
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-525 - July 29, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Elliot A. Segal, 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 sustained an injury to his right hand on December 5, 1988 while working in a classified job for the Respondent. Workers' Compensation paid medical bills incurred by the Complainant on December 6, 1988 and July 26, 1990 for medical services related to his injury. On June 8, 1989 the Complainant underwent surgery for carpal tunnel syndrome of his right hand. The Complainant submitted a claim to Workers' Compensation which denied the claim on the grounds that the surgery was not for a work related injury. In December 1990, the clinic at which the surgery was performed filed suit against the Complainant for non-payment of his bill and in February 1991, a court found in favor of the clinic. Subsequently, the Complainant's wages were garnished.

After the Complainant's claim was denied by Workers' Compensation, he requested coverage for the medical bill under the Employer Benefit Plan. The Respondent refused to pay the bill under the Employer Benefit Plan. The Respondent contends that because the Complainant submitted the medical bill to Workers' Compensation, the Complainant asserts that his claim should be satisfied by Workers' Compensation. The Respondent states that Article III A. (11) (a) of the Employer Benefit Plan specifically excludes services covered by Workers' Compensation law, therefore, the Complainant's claim is excluded from payment under the Employer Benefit Plan. The Respondent also contends that the Trustees do not have jurisdiction to resolve a dispute concerning Workers' Compensation benefits.

The Complainant appealed the denial of his Workers' Compensation claim. He contends that while the appeal is pending, the Respondent should provide reimbursement under the Employer

Benefit Plan for the bill the Complainant paid as a result of the court suit and allow the Complainant to sign a subrogation agreement which would protect the Plan's right to reimbursement if Workers' Compensation denial of coverage is overturned.

Dispute

Pending the appeal of Workers' Compensation's denial of coverage, is the Respondent responsible for providing coverage under the subrogation provision of the Employer Benefit Plan for the medical bill incurred by the Complainant on June 8, 1989?

Position of the Parties

Position of the Complainant: Because coverage for the Complainant's medical bill 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 bill because the Complainant has asserted that his claim should be satisfied by Workers' Compensation and it is, therefore, excluded from coverage under the Employer Benefit Plan. The Respondent also claims that the Trustees do not have jurisdiction to resolve a dispute concerning Worker's Compensation benefit.

Pertinent Provisions

Article I (1), (2) and (4) of the 1988 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 obliged 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 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

The Respondent has raised two defenses in response to the Complainant's request for medical coverage under the Employer Benefit Plan. The Respondent contends that the Trustees do not have jurisdiction to resolve this dispute because it is a case covered by Workers' Compensation laws. Article XX Section (e)(6) of the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988 authorizes the Trustees to resolve disputes arising under that Agreement with regard to the Employer Benefit Plan. As the issue raised by the Complainant concerns his entitlement to benefits coverage and that entitlement is governed by the terms of the Employer Benefit Plan, the Trustees may resolve this dispute consistent with their authority under Article XX Section (e)(6) of the Wage Agreement.

We now turn to the Respondent's second defense. Article III A. of the Employer Benefit Plan excludes benefits for cases covered by state Workers' Compensation laws. The Respondent contends that because the complainant asserts his claim under the law of Workers'

Compensation, payment of the bill is excluded under the Employer Benefit Plan. The Respondent's contention is without merit. The Employer Benefit Plan's liability depends on whether or not the surgery bill is covered by Workers' Compensation. The mere assertion of a claim under Workers' Compensation does not automatically exclude coverage under an Employer Benefit Plan.

Workers' Compensation covers medical services for work related injuries. Workers' Compensation denied coverage for the Complainant's surgery because it did not find a causal connection between the carpal tunnel syndrome and the work injury of December 5, 1988. The Respondent has not denied that the Complainant's particular medical service, carpal tunnel syndrome surgery, is a covered benefit under the Plan. The Complainant appealed the Workers' Compensation's decision. Presently, both Workers' Compensation and the Respondent deny primary liability for the Complainant's medical service.

The Complainant, however, is not seeking primary coverage from the Respondent. He is seeking intermediate coverage pursuant to the subrogation provision of Article III A. (10)(e) of the Employer Benefit Plan. Article III A. (10)(e) of the Employer Benefit 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 Complainant appealed the denial of his claim under Workers' Compensation and contends that the Respondent is required to pay his medical bill in accordance with the subrogation provision of Article III A. (10)(e) of the Plan. The subrogation provision is applicable when the Employer is potentially responsible for the medical services. See ROD 88-055. Inasmuch as the Complainant's medical bill was denied by Workers' Compensation because it is not attributable to a work-related injury, the Respondent in this case is potentially responsible for the medical services in question. Thus, pending the Complainant's appeal of Workers' Compensation's denial of coverage, the subrogation provision of Article III A. (10)(e) of the Employer Benefit Plan is applicable.

Opinion of the Trustees

Pending the appeal of the Workers' Compensation's denial of coverage, the Respondent is required to provide coverage under the subrogation provision of the Employer Benefit Plan for the Complainant's June 8, 1989 medical bill, thus providing reimbursement to the Complainant for the medical expense paid by the Complainant as a result of the garnishment. The Respondent may follow the procedures outlined in Article III A. (10)(e) and require the Complainant to sign an indemnification agreement before payment is made.