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

OCT 2 8 2004

Re: Smith Corona Corporation
Salaried Employees Retirement Plan, Case No: 192864

Dear

The Appeals Board reviewed your appeal of PBGC benefit determination, which was dated September 3, 2002 and remailed April 27, 2004. For the reasons stated below, the Board changed PBGC's determination by finding that is Totally and Permanently Disabled under the terms of the Plan. As a result, she is entitled to additional credit for service through the Plan's termination date (August 2, 2000). PBGC's Insurance Operations Department, the organization responsible for determining and paying benefits, will issue a new determination of her disability amount and annuity start date, with a new 45-day appeal right.

PBGC's Benefit Determination and Your Appeal

applied to the Plan for a Disability Retirement around March 10, 1998, which is before the Plan terminated and PBGC became trustee. included with her application a copy of a May 10, 1996 Notice of Decision from the Social Security Administration, which said that she became disabled under their rules as of July 15, 1993. The Retirement Committee denied request in a May 11, 1998 letter signed by Gary J. Lynch, Smith Corona's Vice President - Treasurer. You appealed the Retirement Committee's decision on her behalf on August 7, 1998.

PBGC's September 3, 2002 benefit determination said that was entitled to $358.39 per month if paid as a Straight Life Annuity starting November 1, 2019, or to a reduced amount as early as November 1, 2004. In response to your inquiry, PBGC remailed its determination to her correct address on April 27, 2004. On June 1, 2004, you wrote PBGC saying you had "filed an appeal pursuant to company procedures for [now using to receive retirement from Smith Corona." You also asked that PBGC "advise you of the status of that appeal." Because you and believed your unanswered 1998 appeal to the Retirement Committee was still under consideration, the Board accepted your June 1, 2004 status request as a timely appeal of PBGC's remailed benefit determination.

Background

The Smith Corona Plan terminated, effective August 2, 2000, without 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 [redacted] entitlement to a guaranteed benefit. PBGC's regulations require that 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 date the plan terminated (see 29 Code of Federal Regulations §§4022.3, 4022.4(a)(3)).

The files available to the Appeals Board contain the following information for [redacted] which you did not contest in your appeal: (1) date of birth – [redacted] (2) date of hire – March 8, 1973, (3) last day worked – August 13, 1993, and (4) date of termination of employment – June 3, 1994. Her normal retirement date is November 1, 2019 (the first of the month following her 65th birthday) and her earliest retirement date for a reduced benefit is November 1, 2004.

Plan's Disability Provisions

Section 6.1 of the most recent Plan document (effective January 1, 1994 and identical to the previous Plan document, effective January 1, 1989) provides that --

> If a Member who has 15 or more years of Service shall become Totally and Permanently Disabled . . . prior to his Normal Retirement Date he shall be deemed to be on an Authorized Leave of Absence and shall continue to accrue Credited Service during the period prior to his Normal Retirement Date that he remains Totally and Permanently Disabled.

For purposes of section 6.1, *Total and Permanently Disabled* means "a physical or mental condition which renders a Member disabled to the extent he is eligible for and receiving Social Security disability benefits." Section 6.1 specifically excludes from this definition disabilities arising from (1) drunkenness or addiction to narcotics, (2) engagement in a criminal enterprise, (3) self-inflicted injuries or (4) service in the Armed Forces. Neither you nor the Retirement Committee claimed that any of these exclusions applied to [redacted] Further, all parties agreed that she completed at least 15 years of Service.

The files also show that [redacted] applied for Social Security Disability benefits on February 23, 1995. James C. Johnson Esq., an Administrative Law Judge for the Social Security Administration, explained in a decision dated May 10, 1996 that [redacted] is "unable to engage in substantial gainful activity on a sustained basis due to her symptoms of depression and anxiety . . . [and] has not engaged in substantial gainful activity since July 15, 1993." Judge Johnson concluded she was disabled under the Social Security Act commencing July 15, 1993.

[redacted] filed for a benefit under the Plan's disability provisions around March 10, 1998. The Plan's Retirement Committee accepted her application, but after review concluded that she was not eligible because she was not disabled when her service with Smith Corona ended. The Committee's May 11, 1998 decision said that it "does not agree with the Administrative Law Judge's finding that [she] became unable to work on July 15, 1993 and had not engaged in substantial gainful activity since that date."

Your August 7, 1998 appeal to the Retirement Committee said that the Committee was required by Plan section 6.1 to provide a disability benefit to a participant with at least 15 years of Service who was eligible for and began receiving Social Security disability payments on account of a disability that occurred while the participant was an active Plan member, provided none of the exclusions applied. You said that the Plan did not permit the Committee to "second-guess" a Social Security Administration finding of disability.

We reviewed the Plan provisions and agree with you that a Social Security Administration disability award is both a necessary and a sufficient condition for meeting the Plan's definition of Total and Permanent Disability under section 6.1. Because (1) the Social Security Administration determined that [redacted] was disabled under their rules before her employment ended, (2) none of the four exclusions described in Plan section 6.1 applied to [redacted] and (3) she had more than 15 years of Service, we further find that she is entitled to accrue additional service under section 6.1. Please note, however, that PBGC cannot take into account service after a Plan's termination date (see the first paragraph on page 2 of this letter).

Decision

Having applied the law, the provisions of the Plan and PBGC policy to the facts in this case, the Appeals Board found that [redacted] is Totally and Permanently Disabled as defined by the Plan. As a result, she is entitled to additional credit for service through August 2, 2000, the date the Plan terminated. This is the Agency's final decision on this matter and she may, if she wishes, seek court review.

PBGC's Insurance Operations Department will send [redacted] a new determination of her benefit amount and annuity start date, with a new 45-day appeal right. If you or [redacted] have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

Linda M. Mizzi
Member, Appeals Board