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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

7/28/04 11:51 AM

JUL 22 2004



Re: Case #: 188188; Consolidated Pension Plan for Acme
Salaried and Hourly Employees

Dear

The Appeals Board reviewed your appeal of PBGC's October 23, 2003 determination that you are not entitled to a disability benefit under the Acme Plan. For the reasons explained below, we found no basis for changing this determination. The Board further found, however, that you are owed backpayments of your early deferred vested pension for the months of June through December of 2002. PBGC will pay these to you in a single lump sum with interest.

PBGC's Determinations and Your Appeal

PBGC's first determination, dated September 8, 2003, said that you are entitled to a benefit of \$346.81 per month as a lifetime annuity, which is the same amount you are currently receiving. Your September 19, 2003 letter to the Appeals Board said that you retired on disability and asked that PBGC recalculate your benefit under the Plan's disability provisions. To support your appeal, you included a copy of a *Settlement Contract Lump Sum Petition and Order* from the Illinois Industrial Commission relating to your Workers' Compensation claim against Acme Steel for a work-related injury you incurred on June 23, 1998. The Board asked PBGC's Insurance Operations Department (IOD), the organization responsible for determining and paying benefits, to respond to your request.

On October 23, 2003, IOD issued a new determination that said you are not entitled to a disability pension because you did not meet the Plan's disability eligibility requirement of at least 15 years of continuous service. IOD said that (1) you were hired by Acme on April 16, 1987, (2) your employment with Acme ended September 22, 2000 and (3) you had 13.434 years of continuous service. The letter also explained how your \$346.81 per month benefit was calculated under the Plan's "Early Deferred Vested" retirement rules.

#1854692

You appealed PBGC's second determination on November 6, 2003, again asking that PBGC change your benefit from a deferred vested pension to a disability pension. You said that you were never able to return to work after your June 23, 1998 injury, which left you with a 46 percent disability of your left leg. You also noted that you received Workers' Compensation for 6 months after your injury followed by 52 weeks of short-term disability payments and that you are currently receiving Social Security disability payments.

Discussion

When the Acme Plan terminated, effective June 1, 2002, it did not have sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act (ERISA). The terms of the Plan, the provisions of ERISA, and PBGC regulations and policies determine your entitlement to a guaranteed benefit. PBGC's regulations require that, to be entitled to a guaranteed benefit, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit on or before the earlier of the date the participant's employment ended or the plan's termination date (see 29 Code of Federal Regulations (CFR) §§4022.3, 4(a)(3)).

Under section 2.5 of the Acme Plan for hourly employees at the Riverdale plant (copy enclosed), a participant must have at least 15 years of continuous service and be "permanently incapacitated" to be eligible for the Plan's Permanent Incapacity (disability) retirement. The files PBGC's auditors obtained from the prior Plan Administrator show that you had only 13.434 years of continuous service between your hire date of April 16, 1987 and your employment termination date of September 22, 2000. (You did not dispute these dates in your appeal.)

The files also include information showing you were awarded Social Security disability benefits, retroactive to December, 1998. However, you are not eligible for the Plan's Permanent Incapacity Retirement because you did not also have at least 15 years of continuous service. While we are sympathetic to your situation, the Appeals Board has no authority to change the terms of the Plan or PBGC policy.

PBGC Benefit Payments

As discussed above, PBGC became responsible for paying benefits guaranteed under ERISA as of June 1, 2002, the date the Acme Plan terminated. The records available to the Appeals Board show that (1) PBGC's paying agent (State Street Bank) began paying your \$346.81 monthly benefit on January 1, 2003, and (2) neither the former Plan Administrator's paying agent nor State Street Bank paid you for June through December of 2002. The Board found that you are entitled to those backpayments with interest.

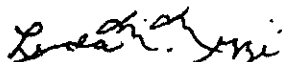
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Decision

Having applied the law and the Plan's provisions to the facts in this case, the Appeals Board found that you are not entitled to a permanent incapacity retirement under the Acme Plan. This is the Agency's final decision concerning your eligibility for a permanent incapacity pension and you may, if you wish, seek court review.

We will forward a copy of this letter to our Insurance Operations Department. They will calculate the backpayments PBGC owes you for your early deferred vested pension and pay that amount in a single lump sum with interest. If you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242 and ask for the IOD analyst assigned to your Plan.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

Enclosure

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