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OPINION OF TRUSTEES

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In Re

Complainant: Surviving Spouse  
Respondent: Employer  
ROD Case No: 84-720 - February 28, 1991

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, 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 a surviving spouse under the terms of the Employer Benefit Plan.

Background Facts

The Complainant is the surviving spouse of an Employee who was working in a classified position for the Respondent on January 8, 1980, when he received an electrical shock. Approximately two hours later, the Employee went into a coma; he did not regain consciousness and died on January 12, 1980. The death certificate states that the immediate cause of death was a "brain stem and intraventricular hemorrhage" due to a "brain aneurysm or vascular malformation."

Sometime after her husband's death, the Complainant filed a civil action against the Respondent and its insurance carrier for the payment of a \$12,000 accidental death benefit. On January 4, 1985, a settlement was reached between the parties. It was agreed by the parties that the settlement payment of \$7,000 to the Complainant is not an admission of liability on the part of the Respondent and its carrier.

On July 2, 1985, the Workers' Compensation Commissioner awarded dependent's benefits to the Complainant and her children. On appeal, the Board issued an opinion in september 1986 stating that [t]here can be no doubt that the [Employee] suffered from a congenital defect which ultimately played a part in the vascular accident." The Board noted that, "[a] though it is disputed by the Employer, the evidence also supports the contention that the claimant suffered from a severe, painful shock at work on January 8, 1980." The Board concluded that it was "unable to state to any degree of certainty whether or not the vascular accident was caused by the electric shock. However, when one superimposes upon this equation the well-known liberality rule, this Board has no other alternative but to hold the claim to be compensable."

The Respondent provided health benefits coverage for the Complainant and her dependents for a period of sixty months following the death of her husband pursuant to Article II E. (3) of the Employer Benefit Plan. The Complainant states that after coverage was terminated, she obtained private insurance coverage. She states that she did not learn that additional coverage is provided to certain surviving spouses until she discussed the matter with a Union representative in April 1990. The Complainant claims that she is entitled to receive health benefits coverage for life or until she remarries.

The Respondent maintains that the Complainant's husband's death was not the result of a mine accident within the meaning of Article II E. of the Employer Benefit Plan, and the Complainant is therefore entitled only to 60 months of health benefits coverage, which the Respondent has provided. The Respondent also contends that the Workers' Compensation award is not determinative with respect to whether the miner died as a result of a mine accident. According to the Respondent, the January 8, 1980 accident was investigated by the Mine Safety and Health Administration (MSHA) and was not considered to be a mine fatality. A copy of MSHA's report was submitted by the Respondent.

#### Dispute

Whether the Respondent is responsible for providing health benefits coverage for the Complainant for life or until she remarries.

#### Positions of the Parties

Position of the Complainant: The Respondent is responsible for providing the Complainant with health benefits coverage for life or until she remarries because she is the surviving spouse of an Employee who died as a result of a mine accident.

Position of the Respondent: The Complainant is not eligible for health benefits coverage beyond the 60-month period provided because her husband's death was not the result of a mine accident.

#### Pertinent Provisions

Article II. E. (1), (2) and (3) of the Employer Benefit Plan provide in pertinent part:

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 C 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 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.

...

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....

#### Discussion

Article II E. (1) of the Employer Benefit Plan provides health benefits coverage to the unmarried surviving spouse of an Employee who died as a result of a mine accident that occurred while the Employee was working in a classified job. Under Article II E., such coverage shall continue until the surviving spouse remarries. The Complainant contends that she is eligible for health benefits coverage for life or until she remarries because her husband died as a result of a mine accident. Although the Complainant apparently did not file a claim for additional health benefits coverage until more than five years after coverage had been terminated, neither the Employer Benefit Plan nor the National Bituminous Coal Wage Agreement includes a time limit within which claims for benefits must be submitted or a ROD filed. The Trustees note, however, that when a claim is not filed promptly, it may be difficult to obtain evidence needed for an informed decision.

The Complainant's husband received an electrical shock at work on January 8, 1980 and died four days later on January 12, 1980. The Employee's death certificate states that the immediate cause of death was a "brain stem and intraventricular hemorrhage" due to a "brain aneurysm or vascular malformation." The Respondent appears to argue that the Employee's death was the result of his own physical condition and not the result of a mine accident. The Respondent cites RODs 217 and 342 in support of its position. However, those cases are distinguishable. The Employee in each of those cases had suffered a heart attack at work, and it was concluded that death was due to a bodily infirmity, not a mine accident. In this case, while there is evidence that

the Employee may have had a congenital defect, there is also evidence that a mine accident occurred.

