
OPINION OF TRUSTEES

In Re

Complainant: Laid-off Employee
Respondent: Employer
ROD Case No: 84-606 - June 9, 1988

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 continuation of health benefits coverage for a laid-off Employee under the terms of the Employer Benefit Plan.

Background Facts

The Complainant was employed in a classified position by the Respondent until June 27, 1987, when he was laid off. Funds' records indicate that the Complainant worked over 2,000 hours for the Respondent during the 24-month period prior to June 27, 1987.

The representative for the Complainant states that the Complainant used his own dump truck to haul gravel on a contract basis during his employment with the Respondent and following his layoff on June 27, 1987. The representative for the Complainant states that the Respondent terminated the Complainant's health benefits coverage on September 2, 1987, without notifying the Complainant. The representative states that, as a result, medical expenses, which the Complainant thought would have been covered, have not been paid. The representative contends that the Complainant is entitled to continued health benefits coverage beyond September 2, 1987 because self-employment is not considered "employment" under the terms of the Employer Benefit Plan. The representative further contends that under Article XX of the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1984, a beneficiary may earn up to \$500 per month without losing his health benefits coverage.

The Respondent states that on October 6, 1987, the Complainant visited its office to seek assistance with some medical claims. While in the Respondent's office, the Complainant indicated that he had taken the day off from his job with another company. The Respondent then contacted that company and was advised that the Complainant began hauling gravel on a contract basis for that company on September 2, 1987. Information provided to the Funds indicates that

the Complainant hauled gravel regularly for that company during September 1987. The Respondent contends that the Complainant's self-employment is considered "employment" within the meaning of Article III. D. (1)(f) of the Employer Benefit Plan; accordingly, it terminated the Complainant's health benefits coverage on September 2, 1987.

Dispute

Whether the Respondent is responsible for providing continued health benefits coverage for the Complainant beyond September 2, 1987.

Positions of the Parties

Position of the Complainant: The Complainant's self-employment is not considered "employment" within the meaning of Article III. D. (1)(f) of the Employer Benefit Plan; therefore, the Respondent is responsible for providing health benefits coverage for the Complainant beyond September 2, 1987.

Position of the Respondent: The Respondent is not responsible for providing continued health benefits coverage for the Complainant beyond September 2, 1987, because the Complainant accepted other employment on that date.

Pertinent Provisions

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

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's Name).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1984, 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. B. (4) and E. (3) of the Employer Benefit Plan provide:

Article II - Eligibility

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

B. Pensioners

Health benefits and life insurance under Article III hereof shall be provided to Pensioners as follows:

- (4) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least \$500 per month.

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;
- (2) Under conditions which qualify such spouse for a Surviving Spouse benefit under the 1974 Pension Plan or any successor thereto;
- (3) At a time when such Employee or Pensioner is entitled to receive health benefits pursuant to paragraph A, B, or G of this Article II, provided that (i) if such Employee or Pensioner died prior to the effective date of the Wage Agreement and the spouse is not eligible for a Surviving Spouse's benefit, then only for the period that the spouse is eligible to receive death benefits in installment payments pursuant to paragraph C of Article III, or (ii) if such Employee or Pensioner died on or after the effective date of the Wage Agreement and the spouse is not eligible for a Surviving Spouse's benefit and life insurance benefits or death benefits are payable in a lump sum, then only for 60 months following the month of the death of such Employee or only for 22 months following the month of death of such Pensioner. If life insurance benefits are not payable, health benefits shall be provided only to the end of the month in which the Employee or Pensioner died.

Any children who have not attained age 22 shall not be entitled to receive health benefits under this paragraph E if they are employed and living outside the household (residence) of the surviving spouse or the immediate family of the deceased Employee or Pensioner.

Health benefits shall continue for a surviving spouse until remarriage of such spouse, but if such spouse is entitled to such benefits under paragraph (3) above, such health benefits will continue not longer than for the period specified in paragraph (3) above. Health benefits shall not be provided during any month in

which such surviving spouse is regularly employed at an earnings rate equivalent to at least \$500 a month.

