



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



MAR 30 2006

Re: Appeal ; Case No. 197613, Pellet
Salaried Employees Pension Plan (the "Plan")

Dear Ms. :

We are responding to your appeal of PBGC's March 16, 2005 determination regarding your monthly pension benefit from the Plan. For the reasons stated below, we are denying your appeal.

PBGC's Determination and Your Appeal

PBGC determined that you are entitled to a monthly PBGC benefit of \$2,289.63 based on your benefit starting on June 1, 2021, in the form of a Straight Life Annuity. PBGC also provided you with a Benefit Statement. The Benefit Statement showed that your earliest retirement date was June 1, 2011, and that you would receive an actuarially-reduced benefit of \$915.85 if you started benefits on that date.

Your March 31, 2005 appeal asserted that you were "unjustly" denied pension benefits within the definition of the Plan's "Rule of 65" Retirement provisions. You further claimed that you were "unjustly" denied benefits under the "Age 62/15" provision, which allowed participants with 15 or more years of service to retire at age 62 without a reduction to their pension.

You noted that PBGC terminated the Plan in December 2002, and your employment "officially terminated" on May , 2003. You asserted that benefits "should have been due and payable June 1, 2003 for time accrued up to the December date." You also questioned PBGC's decision to terminate the Plan to avoid pension liability, expressing your opinion that "PBGC has willfully and illegally used their fiduciary principles to withhold my pension benefits."

At the request of the Appeals Board, an authorized representative of PBGC's Benefits Administration and Payment Department ("BAPD") responded to your March 31 letter. This April 14, 2005 response stated that, although you met the age and service requirements for a "Rule of 65" benefit, you did not meet the additional requirement that "your employment with the company had to be terminated due to the permanent closing of your location." The letter noted that the "location that you worked at was purchased by U.S. Steel and remains open." The April 14th letter further said that you did not qualify for a "rule of 62/15" benefit because "you were not age 62 when the plan terminated." PBGC concluded, however, that you met the requirements for a deferred vested retirement. PBGC gave you 30 days from April 14, 2005, to provide the Appeals Board with specific reasons why PBGC's determination is wrong.

Your April 28, 2005 letter to the Appeals Board again requested that PBGC start paying you benefits as of May 20, 2003, which you asserted is the date that National Steel Pellet Company ceased to exist due the complete sale of its assets. You also stated: "I also believe it is a violation of ERISA to pay retirement benefits to employees who continue to work for a company. This shows that the PBGC recognizes the termination of the Pellet company by paying benefits to 30 year employees."

Background

When National Steel Corporation ("National") filed for bankruptcy on March 6, 2002, it was one of the largest integrated steel companies in the United States. National Steel Pellet Company ("Pellet"), a subsidiary of National that operated a mining operation in Keewatin, Minnesota, filed for bankruptcy along with National.

On December 5, 2002, PBGC issued a notice of determination that the Plan and six other pension plans sponsored by National should be terminated and trusteed by PBGC. At that time, PBGC had found that the National plans were only 47 percent funded, with roughly \$1.3 billion in assets to cover more than \$2.8 billion in benefit liabilities. National further had told PBGC that it would make no further contributions to the plans, and the company had missed more than \$150 million in required funding contributions. When it issued its notice of determination, PBGC had concluded that: (1) each of the seven plans met the plan termination criterion in Employment Retirement Income Security Act (ERISA) section 4042(a)(2) that the plan "will be unable to pay benefits when due;" and (2) the

Plan, as well as five of the other National plans, posed a risk that PBGC's long-run loss will increase unreasonably if the plan did not terminate, thus meeting the plan termination criterion in ERISA section 4042(a)(4).

On April 21, 2003, the Bankruptcy Court approved the sale of most of National's assets, including the Pellet operation, to U.S. Steel. U.S. Steel, however, did not assume sponsorship of the seven National pension plans. In May 2003, U.S. Steel completed its purchase of Pellet's assets, and this mining operation has remained open under U.S. Steel's ownership. Also, effective May 31, 2003, PBGC and National entered into an agreement providing for the termination of the Plan (along with six other National Plans), establishment of December 6, 2002, as the Date of Plan Termination ("DOPT"), and appointment of PBGC as the Plan's trustee.

Relevant Plan Provisions

The January 1, 2001 Amended and Restated Plan document sets forth your benefit rights under the Plan. We have enclosed a copy of certain provisions in this document which address your entitlement to benefits. The Plan provides unreduced early retirement benefits under various conditions, each having its own set of requirements, including:

Age 62/15 Retirement: Attainment of age 62 at the date of termination of employment and completion of at least 15 years of credited service. See Enclosure, section 3.2(a)(2) of the Plan;

30-Year Retirement: Completion of at least 30 years of credited service. See section 3.2 (a)(4) of the Plan; and

"Rule of 65" Retirement: Completion of 20 years of credited service and combined age and service is greater than 65 but less than 80 at retirement, where termination of employment is due to a permanent closing of operations. See section 3.2 (a)(5) of the Plan.

Section 3.3 of the Plan provides that a participant is entitled to an "Early Retirement Pension" if he or she terminates employment as a salaried employee between the ages 55 and 65, has at least 15 Years of Credited Service, and is not entitled to another type of benefit under section 3.2 of the Plan. This Early Retirement Pension is unreduced if payments

begin at age 62, but is actuarially reduced from age 62 if payments begin at an earlier age.

Section 3.4 of the Plan sets forth the requirements for the "**Vested Deferred Pension.**" This benefit is available at age 65 to participants with at least 5 years of credited service, or at ages between 55 and 65 if the participant terminated employment with at least 15 years of credited service. However, for the "Vested Deferred Pension," the normal retirement amount is reduced by one-half of a percent (.5%) for each month that the benefit commences before age 65.

Law and Regulations

When the Plan terminated on December 6, 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.

Section 4022(a) of ERISA provides that subject to certain limitations, the PBGC shall guarantee the payment of all nonforfeitable benefits under a covered plan that terminates. ERISA defines a "nonforfeitable benefit" as:

". . . a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of . . . [ERISA] (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death)."

See also 29 CFR § 4001.2 (definition of "nonforfeitable benefit"). PBGC regulations provide that a guaranteed benefit, among other conditions, must be nonforfeitable as of the plan's termination date. See 29 CFR § 4022.3.

As discussed under "Plan Provisions," one requirement for "Rule of 65" Retirement is that the participant's termination of employment is due to permanent closing of operations. Conditions such as this, which involve how the employment relationship is terminated, are substantive requirements established under Pension plan terms that must be satisfied by the plan's termination date. See *Fetty v. PBGC*, 915 F. Supp.

230 (D. Colo. 1996), *aff'd*, 104 F.3d 367 (10th Cir. Dec. 23, 1996), *cert. denied* 522 U.S. 812 (1997) (subsidized early retirement benefits based upon plan shutdown are not guaranteed if the shutdown occurs after the date of plan termination); see also *PBGC v. Republic Technologies Int'l*, 386 F.3d 659 (6th Cir. 2004) (court affirms PBGC's selection of a pre-shutdown termination date that avoided vesting of shutdown benefits).

Section 4044 of ERISA requires PBGC, as the Plan's trustee, to allocate plan assets to plan benefits as of the termination date. Plan assets are allocated to nonforfeitable benefits before they may be allocated to forfeitable benefits. Also, PBGC may allocate an additional amount to unfunded, nonguaranteed benefits that is based on PBGC's recoveries on its claims against plan sponsors (see ERISA § 4022(c)). For your Plan, however, PBGC has determined that the Plan's assets and the 4022(c) amount were insufficient to pay any forfeitable benefits.

Discussion

According to PBGC's Benefit Statement, you were born on , 1956, and you were hired by Pellet on July , 1974. On DOPT, which was December 6, 2002, you were 46 years old and had 28 years and 5 months of credited service. PBGC records and your appeal indicate that your employment with Pellet ended after DOPT.

1. Your claim for "Rule of 65" Retirement

It is undisputed that you met the combination of age and service for this type of benefit. However, as stated above under "Plan Provisions," an additional requirement for "Rule of 65" Retirement is that your employment be terminated due to a permanent closing of operations. You asserted that you met this requirement because, when your employment with Pellet terminated in May 2003, Pellet had ceased to exist as a result of the sale of its assets to U.S. Steel.

