



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

JUN 07 2005

Re: [REDACTED] Case 194025, Trans
World Airlines, Inc. (TWA) Retirement Plan for
Employees (the Plan)

Dear [REDACTED]

The Appeals Board reviewed the appeal you filed on behalf of your client, [REDACTED] regarding PBGC's January 30, 2004 determination of her benefit from the Plan. For the reasons stated below, the Board found that you did not provide sufficient evidence to change PBGC's determination, and that we must deny your appeal.

PBGC's Determination and [REDACTED] Appeal

PBGC determined that [REDACTED] is entitled to a monthly benefit of \$191.19, payable as a Joint & 50% Survivor Annuity starting on her Actual Retirement Date (ARD = January 1, 2001). The \$191.19 monthly benefit is comprised of monthly benefits of \$178.43 from the TWA Retirement Plan for Non-Contract Employees (the Non-Contract Plan) and \$12.76 from the TWA Retirement Plan for Mechanics and Related Employees, Dining Service Employees and Passenger Service Employees (the PSE Plan)

PBGC included Benefit Statements showing data used to calculate your client's benefits and also showing that PBGC accepted TWA's calculations of her monthly accrued benefits.

Your February 6, 2004 appeal letter claimed that

"PBGC's determination is wrong in that [REDACTED] adjusted date for hire was December 22, 1968. She joined TWA's retirement plan when she was hired by TWA on November 11, 1968. She has always elected to be a member of the retirement plan. The only forms which she completed were to join in 1968, naming [REDACTED] as her beneficiary. In 1981, she changed her primary beneficiary from [REDACTED] to her current husband, [REDACTED]. She never opted out of the retirement plan at any time during her tenure at TWA.

... There would be no reason to change the beneficiary on the plan in 1981 if she had never been a member of the plan. ..."

Although an appeals analyst on September 28, 2004 asked you for any evidence supporting your client's claim that she joined the Plan in 1968, the Appeals Board has not received any such information supporting [redacted] contention that she began her participation in the Plan before 1981.

Discussion

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, as amended (ERISA). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan subject to limitations and requirements set by Congress under ERISA.

Records available to the Appeals Board reveal that the Non-Contract Plan and the PSE Plan merged into the TWA Retirement Plan for Employees (the Plan) in 1988. PBGC records show that the Plan terminated on January 1, 2001 and that PBGC became the Plan's trustee on January 2, 2001.

The Plan provision related to [redacted] appeal involves section 1.2(kk) of the Non-Contract Plan. Section 1.2(kk) provides as follows:

"'Years of Plan Service' means all Service, beginning with the earlier of the Member's Plan membership date or the January 1 or July 1 following completion of one Year of Service, and ending not later than December 31, 1992. If the Employee did not join the Plan on or prior to July 1, 1970, Service between July 1, 1970 and his Plan membership date will be excluded...."

Thus, for participants in the Non-Contract Plan, Service was calculated by first determining the elapsed time from Service Start Date (generally the January 1 or July 1 following a Year of Service) to the participant's date of termination of employment or December 31, 1992 if earlier, because benefit accruals were frozen on December 31, 1992. The elapsed time from July 1, 1970 until the date of Plan Membership was then subtracted out to determine the Years of Plan Service used in calculating the retirement benefit amount.

The only membership form that PBGC has on record is the form that [redacted] signed on November 8, 1981. The form is the same form used by other Non-Contract Plan participants when they became members of the Non-Contract Plan. Based on that

1981 membership form, [redacted] Date of Membership is January 1, 1982.

While it is true, as you suggested in your appeal, that there would have been no reason for [redacted] to change her beneficiary designation if she were not at that time already a member of the Plan, the form she signed on November 8, 1981 was used for at least three distinct purposes. The form she signed is clearly titled "Application for Membership, Payroll Deduction Authority and Beneficiary Designation." Thus, the form she signed was the same form she would use to commence her membership in the Plan.

Please note that the Appeals Board checked the records of other participants who similarly delayed participation in the Plan to make sure that [redacted] situation was handled consistently by TWA while TWA was the Plan's administrator. We also searched for any evidence that [redacted] was a member before July 1, 1970, such as employee contributions that might have been deducted from her pay, the accumulated value of contributions or any benefit statements that may have been sent to her. We were unable to find any such information in PBGC's files to confirm her statement that she was a participant before January 1, 1982.

Furthermore, according to [redacted] Social Security Administration (SSA) records, which she authorized PBGC to obtain, her total earnings for calendar year 1978 were \$18,663.61. This amount is larger than the \$17,700 SSA wage base for 1978. Thus, according to the Plan in effect in 1978, [redacted] should have made Plan contributions equal to $2\% \times (\$18,663.61 - \$17,700.00)$, or \$19.27, in 1978. Similarly, while the SSA records we reviewed did not show total earnings for years before 1978, they did suggest that she had earnings in excess of the SSA wage base in the years 1970 through 1974 and also in 1977. The Appeals Board found no evidence in PBGC files that [redacted] ever made any employee contributions to the Non-Contract Plan.

Since [redacted] Date of Hire and Company Seniority Date are November 11, 1968, her Service Start Date is January 1, 1970, the first January 1 after completion of one year of service. Her elapsed service from January 1, 1970 until December 31, 1991 is 22.0 years. Service from January 1, 1992 to December 31, 1992, was credited to her under the PSE Plan and thus, does not count toward her Non-Contract Plan benefit. The

elapsed time of her excluded service, from July 1, 1970 through December 31, 1981 is 11.5 years. So, [redacted] Benefit Service under the Non-Contract Plan is 10.5 (22.0 - 11.5) years.

Decision

Applying Plan provisions to the facts of this case, the Appeals Board decided that you did not provide sufficient evidence to change PBGC's determination, and we must deny your appeal. This decision is the agency's final action regarding your appeal. [redacted] may, if she wishes, seek court review of this decision in an appropriate federal district court.

We regret the delay in resolving your appeal and appreciate your patience while we completed our review. If [redacted] has additional questions about her benefit, she may call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

cc: