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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-055 - May 23, 1989

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 an Employee under the terms of the Employer Benefit Plan.

Background Facts

The Complainant was employed in a classified position by the Respondent on April 29, 1988. He sustained a back injury on that date. The Complainant filed a claim for workers' compensation benefits. On May 3, 1988, the Complainant was treated by his family physician who recommended that the Complainant see a specialist if his condition did not improve. A specialist examined the Complainant on May 24, 1988, diagnosed a herniated disc and recommended surgery. The Complainant was informed that the specialist was available to perform the surgery on May 31, 1988, and that if the surgery was not performed on that date, the specialist would not be available for another month.

The Respondent contends that, under the Illinois Workers' Compensation Act, the Complainant was required to have an independent medical examination prior to having surgery. The Respondent has submitted a copy of a letter dated May 27, 1988, in which the workers' compensation insurance carrier informed the Complainant that an independent medical examination was scheduled for June 1, 1988, and that it would not accept responsibility for the Complainant's medical bills if he proceeded with the scheduled surgery. The Complainant informed the insurance carrier by letter dated May 30, 1988, that because of his back pain, he would proceed with the surgery on May 31, 1988. Because the Complainant did not keep his appointment for an independent medical examination on June 1, 1988, the workers' compensation insurance carrier has refused to pay the Complainant's medical bills, and the Complainant's claim for workers' compensation benefits was denied on June 16, 1988.

The Complainant submitted the medical bills for his surgery to the Respondent for payment under the Employer Benefit Plan. The Respondent has refused to pay the bills under the Employer Benefit Plan on the grounds that the services are covered by workers' compensation. The Respondent states that Article III. A. (11)(a) of the Employer Benefit Plan specifically excludes services covered by workers' compensation laws.

The representative for the Complainant states that the Complainant has appealed the denial of workers' compensation benefits. The representative contends that, while the appeal is pending, the Respondent should pay the Complainant's medical bills under the Employer Benefit Plan and allow the Complainant to sign a subrogation agreement which would protect the Plan's right to reimbursement if the workers' compensation denial is overturned.

### Dispute

Whether the Respondent is required to provide coverage under the Employer Benefit Plan for the medical expenses incurred by the Complainant as a result of his disc surgery.

### Positions of the Parties

Position of the Complainant: Because coverage for the Complainant's medical expenses was denied by workers' compensation, the Respondent should provide coverage under the Employer Benefit Plan and allow the Complainant to sign a subrogation agreement.

Position of the Respondent: The Respondent is not responsible for payment of the Complainant's medical expenses because they were incurred as a result of a compensable injury, and are therefore excluded from coverage under the Employer Benefit Plan.

### 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 1988, 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 III A. (10)(e) and (11)(a) 1. of the Employer Benefit Plan provide:

(10) General Provisions

(e) Subrogation

The Plan does not assume primary responsibility for covered medical expenses which another party is obligated to pay or which an insurance policy or other medical plan covers. Where there is a dispute between the carriers, the Plan shall, subject to provisions 1 and 2 immediately below, pay for such covered expenses but only as a convenience to the Beneficiary eligible for benefits under the Plan and only upon receipt of an appropriate indemnification or subrogation agreement; but the primary and ultimate responsibility for payment shall remain with the other party or carrier.

Obligations to pay benefits on behalf of any Beneficiary shall be conditioned:

1. upon such Beneficiary taking all steps necessary or desirable to recover the costs thereof from any third party who may be obligated therefore, and
2. upon such Beneficiary executing such documents as are reasonably required by the Plan Administrator, including, but not limited to, an assignment of rights to receive such third party payments, in order to protect and perfect the Plan's right to reimbursement from any such third party.

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

1. Cases covered by workers' compensation laws or employer's liability acts or services for which an employer is required by law to furnish in whole or in part.

Discussion

Article III. A. (11) (a) 1. of the Employer Benefit Plan excludes benefits for cases covered by state workers' compensation laws. Article III. A. (10)(e) of the Plan states that the Plan does not assume primary responsibility for covered medical expenses which another party is obligated to pay or which an insurance policy covers. Article III. A. (10)(e) further states that, where there is a dispute between the carriers, the Plan shall pay for such covered expenses only as a convenience to the Beneficiary and only upon receipt of an appropriate subrogation agreement which would protect the Plan's right to reimbursement from any obligated third party.

The Respondent contends that the Complainant suffered a workers compensation-covered injury on April 29, 1988. The Respondent further contends that because the medical expenses incurred by the Complainant were attributable to such injury, the expenses are excluded under Article III. A. (11)(a) 1. of the Employer Benefit Plan. In general, medical expenses are excluded under Article III. A. (11) (a) 1. in cases where such expenses are actually paid by workers' compensation (see ROD 36, copy attached). However, this broad statement has been limited in a more recent ROD. In ROD 81-686 (copy enclosed herein), the Workers' Compensation carrier refused to pay for services where the Employee sought treatment without receiving the carrier's prior authorization. The Trustees held that although the services in question were not actually paid by workers' compensation, the Employer was entitled to rely on the workers' compensation exclusion in refusing to provide benefits under the Employer Benefit Plan.

In ROD 36, the Employee had settled his workers' compensation claim and was, therefore, completely ineligible for further workers' compensation benefits when the medical expenses in question were incurred. In the instant case, unlike ROD 36, the Complainant was clearly entitled to workers' compensation benefits. The Respondent does not dispute the Complainant's entitlement to workers' compensation benefits, including payment for all necessary medical services related to the Complainant's injury. However, the Respondent denied payment of the medical expenses because the Complainant failed to comply with certain administrative procedures concerning a second opinion which, by law, the employer is entitled to require. In effect, the Complainant elected to impair his right to receive payment from the workers' compensation carrier by failing to act in accordance with such procedures. This case is, therefore, more closely analogous to ROD 81-686 than ROD 36. Inasmuch as the Complainant's medical expenses are attributable to the compensable injury, this is a case covered by workers' compensation laws and, therefore, excluded from coverage under the Employer Benefit Plan.

The Complainant also argues that the Respondent is required to pay for his medical bills in accordance with the subrogation provision of Article III A. (10)(e) of the Plan. The subrogation provision is applicable where the Employer is potentially responsible for the medical services in question. This is not the case in the present ROD. Services attributable to the Complainant's compensable injury are covered by workers' compensation laws within the meaning of Article III A. (11) (a) 1. of the Plan. The Respondent is, therefore, not responsible for the medical services in question and the subrogation provision of Article III A. (10)(e) of the Plan is inapplicable.

#### Opinion of the Trustees

The Respondent is not required to provide coverage under the Employer Benefit Plan for the medical expenses incurred by the Complainant as a result of his compensable injury on April 29, 1988.