
OPINION OF TRUSTEES

In Re

Complainant: Dependent of Deceased Employee
Respondent: Employer
ROD Case No: 81-679 - July 28, 1986

Board of Trustees: Joseph Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 provision of health benefits coverage for the dependent of a deceased Employee under the terms of the Employer Benefit Plan.

Background Facts

The Complainant is the minor son of a deceased Employee of the Respondent. The Employee was killed in a mine accident on February 16, 1984, while working in a classified job for the Respondent.

The Employee and the Complainant's mother were divorced on October 14, 1983. Under the terms of the divorce decree and the Separation Agreement of September 15, 1983 incorporated therein, the Complainant's mother retained custody and the Employee was ordered to provide monthly payments of \$150 for the Complainant's support. The Complainant's mother has stated that such payments were being made at the time of the Employee's death.

The Employee remarried prior to his death. The Complainant's mother claims that this marriage took place prior to the Employee's final divorce decree and was thus void. She has stated further that the Industrial Commission of Virginia found that the sole eligible dependent of the Employee for purposes of benefit payments was the Complainant.

The Representative of the Complainant has stated that following the Employee's death, the Respondent continued to provide health benefits coverage for the Complainant, but upon a change of insurance carriers, coverage was terminated on June 30, 1984. The Representative of the Complainant has asked that the Respondent be found responsible for the provision of health benefits coverage for the Complainant, the surviving dependent child of an Employee killed in a mine accident.

The Respondent has failed to respond to repeated correspondence from the Funds regarding its position in this dispute. Therefore, the Trustees must issue a decision based upon the available information.

Dispute

Is the Respondent responsible for the provision of health benefits coverage for the Complainant under the terms of the Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent is responsible for the provision of health benefits coverage for the Complainant, the surviving dependent child of an Employee killed in a mine accident, under the terms of the Employer Benefit Plan.

Position of the Respondent: The Respondent has failed to present its position in this dispute.

Pertinent Provisions

Article I (1), (2), (4), and (7) of the Employer 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 Wage 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.
- (7) "Dependent" shall mean any person described in Section D of Article II hereof.

Article II D. (2) and E. (1) of the Employer Benefit Plan provide:

Article II - Eligibility

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

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II;

2. Unmarried dependent children of an eligible Employee or Pensioner who have not attained age 22;

E. Surviving Spouse and Dependents of Deceased Employees or Pensioners

Health benefits under Article III shall be provided to (i) any unmarried surviving spouse (who was living with or being supported by the Employee or Pensioner immediately prior to the Employee's or Pensioner's death) and (ii) such spouse's unmarried surviving dependent children as defined in subparagraphs (2) and (5) of paragraph D, of an Employee or Pensioner who died:

1. As a result of a mine accident occurring on or after the effective date of the Plan while the Employee was working in a classified job for the Employer;

At the death of an Employee described in paragraph (1) above, health benefits will be continued for the unmarried children until they attain age 22, even if there is no surviving spouse or if the surviving spouse dies before they attain age 22; provided, however, health benefits shall not be provided for any child during any month in which such child is regularly employed at an earnings rate equivalent to at least \$500 per month, unless such child is a full-time student.

Discussion

Article II E. of the Employer Benefit Plan establishes that health benefits coverage pursuant to Article III of the Plan will be continued for the unmarried dependent children of an Employee who died as a result of a mine accident until they attain age 22. The Plan and Q&A H-5 (81) (enclosed herein) make clear that the presence or absence of a surviving spouse does not affect the continued eligibility of a dependent child of a miner killed in a mine accident.

In Question and Answer H-2 (81), the Trustees stated that a person is considered a dependent of a participant if the participant regularly provides over one-half of the person's support, or is under Court Order to provide over one-half of the person's support. Support includes the fair rental value of lodging, reasonable cost of board, clothing, miscellaneous household services and education expenditures, excluding scholarships. Support is not limited to necessities. Inasmuch as the Employee was under Court Order to provide support payments of \$150 per month for the Complainant, who was then eleven years old, this amount can reasonably be considered to constitute one-half of the Complainant's total monthly support. Therefore, the Complainant is a dependent of the deceased Employee for purposes of health benefits eligibility. This conclusion is supported by the finding of the Industrial Commission of Virginia that the Complainant was the sole eligible dependent of the Employee at the time he died.

Inasmuch as the Employee was killed in a mine accident while working in a classified job for the Respondent and the Complainant is the dependent, unmarried child of the Employee, the Respondent is responsible to provide health benefits under the terms of the Employer Benefit Plan to the Complainant until he marries or attains age 22. Whether or not the Employee's second marriage was legitimate and his second wife thus his surviving spouse is irrelevant to the Employee's son's continued eligibility. The Respondent is not responsible to provide health benefits during any month in which the Complainant is regularly employed at an earnings rate equivalent to at least \$500 per month, unless he is a full-time student.

Opinion of the Trustees

The Respondent is responsible for the provision of health benefits coverage for the Complainant under the terms of the Employer Benefit Plan.