
OPINION OF TRUSTEES

In Re

Complainant: Surviving Spouse of an Employee
Respondent: Employer
ROD Case No: 88-264 - April 25, 1990

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 accidental death benefits under the terms of the Employer Benefit Plan.

Background Facts

The Employee was employed in a classified position by the Respondent, a signatory employer. During the morning of November 12, 1988, the Employee died from a self-inflicted gunshot wound. Witnesses at the shooting provided statements to the police indicating that the Employee had pointed a gun at them and stated that the gun was not loaded; he then put the gun to his own head and pulled the trigger. The gun discharged and the Employee died shortly thereafter.

The Death Certificate indicates that the Employee's immediate cause of death was "pending autopsy." The Coroner's Supplementary Medical Certification lists the major findings of the autopsy as (1) tight contact wound of head with perforation of skull and brain, (2) marked atherosclerotic narrowing of his left anterior descending arteries, and (3) ethanol 0.26%. In addition, where the coroner's report indicates whether death was due to accident, suicide, or homicide, the coroner wrote "accidental." The coroner also described the Employee's injury as a "self-inflicted gunshot to right forehead."

The Complainant received a \$35,000 life insurance benefit from the Respondent. The Complainant's claim for a \$70,000 accidental death benefit was denied by the Respondent.

Dispute

Is the Respondent required to pay an accidental death benefit of \$70,000 to the Complainant?

Positions of the Parties

Position of the Complainant: The Respondent is required to pay an accidental death benefit of \$70,000 to the Complainant because the Complainant's husband's death was accidental.

Position of the Respondent: The Respondent is not required to pay an accidental death benefit of \$70,000 to the Complainant because the Employee's death was not the result of accidental means. In addition, the Respondent contends that recovery of the \$70,000 is inappropriate because the Employee's death was due, at least in part, to his own voluntary intoxication, and he was acting in violation of the law - using weapons while intoxicated - at the time of his death.

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 II A. of the Employer Benefit Plan provides:

Article II - Eligibility

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

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

- (1) is actively at work* for the Employer on the effective date of the Wage Agreement; or
- ...
- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

*Actively at work includes an Employee of the Employer who was actively at work on January 31, 1988, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

Article III B. (1) (a), (b) and (d) of the Employer Benefit Plan provide:

Article III - Benefits

B. Life and Accidental Death and Dismemberment Insurance

(1) Active Employees

Life and accidental death and dismemberment insurance will be provided for Employees, as described in Article II, Sections A and C (3), in accordance with the following schedule:

- (a) Upon the death of an Employee due to other than violent, external and accidental means, life insurance in the amount of \$35,000 will be paid to the Employee's named beneficiary.
- (b) Subject to (d) below, upon the death of an Employee due solely to violent, external and accidental means as the result of an injury occurring while insured and on or after February 1, 1988, life insurance in the amount of \$70,000 will be paid to the Employee's named beneficiary.
- (d) Accidental death or dismemberment benefits are not payable if caused in whole or in part by disease, bodily or mental infirmity, ptomaine or bacterial infection, hernia, suicide, intentional self-inflicted injury, insurrection, or acts of war or is caused by or results from committing a felony.

Discussion

Under Article III. B. (1)(b) of the Employer Benefit Plan, a \$70,000 accidental death benefit is payable upon the death of an Employee due solely to violent, external and accidental means. There is no question that the Employee's death was due to violent and external means; the issue here is whether the Employee's death was due to accidental means.

According to witnesses at the shooting, the Employee said the gun was unloaded before he aimed it at his head and pulled the trigger. The information submitted in this case indicates that the Employee's actions were voluntary and unnecessary. The Employee freely undertook a known risk when he aimed the gun at his head and pulled the trigger, causing the gun to discharge. Although the Employee may have made an error in judgment by assuming that the gun was not loaded, the consequences of his actions were reasonably foreseeable and not out of the ordinary or accidental. When he pulled the trigger, the gun operated mechanically the way it was intended to operate. It is therefore reasonable to conclude, based on the evidence in his case, that the Employee's death was not due solely to accidental means. Accordingly, the Respondent is not required to pay an accidental death benefit of \$70,000 to the Complainant. The additional

Opinion of Trustees
Resolution of Dispute
Case No. 88-264
Page 4

issues raised by the Respondent regarding the Employee's level of intoxication and use of a gun while intoxicated need not be addressed.

Opinion of the Trustees

In accordance with Article II. B (1)(b), the Respondent is not required to pay a \$70,000 accidental death benefit to the Complainant.