Q&A 252 (copy enclosed herein) pertains to eligibility for pension benefits, rather than eligibility for health benefits coverage. However, it is relevant to this case insofar as it defines the elements of a mine accident. The first element is unexpectedness. Clearly, a severe electrical shock was not expected in the normal course of the Employee's job. The second element is definiteness. There must be a definite time, place and occasion within the course of the mine worker's employment which can be identified as a mine accident. Here, it is not disputed that the Employee suffered an electrical shock at work on January 8, 1980. The final element is force or impact. There must be some exertion or impact of a physical force or object against the body or some exertion or impact of the body against a physical force. Information provided in this case contains varying estimates of the impact of the electrical shock on the Employee. Although the exact intensity and duration of the Employee's shock have not been determined, the testimony of witnesses indicates that the electrical shock had a severe, painful impact on the Employee. Thus, there is no question that a mine accident occurred. The issue here is whether the Complainant's husband's death was caused by that accident.

The Employer contends that the evidence in this case does not establish that the Employee's death was caused by the electric shock. As noted by the Employer, the Workers' Compensation Appeal Board stated that it was unable to state to any degree of certainty whether or not the vascular accident was caused by the electric shock. Nonetheless, the Board found in favor of the Complainant's claim for compensation. Q&A 35 (copy enclosed herein) states that, in situations where a miner suffers a heart attack while working, a Workers' Compensation award to the widow is not determinative as to whether the miner died as a result of a mine accident. Rather, a factual determination, based on all available evidence, must be made on the question of whether the miner died as a result of a mine accident. Similarly, the Worker's Compensation award in this case is not, by itself, determinative as to whether the Employee died as a result of a mine accident; that determination must be made on the basis of all available evidence.

The Employer has also stated that the January 8, 1980 accident was investigated by MSHA and it was concluded that this was not a mine fatality.

MSHA's report of the findings of its investigation states that there was no indication on the death certificate to link the Employee's death to the electrical shock accident. The report also states that two other employees received electrical shocks at the same time as the Complainant's husband, but they did not report them until the investigation occurred. Although this implies that the shock was not sufficient to have caused the Complainant's husband's death, the report does not specifically address how the electrical shock would have affected the Complainant's husband's physical condition. The MSHA report was apparently not written by anyone with a medical background nor does it state that the investigators spoke to any physicians concerning the cause of the Complainant's husband's death. In any event, just as the Workers' Compensation decision is not determinative with respect to the issue in this case, neither is the decision of MSHA.

As noted above, the information presented in this case shows that the Complainant's husband suffered a severe, painful electrical shock on January 8, 1990. Testimony given before the Workers' Compensation Appeal Board indicates that the shock was severe enough to cause the Employee to shout and state that his arms were numb. An expert witness retained by the Complainant concluded that the most obvious cause available to explain the vascular accident and ensuing death was the electrical shock. Although an expert witness retained by the Respondent contended that the electric shock could not have caused the Employee's death, the Board in its decision noted that the Respondent's witness was unable to provide any other immediate etiology for the vascular accident.

A Funds' medical consultant has reviewed the information presented in this case, including the depositions of medical experts and the MSHA report, and has noted that, according to the records, the Employee became comatose approximately six to seven hours following the shock and died four days later. The consultant has advised that this temporal relationship is consistent with an electrical shock precipitating intracranial bleeding into the brain stem. The consultant has also advised that the patient's brain aneurysm or vascular malformation may have been an underlying defect, but it may not have caused him symptoms and may never have become a problem, if the electrical shock had not occurred. The consultant advises that within a reasonable degree of medical certainty the electrical shock received on January 8, 1980 was the cause of the brain stem and intraventricular hemorrhage that resulted in the Employee's death.

Thus, the Trustees conclude on the basis of all the available evidence that the Employee died as a result of a mine accident. Accordingly, the Complainant is entitled to coverage under Article II E. (1) for life or until she remarries, consistent with the terms of the Employer Benefit Plan. Under the circumstances of this particular case, the Trustees have determined that the Complainant's coverage should be effective May 15, 1990, the date that this ROD was filed.

#### Opinion of the Trustees

Effective May 15, 1990, the Respondent is required to provide health benefits coverage for the Complainant for life or until she remarries, consistent with the terms of Article II E. of the Employer Benefit Plan.