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 of at least \$500 per month, unless such child is a full-time student.

If at the death of an Employee or pensioner described in paragraph (3) above, there is no surviving spouse, or if the surviving spouse dies during any period in which health benefits are being continued, such health benefits will be continued for the unmarried children during the period in which such spouse would have been eligible for health benefits but in no event beyond their attaining 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.

The unmarried, dependent children of a Surviving Spouse eligible under (2) above shall be eligible for health benefits until they attain age 22, so long as the Surviving Spouse is eligible for benefits; provided, however, health benefits shall not be provided 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.

Article III. A. (10)(b) and D. (1) (a) and (f) of the Employer Benefit Plan provide:

Article III - Benefits

A. Health Benefits

(10) General Provisions

(b) Administration

The Plan Administrator shall give written notice to each employee of the termination of extended coverage under the Benefit Plan. Such notice shall explain the conversion privileges of the Benefit Plan and the enrollment procedures to be followed. Failure to provide such notice shall not extend coverage beyond the period otherwise provided in the Benefit Plan.

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:

<u>Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked</u>	<u>Period of Coverage Continuation from the 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

(f) Other Employment

Notwithstanding the foregoing, in the event an Employee accepts employment during a period of continued coverage under paragraph (a), health, life and accidental death and dismemberment insurance coverage will terminate as of the date of such employment. If, however, such employment subsequently terminates prior to the date the Employee's coverage under paragraph (a) otherwise terminates, such Employee's health, life and accidental death and dismemberment insurance coverage will be reinstated following the later of (i) termination of such employment or (ii) any continued health coverage resulting therefrom, and will continue to the date such coverage under paragraph (a) would have otherwise terminated. It is the obligation of the Employee to notify the Employer within 10 days by certified mail of both the acceptance and termination of such employment; failure to provide such notice will result in permanent termination of coverage. Nothing in this paragraph shall extend coverage beyond the date determined pursuant to paragraph (a).

Discussion

Article III. D. (1) (a) of the Employer Benefit Plan provides continued health benefits coverage for a laid-off Employee based upon the number of hours worked for the Employer during the 24 consecutive calendar month period immediately prior to the Employee's date last worked.

Article III. D. (1)(f) of the Plan states that "in the event an Employee accepts employment during a period of continued coverage ... health, life and accidental death and dismemberment coverage will terminate as of the date of such employment." Article III. A. (10)(b) of the Plan requires the Plan Administrator to give written notice to each Employee of the termination of extended coverage. Article III. A.(10)(b) further stipulates that failure to provide such notice shall not extend coverage beyond the period otherwise provided in the Plan.

The representative for the Complainant contends that self-employment is not "employment" within the meaning of Article III. D. (1)(f) of the Employer Benefit Plan. The record in this case indicates that the Complainant worked on a regular basis as a contract hauler during at least the month of September 1987. Therefore, the Trustees conclude that the Complainant's self-employment is considered "employment" within the meaning of Article III. D. (1)(f).

The representative for the Complainant also claims that the Complainant may earn a maximum of \$500 per month without losing his health benefits coverage. The references to a \$500 monthly earnings limitation under Article XX of the Wage Agreement and under Articles II. B. and E. of the Employer Benefit Plan apply to Pensioners and surviving spouses and dependents of deceased Employees or Pensioners. Inasmuch as the Complainant is a laid-off Employee, the \$500 monthly earnings limitation does not apply in this case.

Inasmuch as the Complainant became self-employed on September 2, 1987, the Respondent is not responsible for providing continued health benefits coverage for the Complainant beyond September 2, 1987, under the terms of Article III. D. (1)(f) of the Employer Benefit Plan. Although the Complainant contends that the Respondent should be responsible for payment of his medical bills incurred before he learned his coverage had been terminated, Article III. A.

(10)(b) of the Plan clearly provides that failure to provide notice of the termination of coverage shall not extend coverage beyond the period otherwise provided in the Plan.

Opinion of Trustees

The Respondent is not responsible for providing continued health benefits coverage for the Complainant beyond September 2, 1987, under the terms of the Employer Benefit Plan.