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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 88-326 - September 25, 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 Pensioner under the terms of the Employer Benefit Plan.

### Background Facts

The Complainant was injured while working in a classified job for the Respondent on September 17, 1986. As a result of this injury, the Complainant was awarded Workers' Compensation benefits. In December 1987, the Complainant applied for Social Security Disability Insurance ("SSDI") benefits under Title II of the Social Security Act. His application was approved on appeal by an Administrative Law Judge on February 17, 1989, with a disability onset date of September 17, 1986.

In February 1989, the Complainant applied for disability pension benefits under the UMWA 1974 Pension Plan. The Funds notified the Complainant by letter dated October 2, 1989 that he was awarded a 1974 Pension Plan Minimum Disability pension, effective October 1, 1986. The Complainant was advised to contact the Respondent, his last signatory employer, regarding his eligibility for health benefits coverage as a Pensioner. The Complainant contends that the Respondent has failed to provide health benefits coverage as required by the Wage Agreement.

The Complainant states that the Respondent reinstated his health benefits coverage under a plan implemented through Great-West Life Assurance Company around November 1989, but refuses to provide his health benefits coverage retroactive to October 1, 1986, the effective date of his pension. According to information submitted by the Complainant, benefit payments under the Great-West plan are subject to a \$500 deductible per family and, thereafter, benefits are paid up to 80% of the cost of services. The Complainant also submitted information indicating that the Great-West plan does not provide coverage for pre-existing conditions, and for certain services such as well baby care, immunizations, and prescription drugs. As a result, the Complainant and

his dependents have incurred numerous unpaid medical bills, some of which pertain to the birth of the Complainant's daughter in February 1990.

The representative for the Respondent states that the Complainant is not eligible for health benefits coverage because the Complainant was not totally disabled as a result of a mine accident.

### Dispute

Whether the Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner, effective October 1, 1986, at the level prescribed by the Employer Benefit Plan.

### Positions of the Parties

Position of the Complainant: The Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner effective October 1, 1986, the effective date of his pension. The Respondent is also required to provide health benefits coverage for the Complainant and his eligible dependents at the level prescribed by the Wage Agreement and the Employer Benefit Plan.

Position of the Respondent: The Respondent is not required to provide health benefits coverage for the Complainant as a Pensioner because the Complainant is not totally disabled as a result of a mine accident, as required to qualify for a disability pension.

### Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreements of 1984 and 1988 provides in pertinent part:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans....

Article I (1), (2) and (5) of the 1984 and 1988 Employer Benefit Plans 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 [1988], as amended from time to time and any successor agreement.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan.

Article II B. (1) of the 1984 and 1988 Employer Benefit Plans provides:

#### Article II - Eligibility

The persons eligible to receive the 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:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
  - (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
  - (b) October 1, 1984 (February 1, 1988), shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I(S) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

Article III A. (1)(h), (3)(c) and (o) 1., (4) (a) and (8) of the 1984 and 1988 Employer Benefit Plans provide in pertinent part:

#### Article III - Benefits

A. Health Benefits

(1) Inpatient Hospital Benefits

(h) Maternity Benefits

Benefits are provided for a female Beneficiary who is confined in a hospital for pregnancy....

(3) Physicians' Services and Other Primary Care

(c) Obstetrical Delivery Service

Benefits are provided for a female Beneficiary for obstetrical delivery services (including pre- and post-natal care] performed by a physician. Benefits will also be provided if such delivery is performed by a midwife certified by the American College of Nurse Midwifery and licensed where such licensure is required.

(o) Primary Medical Care - Miscellaneous

1. Benefits are provided for care of newborn babies and routine medical care of children prior to attaining age 6.

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set forth in (3)(e)....

(8) Co-Payments

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the

Beneficiary. The Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments....

Co-Payments for covered Health Benefits are established as follows:

BenefitCo-Payment

(a) Physician services as an out-patient as set forth in Section A (2) and physician visits in connection with the benefits set forth in Section A(3), paragraph (c) but only for pre- and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient surgery, paragraph (o) and Section A(7) paragraph (f).

Working Group -- \$7.50 per visit up to a maximum of \$150 per 12-month period(\*) per family.

Non-working Group -- \$5 per visit up to a maximum of \$100 per 12-month period(\*) per family.

(b) Prescription drugs and insulin, \$5 per prescription or refill as set forth in Section A(4) and take-home drugs following hospital confinement as set forth in Section A(1)(a).

up to a \$50 maximum per 12-month period(\*) per family.

Note: For purposes of this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

\*The 12-month periods shall begin on the following dates: March 27, 1984; March 27, 1985; March 27, 1986; and March 27, 1987 [March 27, 1988; March 27, 1989; March 27, 1990; March 27, 1991 and March 27, 1992].

Discussion

Article II B. of the Employer Benefit Plans established pursuant to the 1984 and 1988 Wage Agreements provides health benefits coverage for Pensioners. Article I (5) of those Plans defines such Pensioners as any person whose last classified signatory employment was with the Employer, and who is receiving a pension under the UMWA 1974 Pension Plan, other than a deferred vested pension based on less than 20 years of credited service, or a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan.

The Complainant in this case is receiving a 1974 Pension Plan Minimum Disability pension, effective October 1, 1986. He is not receiving a deferred vested pension nor a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan. Inasmuch as the Complainant is receiving a Minimum Disability pension and his last classified signatory employment was with the Respondent, he is a Pensioner within the definition of Article I (5) of the Employer Benefit Plan established by the Respondent, and is eligible to receive health benefits under Article II B. thereof. Accordingly, the Respondent is required to provide health benefits coverage for the Complainant and his eligible dependents from the effective date of his pension, October 1, 1986.

The Respondent has asserted that the Complainant is not disabled as a result of a mine accident and, therefore, is not entitled to a disability pension from the 1974 Pension Plan. Any Employer challenge of a pension eligibility decision must be raised in a separate procedure authorized by Article XX (g)(3) of the Wage Agreement, and may not be addressed by the Trustees in the ROD process.

Article XX Section (c)(3)(i) of the 1984 and 1988 Wage Agreements requires a signatory Employer to establish and maintain an Employer Benefit Plan and stipulates that the benefits provided by an Employer to its eligible Participants pursuant to such Plan shall be guaranteed during the term of the Agreements by that Employer at levels set forth in such Plan. Article III A. of the Employer Benefit Plan specifies the benefits, including hospital and physician services pertaining to pregnancy and delivery, routine medical care for children up to age 6 and prescription drug coverage, which are to be provided under the Employer Benefit Plan. Benefits are provided for covered hospital charges and physician's fees which are incurred by a beneficiary without restrictions for pre-existing conditions. In addition, Article III A. (8) of the Employer Benefit Plan specifies the co-payments which are the responsibility of the beneficiary for medical services and prescriptions. Levels of benefits to be provided to Employees, Pensioners and their dependents and survivors are established through collective bargaining and may not be unilaterally changed by an Employer. The Respondent's use of a non-conforming health coverage plan is inconsistent with the express provisions of the Wage

Agreement and the Employer Benefit Plan. The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan and for payment of the Plan-covered medical expenses incurred by the Complainant and his eligible dependents during the Complainant's eligibility for coverage under the Plan.

#### Opinion of the Trustees

The Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner, effective October 1, 1986, at the level specified in the Employer Benefit Plan and for payment of the Plan-covered medical expenses incurred by the Complainant and his eligible dependents during his eligibility for coverage as a Pensioner.

