

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-572 - 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 June 27, 1990, the Complainant sustained an injury to his right eye while working a classified job for the Respondent. A physician's statement dated May 12, 1992 indicates that the Complainant has a visual acuity of 20/20 in his left eye and sees hand motions at one foot with the right eye. The physician states that the Complainant should be considered to have total loss of vision for industrial and working purposes because his vision is less than 20/200 in the injured eye.

The Respondent has denied the Complainant's claim for a \$17,500 dismemberment benefit due to the loss of vision in his right eye.

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 because the Complainant has total loss of vision for industrial and working purposes.

Position of the Respondent: The Respondent is not required to pay a dismemberment benefit of \$17,500 to the Complainant because the Complainant has not suffered total loss of vision in his right eye as required by 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 B. (1)(c) of the Employer Benefit Plan provides:

#### 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 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. (1)(c), a member for the purpose of the provision of dismemberment benefits 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.

The Complainant contends that he is eligible for a dismemberment benefit because he has total loss of vision for industrial and working purposes. The issue of eligibility for dismemberment benefits due to the loss of vision has previously been addressed by the Trustees in RODs 317, 324, 81-119, 81-187, 81-483, 81-623 and 84-719 (copies enclosed herein). The Trustees concluded in each of those RODs that although the Employee in each case had suffered visual impairment, the loss of vision was not total and, therefore, the Employer was not required to pay a dismemberment benefit. In ROD 81-623, it was determined that because the Employee had the ability to perceive light in his injured eye, he did not have a total loss of vision and his Employer was not required to provide a dismemberment benefit. According to the physician's statement in this case, the Complainant is able to see hand motions at one foot with his right eye. Thus, the Complainant has not lost total vision in the right eye and 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 in this instance.