



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

MAY 03 2005

Re: [redacted] Case 192187, [redacted]
[redacted] Duro-Test Corporation ("Duro-Test" or
the "Company") Pension Plan (the "Plan")

Dear [redacted]

The Appeals Board has reviewed your appeal of PBGC's April 12, 2004 determination that you are not entitled to a spousal benefit under the Plan. For the reasons stated below, we found no basis presented in your appeal for changing PBGC's determination.

Benefit Determination and Appeal

PBGC's letter stated that you are not entitled to a spousal benefit, because your late husband, [redacted] did not have the required ten years of service to be vested in the Plan.

In your June 17, 2004 appeal, you stated your husband was told that if he returned to Duro-Test, he would be able to vest in its pension plan. You stated that, upon his return, he worked directly for the President of Duro-Test, [redacted]. You enclosed a copy of a May 3, 2004 letter, sent to you by [redacted] in which he wrote: "To the best of my recollection, [redacted] worked directly for me at Duro-Test Corporation and was included in our pension plan."

Pension Records

PBGC's auditors found no record that your late husband was a participant in the Plan. [redacted] is not included in the Plan's actuarial valuation listings.

[redacted] Date of Termination of Employment

With your authorization, PBGC obtained your husband's earnings data from the Social Security Administration ("SSA") from 1957 through 1985. The Duro-Test Summary Plan Description effective August 1, 1976 (the "1976 SPD") states that the Plan covers eligible

employees of Duro-Test Corporation, Tungsten Products Corporation, Jewel Electricity Products, Inc., Duro-Test International Corporation, Arc Ray Electric Corporation, Luxor Lighting Products, Inc., and Duro-Lite Lamps, Inc. After the first quarter of 1976, your husband's earnings were reported either by companies not included in the list above or from self-employment. Therefore, the Board found that [redacted] terminated employment under the Plan during the first quarter of 1976 (i.e., on or before March 31, 1976). For your reference, we have enclosed a copy of your husband's SSA earnings and a copy of the 1976 SPD.

Deferred Vesting under the Duro-Test Plan

The 1976 SPD is the earliest Plan document in PBGC's possession. Under the Employee Retirement Income Security Act ("ERISA"), the Duro-Test Plan was required to provide one of a number of minimum vesting schedules as of the beginning of the Plan year commencing in 1976. In compliance with ERISA, the 1976 SPD provided a deferred vested benefit to covered employees who completed 10 years of service effective August 1, 1976 (the beginning of the 1976 Plan year).

The Director of Personnel at Duro-Test in 1976 was [redacted]. In a February 23, 2005 telephone conversation with the Board's staff, [redacted] stated that the Duro-Test Plan did not include a deferred vested benefit prior to the amendment adopted to comply with ERISA. The Board notes that prior to the enactment of ERISA, most pension plans did not include a deferred vested benefit.

PBGC's actuarial valuation identified 1,007 individuals who were entitled to benefits under the Plan at Plan termination. We reviewed the Plan's practice with respect to these individuals, and we did not find a single example of a participant who earned a deferred vested benefit prior to August 1, 1976.

For the reasons given above, the Board found that the Duro-Test Plan did not provide a deferred vested benefit to employees who terminated employment prior to August 1, 1976. As noted earlier, the Board found that [redacted] terminated employment under the Plan on or before March 31, 1976. Therefore, the Board found that [redacted] was not entitled to a deferred vested benefit under the Duro-Test Plan. Consequently, the Board found that you are not entitled to a spousal benefit.

PBGC's Determination Regarding [redacted] Years of Service

PBGC's determination was based on the conclusion that [redacted] did not complete the 10 years of service required to vest under the earliest Plan document in PBGC's possession. Your

husband's SSA earnings data indicate that he worked for Duro-Test (or one of the other companies listed in the 1976 SPD) for (1) about six years and five months from the last quarter of 1958 into the second quarter of 1965 and (2) about nine years and three months from the first quarter of 1967 through the first quarter of 1976. Between these two periods, he was not employed by Duro-Test (or a related company) for a period of at least one year and six months.

In most pre-ERISA plans, an employee's eligibility for a benefit was based on continuous service measured from the employee's last date of rehire. The 1976 SPD states:

Employees who were members of the Pension Plan on August 1, 1976 will also receive credited service for time worked as "continuous employment" prior to that date. "Continuous employment" is essentially the service you accumulated since your most recent date of hire.

It is unlikely that the Plan in effect prior to the 1976 SPD was more generous than the 1976 SPD. Thus, it appears that [redacted] continuous employment would have been measured from his last date of rehire and that he did not complete 10 years of continuous service.

In your appeal, you stated that your husband was told that if he returned to work for Duro-Test he could vest in the Duro-Test pension plan. According to SSA records, your husband returned to work at Duro-Test in the first quarter of 1967. The Duro-Test Plan became effective August 1, 1968. Thus, the oral assurances that you recall your husband received pertained to the provisions of a pension plan that had not yet been established.

The letter which you enclosed with your appeal states that your husband was employed by the Company and included in the Plan, but does not state that he was vested in the Plan. In a February 23, 2005 telephone conversation (and a February 24, 2005 voice mail message), the Company's former Director of Personnel recalled discussing [redacted] situation with a "senior Company executive" and concluding that [redacted] did not complete ten years of vesting service, because he incurred a break in continuous service.

For the reasons given above, the Board agreed with PBGC's determination that [redacted] did not complete the 10 years of service required to vest under the 1976 SPD (the earliest Plan document in PBGC's possession). The Board, however, based its own decision on its finding that when [redacted] terminated employment, the Plan did not provide a deferred vested benefit, regardless of the employee's length of service.

Decision

The Board found no basis presented in your appeal for changing PBGC'S determination. This is the final agency action with regard to the issues decided in your appeal.

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,



Michel Louis
Member, Appeals Board

Enclosures:

1. SSA Itemized Statement of Earnings for
2. The Duro-Test 1976 Summary Plan Description.