As discussed above in "Law and Regulations," ERISA and PBGC regulations require (among other things) that a guaranteed benefit be nonforfeitable as of the pension plan's termination date. This means that you must satisfy the substantive conditions for entitlement to the benefit, including any requirements that are based on how the employment relationship is terminated, as of the Plan's DOPT. In your case, you did not satisfy all of the conditions for "Rule of 65" Retirement as of

DOPT. Rather, the termination of your employment with Pellet and the sale of Pellet's assets to U.S. Steel both occurred after DOPT.

2. Your Claim for "62/15" Retirement

In order to qualify for "62/15" Retirement, you must have attained at least age 62 when you terminated your employment, in addition to completing at least 15 years of credited service. See Enclosure 1, section 3.2(a)(2) of the Plan. Since you were 46 years old when the Plan terminated, you did not satisfy at DOPT this requirement that you terminate employment at age 62 or later. We note that you also did not qualify as of DOPT for the "Early Retirement Pension" described in Section 3.3 of the Plan, because your employment must terminate at age 55 or later in order to qualify for that benefit.

However, as PBGC stated in its letters, you met the requirements for PBGC to guarantee a "Vested Deferred Pension." Under this Plan provision, you are eligible to begin receiving your pension on or after age 55, but will receive a reduced benefit if you decide to retire prior to age 65.

3. Other Claims in Your Appeal

You noted that PBGC had started paying benefits to 30-year employees upon the sale of Pellet's assets to U.S. Steel. You claim that this shows that "the PBGC recognizes that National Steel Pellet Co. ceased to exist."

As you suggested, PBGC concluded that Plan participants could qualify for a guaranteed 30-Year Retirement, if they had completed at least 30 years of continuous service as of DOPT. Since a layoff or a permanent shutdown was not a requirement for 30-Year Retirement, ERISA permitted PBGC to guarantee this type of benefit for these participants even though Pellet was still operating at DOPT. PBGC concluded, however, that it could not start payments to 30-year employees while they were working for Pellet, since neither Plan provisions nor PBGC policy permit participants to receive benefits while they were working for Pellet or a member of its controlled group. PBGC also concluded that eligible employees could start receiving benefits after the sale, even if they worked for U.S. Steel, based on PBGC's finding that U.S. Steel was an unrelated party who did not assume any of the pension liabilities. Thus, since the requirements for 30-Year Retirement were different than for

"Rule of 65" Retirement, the Appeals Board found no inconsistency in PBGC's treatment of the two types of benefits.

You asserted that PBGC "has willfully and illegally used their fiduciary principles to withhold my pension benefits." You felt that PBGC terminated the Plan prematurely to avoid some pension liability.

PBGC determined that seven of National's pension plans had to be terminated, primarily because National stopped funding them and no one else wanted to sponsor them. PBGC had found that the pension plans' benefit obligations for the seven plans exceeded the plans' assets by approximately \$1.5 billion at the time of their termination. PBGC also decided that one of the reasons for the Plan's termination (as well as for five other National plans) was to prevent PBGC's long-run loss from increasing unreasonably, which PBGC concluded likely would occur if a later DOPT was established.

ERISA specifically permits PBGC to seek termination of a pension plan to prevent unreasonable long-run loss to PBGC. ERISA § 4042(a)(4), 29 U.S.C. § 1342(a)(4). As a Federal court of appeals has stated, "ERISA provides for involuntary termination proceedings precisely so that PBGC can protect its own financial interests and 'avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund.'" *PBGC v. Republic Technologies Int'l*, 386 F.3d 659, 668 (6th Cir. 2004).

Furthermore, section 4048(a)(3) of ERISA provides that, when a pension plan is terminated by PBGC, the date of plan termination ("DOPT") is "the date established by the [PBGC] and agreed to by the plan administrator." If an agreement on the date cannot be reached, section 4048(a)(4) provides that the termination date is established by the court. As discussed above, PBGC and National entered into an agreement establishing December 6, 2002, as DOPT. Please note that the Appeals Board has no authority to change an established plan termination date.

Decision

Having applied Plan provisions, the law, and PBGC regulations to the facts in your case, we found no basis for changing PBGC's March 16, 2005 determination. This is the PBGC's final action in your case and you may, if you wish, seek court review of this decision. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles W Vernon

Charles W. Vernon
Chair, Appeals Board

Enclosure