as the Employee continues to be so disabled during the period for which Workers' Compensation payments (Workers' Compensation does not include Federal Black Lung Benefits) are applicable; or
- (3) Is receiving or would, upon proper application, be eligible to receive Sickness and Accident Benefits pursuant to the Wage Agreement.

Article III D. (1) (a) and (b) of the Employer's Benefit Plan provide:

##### D. General Provisions

###### (1) Continuation of Coverage

###### (a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employees 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 but less than 2,000 hours	plus 6 months Balance of month
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, 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.

Discussion

The Respondent has provided the Complainant with continuation of benefits coverage under Article III D. (1) (a) of the Employer's Benefit Plan through January 31, 1984, based on the Complainant's number of hours worked during the 24 consecutive calendar month period immediately prior to his date last worked. The Complainant's Representative contends, however, that the Complainant is entitled to additional benefits coverage under Article II C. of the Plan as a disabled miner, because he is within four years of retirement and is being paid Workers' Compensation benefits. The Respondent has countered this claim by alleging that the Complainant's absence from work is due to his being laid-off as a result of his lack of seniority to retain his former light-duty job.

Under Article II C. (2) of the Employer's Benefit Plan, an individual is eligible for benefits coverage if he becomes totally disabled due to a compensable injury within four years of the date he would be eligible to receive a pension. The primary issue with respect to the Complainant's eligibility under Article II. C. (2) is whether the Complainant is totally disabled. The Complainant has not submitted any evidence that he is totally disabled. His Workers' Compensation award is for a temporary partial disability. The Complainant admits that he applied for Social Security Disability Insurance benefits, and that his application was denied

based on a finding that he is not totally disabled. Moreover, the Complainant has demonstrated, during his previous periods of employment, an ability to perform light-duty work. Although he attempted to return to work in July 1983, his subsequent departure from the active work-force was not brought about by deterioration in his physical condition, but rather by the unavailability of a light-duty position in the work force.

In light of the above, the Trustees must conclude that the Complainant does not meet the requirement of Article II C. (2) of being totally disabled as a result of a compensable injury, and therefore is not eligible for benefits coverage under that provision.

Opinion of the Trustees

The Trustees are of the opinion that the Complainant is not eligible under Article II C. (2) of the Employer's Benefit Plan for continuation of coverage after January 31, 1984.