

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-284 - July 27, 1987

Board of Trustees: Joseph P. 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 for diagnostic procedures under the terms of the Employer Benefit Plan.

Background Facts

The Employee had a history of respiratory symptoms dating back to at least 1982. The primary care physician first examined the Employee in March 1982. The office notes from that visit indicate impressions of minimal pneumoconiosis and slight bilateral pulmonary emphysema, based on the examination and a chest x-ray. The Employee was awarded a permanent partial (5%) disability award from the West Virginia Workers' Compensation Fund in late 1982, based on an occupational disease (pneumoconiosis). The Employee continued working for the Employer until March 1985, when he was laid off.

Throughout this period, the primary care physician continued to see the Employee on a regular basis for his respiratory symptoms. The physician used chronic obstructive pulmonary disease (COPD) as the working diagnosis. On April 14, 1984, he began treating the Employee's worsening condition with medications. In December 1985, the primary care physician indicated in his notes that a pulmonary function test (PFT) would be ordered at the Employee's next visit. The notes of the next visit on January 17, 1986 indicate a diagnosis of COPD and discuss referral to a pulmonary specialist for a PFT. The physician's bill for this visit lists diagnoses of COPD and pneumoconiosis.

On February 3, 1986, an evaluation and a number of diagnostic tests were performed by the pulmonary specialist. The tests included a chest X-ray, and the radiologist reported evidence of pneumoconiosis. The pulmonary specialist's report of his evaluation did not include a diagnosis; his bill to the Employer's insurance carrier included a diagnosis of respiratory insufficiency. The Employee was next seen by his primary care physician on February 28, 1986. The office notes

from that visit include mention of the specialist's evaluation and diagnostic tests; the diagnosis in the office notes was COPD.

The Employee filed a new claim for occupational pneumoconiosis benefits from the West Virginia Workers' Compensation Fund on March 13, 1986. The Employer and its insurance carrier concluded that the tests performed on February 3, 1986 were connected with the Employee's claim for Black Lung benefits, and were therefore not covered services under the Employer Benefit Plan.

The Employee contends that the Employer is responsible for providing benefits for the tests performed on February 3, 1986. In support of his position, the Employee has submitted a copy of a letter dated September 12, 1986 from the primary care physician to the Employer's insurance carrier stating that the diagnostic tests were performed to evaluate the Employee's COPD. The physician's office notes of subsequent visits in October 1986 and January 1987 list both COPD and pneumoconiosis as diagnoses.

Dispute

Is the Employer responsible for payment of benefits for the services provided by the pulmonary specialist?

Positions of the Parties

Position of the Employee: The Employer is responsible for providing benefits for the services.

Position of the Employer: The Employer is not responsible for providing benefits for the services because they were performed in connection with the Employee's application for Black Lung benefits.

Pertinent Provisions

The introduction to Article III of the Employer Benefit Plan states in part:

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan.

Article III. A. (11)(a)6. of the Employer Benefit Plan states:

(11) General Exclusions

- (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following: 6. Evaluation procedures such as x-rays and pulmonary function tests, in connection with

applications for Black Lung benefits, as required by Federal or State Black Lung legislation.

Discussion

Under Article III of the Employer Benefit Plan, benefits are provided for services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care. Article III. A. (11)(a)6. of the Plan excludes benefits for evaluation procedures performed in connection with applications for Black Lung benefits.

The Employer argues that the evaluation and diagnostic tests performed by the pulmonary specialist are not covered services under the Plan because they were performed in connection with the Employee's application for State Black Lung benefits. The evidence on record indicates that the services in dispute were recommended by the Employee's primary care physician without being requested by the Employee. A Funds' medical consultant has reviewed the available evidence and is of the opinion that, given the Employee's worsening pulmonary symptoms, reasonable medical practice would require that the Employee have the evaluation and diagnostic tests which were performed on February 3, 1986. The consultant also noted that while the standard battery of pulmonary tests includes tests which evaluate the extent of pneumoconiosis, the testing performed by the specialist included more sophisticated evaluations which are not specific for pneumoconiosis and are not required for Federal or State Black Lung evaluations.

The weight of the evidence indicates that the services provided by the pulmonary specialist were reasonable and necessary in the course of the Employee's treatment for COPD, and were not performed for the purpose of establishing disability in connection with the Employee's application for State Black Lung benefits. The Trustees therefore conclude that the services provided by the pulmonary specialist are covered under the Employer Benefit Plan.

Opinion of the Trustees

The Employer is responsible for providing benefits for the evaluation and diagnostic tests performed by the pulmonary specialist.