

OPINION OF TRUSTEES

---

In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-547 - May 7, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 dismemberment benefits under the terms of the Employer Benefit Plan.

Background Facts

On February 22, 1990 the Complainant sustained an injury while working in a classified job for the Respondent that contributed to the complete loss of hearing in the Complainant's left ear. As a result of this injury, the Complainant was awarded Workers' Compensation benefits. The representative for the Complainant contends that the Complainant is entitled to a dismemberment benefit of \$17,500 due to the loss of hearing in his left ear.

Dispute

Is the Respondent required to pay a dismemberment benefit of \$17,500 to the Complainant?

Positions of the Parties

Position of the Complainant: The Respondent is required to pay a dismemberment benefit of \$17,500 to the Complainant due to the total loss of hearing in the Complainant's left ear.

Position of the Respondent: The Respondent is not required to pay a dismemberment benefit of \$17,500 to the Complainant because the loss of hearing is not included as a dismemberment 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 1978, as amended from time to time and any successor agreement.
- (5) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article III B. (1)(c) of the Employer Benefit Plan provides:

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:

(c) If an Employee shall lose two or more members due to violent, external and accidental means as the result of an injury occurring while insured and on or after February 1, 1988, such Employee shall receive a \$35,000 dismemberment benefit. If an Employee shall lose one member due solely to violent, external and accidental means as the result of an injury occurring while insured and on or after February 1, 1988, such Employee shall receive a \$17,500 dismemberment benefit. A member for the purpose of the above is (i) a hand at or above the wrist, (ii) a foot at or above the ankle or (iii) total loss of vision of one eye.

Discussion

Article III B. (1)(c) of the Employer Benefit Plan provides that an Employee who loses one member due solely to violent, external and accidental means as the result of an injury occurring while insured shall receive a \$17,500 dismemberment benefit. Under Article III B. (1)(c), a member is defined as (i) a hand at or above the wrist, (ii) a foot at or above the ankle, or (iii) total loss of vision of one eye. Because loss of hearing is not defined as a member for the purpose of the provision of dismemberment benefits, the Respondent is not required to pay a dismemberment benefit under the terms of the Employer Benefit Plan.

Opinion of the Trustees

The Respondent is not required to pay a \$17,500 dismemberment benefit to the Complainant.