



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

March 29, 2007



Re: , Case # 19813300, Ajax Magnethermic Corporation
Employees' Pension Plan (the "Ajax Plan")

Dear :

The Appeals Board reviewed your appeal of PBGC's June 30, 2006 determination of your benefit under the Ajax Plan. For the reasons explained below, we must deny your appeal.

PBGC's Determination and Your Appeal

PBGC's June 30, 2006 letter said that you are entitled to a benefit of \$580.78 per month in the form of a Ten Year Certain and Continuous Annuity. Although this amount is smaller than the \$582.21 estimated benefit you are currently receiving, the letter explained that PBGC will not change your benefit amount because the difference is \$5.00 or less. PBGC also enclosed a benefit statement showing the information PBGC used to calculate your benefit, which you did not dispute.

Your July 19, 2006 appeal asked that PBGC pay your benefit as a single lump sum instead of a monthly annuity. You said that your employment with Ajax was officially terminated on May , 2002. On May 13, 2002, in accordance with Company policy, you submitted a request to the prior Plan Administrator to receive your full Plan benefit in a single lump sum payment of \$113,152.40, the value determined by Watson Wyatt Worldwide, the Plan's Actuary. You said you never received a response to your request.

You also said that you made several requests to PBGC for a lump sum payment, both before and after PBGC officially took over the Ajax Plan, which PBGC eventually rejected. Your appeal specified three reasons why you believe PBGC's determination to pay your benefit as a monthly annuity instead of a single lump sum is wrong:

1. Your request to Ajax was "timely and in accordance with policy;"
2. Your requests to PBGC were made prior to and after PBGC assumed responsibility for the Plan; and

3. You believe sufficient funds are available for payment.

You provided a chronology of events you believe to be relevant to your appeal along with a series of attachments documenting your efforts, initially with the prior Plan Administrator and later with PBGC, to receive your retirement benefit as a lump sum.

Background

The Ajax Plan terminated, effective September 10, 2002, without sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act ("ERISA"). PBGC became the Plan's trustee on July 21, 2003. The terms of the Plan in effect when your employment ended, the provisions of ERISA, and PBGC regulations and policies determine your entitlement to a PBGC benefit.

After a plan terminates, PBGC will pay retirees on an estimated basis until PBGC can collect plan records, audit data and determine guaranteed benefit amounts. If the estimated amounts are higher, PBGC must recover the overpayments. If they are lower, PBGC will pay any underpayments in a single payment, with interest.

Effective August 1, 2004, PBGC began paying you an estimated benefit of \$699.39 per month. (PBGC actually made the first monthly payments on October 1, 2004, and sent you a separate check for \$1,398.78 to cover backpayments for August and September). In response to a request to review your estimated benefit calculation, PBGC wrote you on October 31, 2005 and explained the following:

1. PBGC cannot make a lump sum payment of your full Plan benefit because the value of your benefit was over the \$5,000 statutory limit. Thus, PBGC was required to pay your benefit in the form of a monthly annuity. See 29 Code of Federal Regulations § 4022.7(b)(1)(I).
2. Under PBGC policy, you were eligible for a retroactive annuity start date of June 1, 2002. Accordingly, PBGC would reduce your estimated monthly benefit from \$699.39 to \$582.21 to reflect the earlier start date. PBGC's letter also explained that you were eligible for backpayments from June 1, 2002, and that your total backpayment amount would be reduced by your previous overpayments.

On December 1, 2005, PBGC changed your estimated monthly benefit to \$582.21, and sent you a check for \$14,591.16 (i.e., a net backpayment of \$13,262.58, plus \$1,328.58 in interest).

Discussion

Section 5.4-7.D.1 of PBGC's policy on Annuity Benefit Forms provides that, if a participant filed a "valid application" on or before the later of the Plan's termination

date (September 10, 2002, in this case) or the PBGC trusteeship date (July 21, 2003), PBGC will pay the benefit in the form elected on the plan application if the form is a life annuity form, even if not yet in pay status.

In response to an inquiry on your behalf, Vincent Snowbarger, then PBGC's Deputy Executive Director, Office of Policy & External Affairs, wrote to your Congressman, the Honorable Timothy Ryan, on May 24, 2006. This letter explained that "if a lump sum under the plan is due (emphasis added) before the plan termination date, PBGC will pay it (if sufficient assets are available) because the post-termination annuity payment rule [limiting lump sum payments to benefits whose value is \$5,000 or less] does not apply to benefits due before the plan termination date." See Code of Federal Regulations § 4044.3(a) and (b). The letter accurately pointed out that "the threshold issue in this case" is whether you had established your entitlement to a lump sum under the Plan before the Plan's termination date.

The documents you submitted with your appeal show that, on May 13, 2002, four days after your employment with Ajax terminated, you sent an email to the prior Plan Administrator from your wife's email account requesting payment of your full Plan benefit as an immediate lump sum, and received no response. PBGC's records show that the individual administering the Plan during that period was terminated by Ajax on June 28, 2002, about six weeks before the Plan terminated on September 10, 2002.

Under Plan Section 5.7(a), the benefit of a married participant will be paid in the form of a Joint and 50% Survivor Annuity (J&50%SA), unless the participant's spouse refuses the J&50%SA form of benefit by waiving it in writing. A participant whose spouse executes a valid waiver of the J&50%SA may elect to receive his retirement benefit as a single cash payment equal to the actuarial equivalent, as defined under the Plan, of the participant's normal monthly retirement benefit.

According to the information in PBGC's files, the Plan's application for retirement benefits included a *Pension Benefit Selection Form*, which included a J&50%SA waiver section with blank lines for the signature of the spouse and a witness. The only document available to the Appeals Board relating to your request to retire is the email sent to the prior Plan Administrator from your wife's email account. In a letter dated May 30, 2006, your wife, [redacted], stated that she was never informed that she needed to sign a waiver of rights and that she assumed the prior Plan Administrator understood that she concurred with your election to receive your benefit as a lump sum.

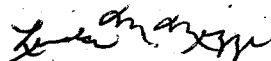
Nevertheless, PBGC has no evidence that you ever completed, signed and submitted the Plan's retirement application with your wife's written consent to waive the J&50%SA. Without such a completed application, PBGC cannot pay your retirement benefit in the form of a lump sum. While we are sympathetic to your situation, PBGC and the Appeals Board must follow the terms of the governing Plan document, the law and applicable regulations and policies.

Finally, your appeal said that you believe the Plan was sufficiently funded to pay you a lump sum. Please note that the May 24, 2006 letter from Mr. Snowbarger explained the requirements for valuing assets and liabilities in a terminated plan. The letter further explained that, as of the Plan's September 10, 2002 termination date, the "Plan's assets were \$6,130,610 and its liabilities were \$9,975,185, for a total shortfall of \$3,844,575; the shortfall for guaranteed benefits amounted to \$3,647,306."

Decision

Having applied the terms of the Plan, the provisions of ERISA, and PBGC's regulations and policies to the facts in your case, the Appeals Board found no basis for changing PBGC's June 30, 2006 determination that you are entitled to a benefit of \$580.78 per month in the form of a Ten Year Certain and Continuous Annuity. (PBGC will, however, continue to pay you \$582.21 per month.) This is the Agency's final decision concerning your benefit form and you may, if you wish, seek court review of this decision.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

cc: