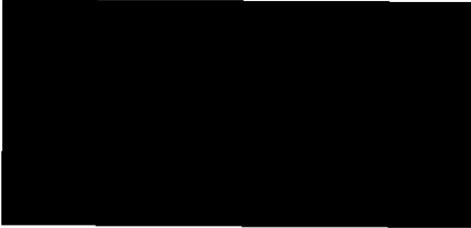




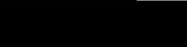
Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the General Counsel

September 11, 2008



Re: Decision on Disability Issues Raised in Consolidated Appeal; Case No: 199334; Retirement Income Plan for Pilots of US Airways, Inc. (the "Plan")

Dear 

On February 29, 2008, the Appeals Board of the Pension Benefit Guaranty Corporation ("PBGC") issued a decision in the above-referenced appeal.<sup>1</sup> The decision resolved ten of the eleven issues raised in your appeal. The only issue not addressed in the decision was the disability issue, which was deferred. The disability issue potentially affects PBGC benefits for the 32 appellants listed on Enclosure 1 to this decision.<sup>2</sup>

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<sup>1</sup> The Appeals Board issued its February 29, 2008 decision to   whose law firm then represented the appellants in this Consolidated Appeal, had filed on March 23, 2007 a 41-page appeal brief with exhibits ("Appeal Brief" or "AB").

Shortly after the Appeals Board issued its February 29, 2008 decision, you replaced  as the attorney for these appellants. In this decision, our reference to "your appeal" includes the claims made by prior legal counsel.

<sup>2</sup> Although Exhibit D of the Appeals Brief lists 37 individuals who potentially are affected by the disability issue, the Appeals Board had concluded that only 28 of these 37 individuals have timely-filed appeals. See page 2 and Enclosure 2-3 of the February 29, 2008 decision. We further note that, before the February 29, 2008 decision was issued, the Appeals Board had added two additional individuals at the request of appellants' counsel, thereby increasing to 30 the number of appellants who would receive supplemental decisions on the disability issue. See Enclosure 1 of that decision. In addition, after the February 2008 decision was issued, the Appeals Board decided to include two other individuals potentially affected by the disability issue in this decision.

This decision supplements our February 29, 2008 decision and completes our consideration of the issues raised in your appeal.<sup>3</sup> We have followed the same general format in discussing the disability issue raised in your appeal as we did for the other ten issues decided in our February 29 decision. We have skipped the Introduction and Background paragraphs found in our February 29, 2008 decision, however, as this information has not changed. Instead, our focus is on the claims raised on pages 16-23 of the Appeal Brief concerning whether PBGC correctly applied the Plan's disability retirement formula in determining PBGC benefits for totally and permanently disabled pilots.

As is discussed in more detail below and in the Enclosures to this letter, the Appeals Board increased the following seven appellants' benefits: [REDACTED]

[REDACTED] and [REDACTED]. The Board also decided that four of the 32 appellants [REDACTED] and [REDACTED] will receive new benefit determinations, each with a new 45-day appeal right. For the remaining 21 appellants, we found no basis for changing their benefits with respect to the disability claims.

This supplemental decision begins by summarizing your appeal and our conclusions. It then presents some background information. Next, in the "Discussion" section, the Appeals Board responds to the specific disability claims made in your appeal. Finally, we are providing, as Enclosures 3 to 34 to this decision, relevant information and our specific findings for each of the 32 appellants. These Enclosures are arranged alphabetically by last name.

**Your Appeal Concerning Disability Retirement Benefits.** Your main contention, which we will refer to as "Disability Claim #1," is that PBGC failed to apply a formula in section 4.1(E) of the Plan document (the "disability retirement formula") to "totally & permanently" ("T & P") disabled participants.<sup>4</sup> Instead, your appeal states that PBGC

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[REDACTED] was a timely-filed appellant named in the March 23, 2007 appeal, but was not listed in that appeal as having a disability claim. When we realized he had a potential disability issue, the Appeals Board re-opened his appeal.

[REDACTED] was named in the March 23, 2007 appeal as having a disability issue, but was not at that time eligible to appeal, because his benefit determination was not yet issued. PBGC issued [REDACTED] his benefit determination on June 25, 2008, and you filed a timely appeal on behalf of [REDACTED] on August 5, 2008. The August 5, 2008 appeal incorporates all applicable grounds raised in the March 23, 2007 appeal, which includes disability issues. Because [REDACTED] raises the same disability issues as the other appellants addressed here, the Appeals Board decided, as a matter of efficiency, to include a decision on this aspect of [REDACTED] appeal in this decision.

<sup>3</sup> Eight of the 32 appellants, however, are among the 85 appellants who will receive new Benefit Determinations in accordance with the Board's February 2008 decision. See pages 1, 26, and 42 of that decision. Additionally, appellant [REDACTED] who is one of the 32 participants potentially affected by the disability issue, submitted correspondence directly to the Appeals Board concerning a non-disability issue. The Appeals Board recently issued a supplemental decision concerning [REDACTED] non-disability issue.

<sup>4</sup> We will use the term "disability retirement formula," to refer to the Plan's retirement formula based on T & P disability in its section 4.1(E). As your Appeals Brief notes, the disability retirement formula in

only considered the normal (basic) retirement formulas in calculating retirement benefits for T & P disabled participants. Specifically, your appeal questions PBGC's calculations for two pilots, [REDACTED] and [REDACTED]. For [REDACTED] your appeal questions whether a \$5,345.38 Priority Category 3 ("PC3") benefit on PBGC's Benefit Statement was calculated under disability or non-disability retirement formulas.<sup>5</sup> AB at 20. For [REDACTED] you note that PBGC did not use the disability retirement formula at all in calculating his PBGC benefits. AB at 21.

Your appeal "demand[s] that PBGC review and revise its benefit calculations of all plan participants who qualify under the disability formula of section 4.1(E) and award each retiree the higher of the benefit to which he is entitled under either the Plan's basic formula, the disability formula contained in section 4.1(E) or, if applicable, the disability provisions of the Prior Plan."<sup>6</sup> AB at 23. Your appeal also makes five additional disability claims, which (along with Disability Claim #1) are addressed in the Discussion section of this decision.

**Our Conclusions.** Before issuing individual benefit determinations, PBGC made the following general determinations: (1) Plan section 4.1(E) provides an alternative retirement benefit formula (the "disability retirement formula") for a T & P disabled participant who was receiving Additional Benefit Programs ("ABP") benefits on or after December 1, 1974; (2) such a participant's Plan benefit is the larger of the amount calculated under the Plan's disability retirement formula or the amount under the Plan's applicable non-disability pension formulas; (3) where applicable under ERISA and PBGC regulations, PBGC will apply the disability retirement formula in calculating PC3 benefit amounts; and (4) PBGC also will apply the "Disability Maximum Guaranteed Benefit" provision in ERISA section 4022(b)(3) to pilots who were T & P disabled under both Plan provisions and for Social Security purposes on or before the earlier of their retirement or the Plan's termination date (March 31, 2003).

Accordingly, the Appeals Board disagrees with your main assertion (Disability Claim # 1) that PBGC did not consider the disability retirement formula in calculating PBGC benefits for T & P disabled pilots. Rather, the Appeals Board found that PBGC did apply the disability retirement formula in Plan section 4.1(E) in calculating benefits for 38 pilots who PBGC had identified as T & P disabled. We are changing PBGC's

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section 4.1(E) applies to T & P disabled participants who began receiving disability benefits under US Airways' Additional Benefit Programs ("ABP") on or after December 1, 1974. The records available to the Appeals Board do not establish that any of the appellants had become disabled prior to December 1, 1974.

<sup>5</sup> For a detailed explanation of PC3 benefits, see "The Statutory Scheme for Allocating a Pension Plan's Assets" starting at page 5 of our February 29, 2008 decision.

<sup>6</sup> The Appeals Board already answered the Appeal's assertion concerning the "Prior Plan's" disability provisions. See pages 34-35 of our February 2008 decision, in which we concluded that the Prior Plan's disability formula applies only to participants who were receiving Prior Plan disability benefits before December 1, 1974. We also pointed out in footnote 57 of that decision that, based on records in PBGC's possession, none of the appellants potentially affected by this disability retirement issue were receiving Prior Plan disability benefits before December 1, 1974.

benefit determinations (or requiring PBGC to issue new benefit determinations) for the eleven appellants listed on page 2 of this decision, however, because PBGC overlooked or did not yet have evidence of their disability. Moreover, we are partially granting your appeal on what evidence establishes T & P disability.

With respect to the other disability claims raised in the Appeal, we found that you have provided no basis for changing PBGC's determinations for the 32 appellants.

**Background.** In this background section, we discuss: (1) the interrelationship between the separate US Airways, Inc. Pilot Disability Plan ("Disability Plan") (which generally pays pre-retirement disability benefits) and the Plan (which pays retirement benefits); (2) the eligibility requirements for the Plan's disability retirement formula in section 4.1(E); (3) how benefits are determined under the disability retirement formula in section 4.1(E); (4) PBGC's determination of PC3 benefit amounts for T & P disabled participants; and (5) the maximum guaranteed monthly benefit for disabled participants under Section 4022(b)(3) of ERISA.

1. The Interrelationship between the Disability Plan and the Plan. US Airways continues to sponsor the Disability Plan, which provides pre-retirement disability benefits and sometimes post-retirement disability benefits to pilots. The Disability Plan is an employee welfare benefit plan and is, therefore, not covered by PBGC's termination insurance program. The Disability Plan is one of the plans under the ABP.

While the Plan and Disability Plan are independent, separately-administered plans, they are interrelated in the following respects: (1) a pilot is eligible for a Plan retirement benefit calculated under the disability retirement formula only if he or she is T & P disabled and had received a disability benefit under the ABP; (2) the term "T & P disabled" is defined in the Disability Plan, not in the Plan;<sup>7</sup> (3) whether a pilot is T & P disabled is determined by the Disability Plan's Administrator (not the Plan's Administrator); and (4) the Plan benefit for an eligible pilot under the Plan's disability retirement formula is based, in part, on the initial disability benefit amount that was paid under the Disability Plan.<sup>8</sup>

2. The Plan's eligibility requirements for the application of its disability retirement formula in section 4.1(E). Section 4 of the Plan is titled "Normal Retirement Income." Within that section, at 4.1(E), is the Plan's disability retirement formula. Plan section 4.1(E) further establishes eligibility requirements for application of the disability retirement formula, which are that the participant: (1) must have begun receiving disability benefits under the ABP on or after December 1, 1974; and (2) must be determined to be T & P disabled.

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<sup>7</sup> The Disability Plan uses the term "Permanent and Total Disability" rather than "totally and permanently disabled" as used in the Plan. References to "T & P" in this decision refer interchangeably to those terms.

<sup>8</sup> See Plan sections 4.1(E) and 2.1(B). The ABP is defined in Plan section 2.1(B).

Plan section 5.1 states, for both disabled and non-disabled participants, the eligibility requirements for the Plan's early retirement benefit. Section 5.1 provides that a participant may elect to retire and receive an early retirement benefit if he or she: (1) has attained age 50 before terminating US Airways employment; (2) has at least 5 years of service; and (3) "is not receiving disability benefits under the Additional Benefit Programs."

Additionally, Plan section 6 provides that a vested participant who has terminated employment and who will "not receive early or normal retirement income" is entitled to receive the Plan's "Deferred Vested Benefit" as early as age 50.

3. How Plan benefit amounts are calculated under the disability retirement formula in section 4.1(E). Plan section 4.1(E) states, in pertinent part, that the yearly amount of basic retirement income payable to the pilot at normal retirement shall not be less than (A) minus (B):

- (A) The amount of disability benefits that the Participant was entitled to receive under the Additional Benefit Programs adjusted annually on each March 1 to reflect increases in the Cost of Living as follows: Whenever the United States Average Consumer Price Index for Urban Wage Earners and Clerical Workers or any index substituted therefore by the United States Department of Labor, increases by one percent (1%) or more in any calendar year, such amount shall be increased correspondingly, provided that such increase shall be limited to 3% of the amount determined for the preceding calendar year and that the maximum aggregate adjustment of such amount shall not exceed 33% of the initial disability benefit paid under the Additional Benefit Programs;
- (B) the yearly amount of retirement income payable in the Life No-Death Benefit form described in Section 9.1(B) of the Plan to the Participant under the Target Benefit Plan and any other tax-qualified defined benefit or defined contribution plan maintained by the Employer that is attributable to Employer contributions (other than any elective deferrals made to such plan(s) in accordance with the provisions of Section 401(k) of the Code or any contributions to the US Airways, Inc. Employee Stock Ownership Plan) for employment with the Employer for which the Participant was credited with Credited Service under the Plan while the Participant was on a leave or furlough status as a pilot, and employed by the Employer in a non-pilot position.

The reference in Plan section 4.1(E) to the "amount of disability benefits that the Participant was entitled to receive" is not further specified in the Plan, but rather is defined in the Disability Plan. The Disability Plan provides that, before a pilot can receive (pre-retirement) disability payments, he or she must exhaust his or her vacation

and sick leave.<sup>9</sup> Sections 1.2 and 3.1 of the Disability Plan state that the initial monthly disability benefit amount payable to a pilot under the Disability Plan equals 50% of his or her average earnings during the last 12 months of active service. Section 3.3 of the Disability Plan further mirrors Plan section 4.1(E) in providing that the maximum Disability Plan benefit equals 133% of the initial disability benefit.

4. PBGC's determination of PC3 benefit amounts for T & P disabled participants.

As was discussed in more detail in our February 2008 decision, the benefit in PC3 is limited to the amount the participant was receiving, or could have received if he or she had retired, as of three years before the pension plan's termination date (which we refer to as "DOPT-3"). Thus, a pilot would have a benefit in PC3 under the disability retirement formula if, as of March 31, 2000 (which is DOPT-3 for the Plan), he or she was (1) T & P disabled; (2) receiving disability benefits from the ABP; and (3) eligible to retire. The benefit in PC3 for such a pilot was the higher of the benefit (as of DOPT-3) under the disability retirement formula in Plan section 4.1(E) or under any other applicable benefit formula. PBGC's calculation of PC3 benefits for T & P disabled participants also is discussed in further detail under "Disability Claim #3" later in this decision.

5. Disability Maximum Guaranteed Benefit ("Disability MGB") for Disabled Participants. As explained on page 5 of the February 2008 decision, the MGB limit is generally reduced from the age-65 amount if a participant starts receiving PBGC benefits at an earlier age. Section 1322(b)(3), however, contains the following special rule (hereinafter referred to as the "Disability MGB"):

The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of [PBGC] that the Social Security Administration has determined the participant satisfied the definition of disability under title II and XVI of the Social Security Act, and the regulations thereunder.

We note that PBGC, before issuing Benefit Determinations, concluded that the Plan's disability retirement formula in section 4.1(E) is a "benefit payable by reason of disability" for purposes of the Disability MGB. Thus, as is discussed under "Disability Claim #5" later in this decision, a T & P disabled pilot entitled to have his benefit calculated under the disability retirement formula may also qualify for the Disability MGB. For plans that terminated in 2003, the MGB is \$3,664.77 at age 65 for a benefit paid as a Straight Life Annuity ("SLA"). Thus, if the Disability MGB applies to the pilot's benefits, the maximum PBGC benefit will not be reduced below \$3,664.77 on account of age (although the MGB will be adjusted for benefit form as provided under PBGC's regulations).

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<sup>9</sup> Disability Plan §§ 1.2 (definition of "Benefit Waiting Period") and 3.4 ("Commencement of Benefits").

**Discussion.** In this discussion, we respond to the six specific claims raised in your appeal concerning the Plan's disability retirement benefit.

Disability Claim #1: PBGC's Application of the Plan's Disability Retirement Formula

As discussed above, the Appeal's main contention is that PBGC failed to apply the disability retirement formula in Plan section 4.1(E) to T & P disabled participants. Your appeal asserts that many of the 32 appellants would receive higher benefit amounts if PBGC had calculated their benefits using that formula.<sup>10</sup>

We disagree with your assertion that PBGC failed to apply the disability retirement formula in Plan section 4.1(E) to T & P disabled participants. Before issuing benefit determinations, PBGC determined that Plan section 4.1(E) provides an alternative disability retirement benefit formula for T & P disabled participants who were receiving ABP disability benefits on or after December 1, 1974.<sup>11</sup> PBGC further determined that a T & P disabled participant's benefit is the larger of the amount calculated under the Plan's disability retirement formula or the amount under the Plan's applicable non-disability pension formulas.<sup>12</sup> These determinations are summarized on pages 10-11 of the *Actuarial Case Memo for Retirement Income Plan for Pilots of U.S. Airways, Inc.* (August 3, 2006) ("Actuarial Case Memo").

We further found that PBGC implemented the above-discussed general determinations when it calculated benefits and issued benefit determinations for pilots who were identified as T & P disabled. As trustee of the Plan, PBGC received information from US Airways that identified 38 participants who were receiving payments from the ABP on the Plan's termination date based on T & P disability. PBGC

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<sup>10</sup> One appellant, ██████████ is a former Piedmont pilot who, prior to the merger of Piedmont into US Airways, was receiving a pre-retirement disability benefit under a Piedmont-sponsored pension plan. Later, after the merger of the companies in 1990, the former Piedmont plan was merged into the Plan. Thus, ██████████ pre-merger disability benefit became a benefit obligation under the Plan based on the Plan provisions applicable to former Piedmont pilots. See Plan section 17.2. As is explained in the Enclosure for ██████████ Enclosure 29, the Appeals Board decided (based on his particular circumstances) that he will receive a new Benefit Determination with a new 45-day appeal right.

<sup>11</sup> PBGC also concluded that the section 4.1(E) disability retirement formula, together with the "Deferred Vested Benefit" provision in section 6, entitled a T & P disabled participant to retire and receive his or her benefit under the disability retirement formula at normal retirement, or to terminate employment and receive an actuarially-reduced benefit at age 50 or afterwards. Based on this interpretation of the Plan's provisions, PBGC further concluded the benefit calculated under the Plan section 4.1(E) disability retirement formula is a "pension benefit" based on T & P disability that, for eligible participants, is guaranteed by PBGC. See 29 C.F.R. § 4022.6 ("Annuity Payable for total disability").

<sup>12</sup> We use the term "basic formulas" here to include: (i) the "Basic Formula" in Plan § 4.1, which is quoted on page 46 of our February 29, 2008 decision; (ii) similar special formulas in Plan sections 16-18 for former pilots at Piedmont Aviation, Pacific Southwest Airlines, and Shuttle, Inc.; and (iii) for T & P disabled participants who were on the Allegheny Airlines' System Seniority List as of December 1, 1972, the "Prior Plan minimum benefit" that is described in Plan section 4.1(E). See the Board's February 2008 Consolidated Decision, pages 34-35, for a discussion of the "Prior Plan minimum benefit."

determined that all 38 of these participants are eligible to have their benefits at normal retirement calculated under the Plan's disability retirement formula in section 4.1(E). See Actuarial Case Memo at page 10. Of your appellants, however, only two are among the 38: [REDACTED] and [REDACTED]

The Appeals Board found that PBGC had correctly identified [REDACTED] and [REDACTED] as T & P disabled and that PBGC correctly calculated their benefits. For [REDACTED] the records that US Airways provided to PBGC showed his monthly Disability Plan (pre-retirement) benefit was \$7,830.90 on March 31, 2003 (DOPT). Thus, his retirement benefit under the disability retirement formula as of DOPT (before any adjustment for commencement date or benefit form) is \$7,830.90. PBGC also calculated his normal retirement benefit under non-disability formulas (before any adjustment for commencement date or benefit form) as \$6,492.90.<sup>13</sup> PBGC then determined, based on those amounts, that it would apply the disability retirement formula in calculating his Plan benefit amount since that formula provided him with the largest Plan benefit. Similarly, PBGC calculated his PC3 benefit using the disability retirement formula since it provided him with the greatest PC3 benefit.<sup>14</sup>

Your appeal questions [REDACTED] benefit determination because his PBGC benefit statement showed a T & P Disability Benefit of \$7,307.73 as of April 1, 2000 and a PC3 benefit of \$5,345.38. The reason for the difference between these amounts is that PBGC adjusted the \$7,307.73 disability amount by an early retirement benefit commencement factor of 0.7350 and by an additional factor of 0.9952 for his pre-retirement death benefit. Thus, contrary to the assumption made in the Appeal, PBGC used both the basic formula and the disability retirement formula in calculating [REDACTED] benefits and is paying him a PBGC benefit based on the Plan's disability retirement formula in Section 4.1(E) of the Plan.

In the case of [REDACTED] PBGC records show that he was receiving a monthly (pre-retirement) Disability Plan benefit of \$7,508.18 when the Plan terminated on March 31, 2003. Although PBGC determined (based on that \$7,508.18 Disability Plan amount) that the disability retirement formula provided him with the greatest Plan benefit, PBGC is unable to pay him his full Plan benefit amount because of the MGB. Additionally, PBGC determined that [REDACTED] does not have benefits in PC3 because at DOPT-3 he was only 41 years old; thus, he was not then eligible to retire under the Plan. PBGC determined, however, that [REDACTED] is eligible for the more favorable Disability MGB of \$3,664.77 per month (unreduced for age in the form of a SLA).

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<sup>13</sup> \$9,935.41 PSA average earnings x 2% x 10.1082 years  
+ \$12,508.56 USAir earnings x (14.75 x 2.4% + 1.8% x .25 years)

<sup>14</sup> PBGC calculated [REDACTED] benefit at DOPT-3, after adjustments for commencement date and benefit form, as \$5,345.38 under the disability retirement formula and as \$3,804.48 under non-disability formulas. (The disability retirement formula amount also was greater than the non-disability formula before his benefit under either formula is adjusted for commencement date and benefit form.) See discussion in his separate Enclosure.

As already noted, we are changing PBGC benefits for seven participants, and are requiring new benefit determinations for four others, because PBGC overlooked or did not yet have evidence of the participant's disability.<sup>15</sup> We note that [REDACTED] who is specifically discussed in the Appeal, will have his PBGC benefits increased for this reason.

#### Disability Claim #2: Required Proof of T & P Disability

Your appeal asserts PBGC should apply the Plan's disability retirement formula in calculating the Plan benefits for all participants who have been determined to be T & P disabled by either the Social Security Administration ("SSA") or by US Airways. Your appeal also asked that PBGC accept (or identify a third party to accept) medical evidence of T & P disability.

As discussed above, the determination of whether a pilot is T & P disabled is made by the Disability Plan's Administrator. Section 1.2 of the Disability Plan defines T & P disability as "a Disability which wholly and continuously disables and prevents such person from engaging in any occupation or employment for wage or profit for which he is qualified by reason of education, training or experience, for the remainder of his life."

While the above-quoted language establishes the general standard for T & P disability, the determination of whether or not a particular pilot is T & P disabled necessarily requires that Disability Plan officials examine the particular facts and circumstances of his or her case. As discussed below, in every case in which the Disability Plan administrator identified a pilot as T & P disabled, PBGC and the Appeals Board have accepted that determination for purposes of determining eligibility for the Plan section 4.1(E) disability retirement formula.

For example, two of the appellants [REDACTED] and [REDACTED] are among the 38 participants that PBGC identified, in its audit of Plan records, as being T & P disabled as of the Plan's termination date. PBGC accepted the Disability Plan's T & P disability determination for these 38 pilots, including [REDACTED] and [REDACTED]. In these cases, PBGC applied the Plan's section 4.1(E) disability retirement formula in calculating the Plan benefit. Other than [REDACTED] and [REDACTED] none of the remaining appellants were on this list of 38 pilots that PBGC had identified as T & P disabled during its audit. We

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<sup>15</sup> As is discussed in the individualized Enclosures for the appellants, the benefit changes occurring as a result of this supplemental decision will affect (depending upon the pilot's circumstances) the benefit in PC3 or the benefits guaranteed by PBGC in PC4. We also note that, under ERISA section 4022(c), PBGC is paying additional benefits based on PBGC's legal recoveries. The benefits PBGC is paying based on section 4022(c) are minimal, however, because the legal recoveries funded only .19% of certain Plan benefits not already being paid in PC3 or under PBGC's guaranty.

Since your appeal does not dispute PBGC's calculations of the Plan benefits funded by legal recoveries, we have not made findings concerning section 4022(c) benefits in this supplemental decision. We note, however, that the amount of a participant's section 4022(c) benefit may increase or decrease a small amount whenever a Plan benefit, a guaranteed benefit, or a PC3 benefit changes.

note that PBGC's audit focused on the T & P disability status of pilots who had not yet retired, while many of the appellants had retired prior to DOPT.

In reviewing individual appellant records, the Appeals Board identified eight more appellants, in addition to [REDACTED] and [REDACTED] who the Disability Plan had determined to be T & P disabled. In each case, the Appeals Board accepted the Disability Plan's determination on T & P disability.<sup>16</sup> We note, however, that the Appeals Board's acceptance of a T & P disability determination does not always result in an increase in PBGC benefits, for reasons that are explained below and in the pilots' individual enclosures.

Your appeal asserts that "if the Social Security Administration has made a finding of total and permanent disability, the individual would qualify for the enhanced benefits of 4.1(E)."<sup>17</sup> In response to this assertion, the Appeals Board examined the Disability Plan's practice to determine whether or not it had accepted a Social Security disability award as sufficient proof of T & P disability.

We found that the Disability Plan's practices concerning acceptance of SSA disability determinations is consistent with the Appeal's assertion. In every case we examined where the pilot had received (or was eligible to receive) a disability benefit from the ABP, we found the Disability Plan Administrator ultimately accepted an SSA disability award as establishing that the medical requirements for T & P disability were met. (In the case of appellant [REDACTED] the Plan Administrator denied T & P benefits for non-medical reasons.) We also note that, in 2004, an Arbitrator discussed in detail the Disability Plan's practice in making T & P Disability determinations. The Arbitrator, in deciding that a particular pilot's Social Security award should be accepted as proof of his T & P disability, noted that in 1982 the Disability Plan had changed its definition of T & P disability.<sup>18</sup> The Arbitrator concluded: "the parties' practice thereafter [i.e., after the 1982 amendment] has been to accept the [S]ocial [S]ecurity award as proof of a pilot being totally and permanently disabled under the Plan."<sup>19</sup>

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<sup>16</sup> Based on its review of Disability Plan records, the Appeals Board found that the appellants discussed in Enclosures 5, 6, 7, 8, 14, 15, 23, 25, 27, and 33 are T & P disabled based on Disability Plan T & P disability determinations.

<sup>17</sup> Your appeal accurately notes that the original version of the Disability Plan required a determination by SSA of total and permanent disability. Your appeal further states, at AB 18, that the 1982 Disability Plan amendments "kept the substantive standard" relied on by SSA, but eliminated the requirement for an SSA finding of disability. Your appeal, therefore, contends: "Clearly, if the Social Security Administration has made a finding of [T & P] disability, the individual would qualify for the enhanced benefits of 4.1(E)." AB at 18.

<sup>18</sup> This matter was referred to Arbitration to resolve a January 2002 deadlock among the members of the US Airways/ALPA Retirement Board. We further note that PBGC accepted the Arbitrator's decision with respect to the particular pilot involved.

<sup>19</sup> As your appeal notes, before a 1982 amendment the Disability Plan stated: "A pilot will be considered permanently and totally disabled if his condition qualifies the disabled pilot for disability benefits under the Federal Social Security Act." Under a 1982 Amendment, the definition of T & P Disability dropped the

The Appeals Board accordingly concluded, based on such consistent Disability Plan practice, that a pilot would meet the Disability Plan's standard of T & P disability if the SSA found that the pilot was disabled under Social Security standards. Furthermore, the Appeals Board decided that, based on this consistent practice, there is no reason to require a pilot with such a SSA award to obtain a T & P disability determination from the Disability Plan (if there is no documented Disability Plan determination in PBGC records). Rather, to expedite processing of the appellants' cases in a manner that is fully consistent with the Disability Plan's practice, the Appeals Board decided it would accept the SSA awards as establishing that the medical requirements for T & P disability were met.

Your appeal also requests that individuals currently with neither a SSA disability award nor a T & P determination under the Disability Plan "should be afforded the opportunity to present their medical evidence to either PBGC or a qualified party of PBGC's choosing in order that a proper determination of their eligibility for disability [retirement] benefits under section 4.1(E) of the Plan can be made." AB at 18-19. Such an opportunity could affect appellants [REDACTED] and [REDACTED] for whom we found neither a SSA disability award nor a T & P determination by the Disability Plan Administrator.

While the Appeals Board has decided evidence of a SSA disability determination, based on consistent Disability Plan practices, may be substituted for a formal determination of T & P disability by the Disability Plan's Administrator, we are denying your request that PBGC review medical evidence to make its own T & P eligibility determinations. Our reasoning is explained immediately below.

First, the Disability Plan routinely reviewed medical evidence in making [ordinary and T & P] disability determinations and has expertise in such reviews.<sup>20</sup> The Disability Plan is ongoing, and nothing prohibits a participant from seeking a T & P disability determination, using medical or other evidence, from the Disability Plan's Administrator.

Second, when the Plan was ongoing, the Disability Plan Administrator determined whether a pilot was T & P disabled. The Plan then would use the Disability Plan's T & P disability finding to determine eligibility for the Plan section 4.1(E) disability retirement

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reference to Social Security. The Arbitrator, based on his review of the information provided by US Airways and ALP, concluded: "The evidence . . . reveals that the parties agreed to the new language to ensure that a pilot who met the [Disability] Plan's definition was not prevented from receiving COLA benefits [based on T & P disability] simply because he could not meet the more stringent requirements established by the Social Security Administration to be granted disability benefits."

<sup>20</sup> Although the Disability Plan generally did not make a T & P disability determination until after a SSA disability award had been submitted, the Appeals Board found evidence that in at least one case the Disability Plan administrators had granted T & P disability in advance of a SSA determination. PBGC's records show that on October 13, 1997, Disability Plan administrators had already found that appellant [REDACTED] was T & P disabled, while SSA's action awarding him a disability benefit occurred later, on February 23, 1999.

formula. The Appeals Board found no evidence, nor did your appeal assert, that Plan administrators themselves ever determined T & P disability; instead, they relied on the Disability Plan Administrator's determinations. Likewise, PBGC should not make its own independent determinations of T & P disability, either. We note that independent PBGC determinations based on medical evidence (in contrast to acceptance of SSA disability awards) could result in outcomes that differ from what the Disability Plan would have decided.

Finally, PBGC has no experience in applying the Disability Plan's standards in making judgments on whether medical records indicate ordinary disability or T & P disability. In contrast to our acceptance of SSA disability awards - which was the Disability Plan's consistent practice and which involved application of a simple to apply "bright-line" test - accepting medical records would require PBGC to discern and apply medical standards of a Plan PBGC does not trustee or even insure.

Therefore, the Appeals Board is denying your request that PBGC (or a third party other than SSA) use medical evidence as a substitute for a formal T & P disability determination under the Disability Plan. PBGC will continue to review any new evidence of a formal SSA disability award or formal T & P disability determination by the Disability Plan Administrator, if such evidence would establish a disability onset date prior to DOPT that could impact a participant's benefit amount.

#### Disability Claim #3: PC3 Benefit Under Section 4.1(E) for T & P Disabled Pilots

Your appeal states, at AB 19: "[A]ll Plan participants who are eligible to retire on March 31, 2000 and are found to have a T & P disability (as defined in the Plan) are in PC3, and since PC3 is 100% funded, all of those individuals are entitled to pension payments from PBGC no less than what they had been receiving or would have received under the disability plan, plus cost of living adjustments up to a maximum of 133%." Also, your appeal contends that the applicable IRC section 415 limit for determining PC3 benefit amounts for T & P disabled participants is the limit in effect on March 31, 2003, or the date of retirement, whichever is later, rather than the limit in effect on March 31, 2000. AB at 20-21.

As discussed above on page 6, the benefit in PC3 is limited by the amount the participant was receiving, or could have received if he or she had retired, as of three years before the plan terminated. Thus, a pilot would have a benefit in PC3 under the disability retirement formula if, as of March 31, 2000 (which is DOPT-3 for the Plan), he or she was (1) T & P disabled; (2) had begun receiving disability benefits from the ABP; and (3) was then eligible to retire. The benefit in PC3 for such a pilot is the higher of the benefit (as of DOPT-3) under the disability retirement formula in Plan section 4.1(E) or under any other applicable benefit formula.

If, however, a pilot was eligible to retire at DOPT-3 but did not become T & P disabled until after that date, the PC3 benefit amount cannot be based on the Plan's disability retirement formula (since such an individual could not have retired at DOPT-3

and received a retirement benefit under that formula). Instead, the PC3 benefit amount in that situation is based on the amount that would be payable, at DOPT-3, under the applicable non-disability formula that produces the highest benefit.

As we discussed in the February 2008 decision (Issue #2), PC3 benefits, once calculated, are fixed as of DOPT-3. With respect to COLAs under the disability retirement formula, PBGC is unable to provide in PC3 any COLAs that became payable under the Plan after DOPT-3. See discussion under Issue #6 of our February 29, 2008 decision.<sup>21</sup>

We note that, with respect to benefits in PC3, PBGC interpreted the Plan's disability retirement benefit provision (in conjunction with other Plan provisions) as providing COLAs both to normal retirees and to those who retired or could have retired before their normal retirement date. For normal retirees, the Plan clearly provides that the normal retirement benefit is based on the amount the pilot was receiving from the Disability Plan at retirement. The normal retirement benefit amount then is annually adjusted for COLAs in future years (up to 133% of the initial Disability Plan amount). Thus, based on PBGC's regulations, any COLA increase that the normal retiree received after DOPT-3 would not be included in PC3.

For a T & P-disabled pilot who had not retired but was age 50 or older at DOPT-3, the PC3 benefit is determined as if the pilot terminated employment at DOPT-3 and immediately went into pay status under the Plan.<sup>22</sup> To calculate the benefit amount, PBGC and the Appeals Board followed a plain reading of the Plan document, starting with the Normal Retirement Benefit amount ("NRB") in section 4.1(E). To calculate the PC3 benefit amount for such a T & P-disabled participant who could have but had not retired on April 1, 2000:<sup>23</sup>

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<sup>21</sup> With respect to COLAs for T & P disabled participants, the Appeals Board identified an error in PBGC's Actuarial Case memo. The Actuarial Case memo states, on page 11, that the PC3 benefit amount for an eligible T & P disabled participant is "the T & P disability payment received for March 2003 (limited to the original T & P disability benefit multiplied by 133%), reduced by the plan's Early Retirement Factor appropriate for his age at April 1, 2000." In its actual PC3 benefit calculations (such as those for [REDACTED]), PBGC used the T & P disability payment received for March 2000. The Appeals Board contacted PBGC's Benefits Administration and Payment Department ("BAPD") about this language. BAPD responded that the Actuarial Case Memo's reference to "March 2003" (rather than to March 2000) was a typographical error.

In any event, the Appeals Board concluded that March 2000 (rather than March 2003) is the appropriate date, because the March 2003 disability payments included COLAs that first had become payable after March 2000. It is clear, for the reasons given in our discussion of Issue #6 in the February 2008 decision, that COLAs that first become payable after DOPT-3 are not included in PC3 benefits.

<sup>22</sup> See 29 CFR 4044.13(b)(2).

<sup>23</sup> The individualized Enclosure we prepared for appellant [REDACTED] is an example of how PBGC and the Appeals Board found PC3 benefits should be calculated under section 4.1(E).

- The first step is to calculate the Normal Retirement Benefit under section 4.1(E). This amount is the Disability Plan benefit amount on March 31, 2000, including the COLAs effective through that date. Any future COLAs were contingent on future events, such as increases in the Consumer Price Index, so no eligibility for future COLAs was established on March 31, 2000. Thus, the section 4.1(E) Normal Retirement Benefit on March 31, 2000 includes only COLAs through March 31, 2000, like the NRB under section 4.1(A) includes only service ending no later than March 31, 2000.
- The second step in calculating the PC3 benefit is to reduce the Normal Retirement Benefit for early commencement on April 1, 2000. The Appeals Board found the Plan document simply does not provide any unreduced early commencement benefits under any retirement type, as explained under Disability Claim #4 below.
- Finally, section 4.1(E) provides COLAs in future years (after April 1, 2000) capped at an aggregate total of 133%. However, based on PBGC's regulations, such COLA increases are not included in PC3. (As we stated in our February 29, 2008 decision, COLA increases under the disability retirement formula that went into effect after DOPT-3, but before DOPT, may be part of the participant's Plan benefit, and those COLA increases generally are in PC4-PC5. Unfortunately, Plan assets are not available to fund PC5 benefits.)

The Appeals Board concluded that your appeal provided no basis for changing the above-stated PBGC interpretations of Plan section 4.1(E) and applicable law.<sup>24</sup>

With respect to the IRC section 415(b) limits, your appeal raises essentially the same claims that were made and which the Consolidated Decision addressed under Issue #4. The Appeals Board decided that increases to the section 415(b) limits that went into effect in the last three years before the Plan termination date (i.e., between April 1, 2000 and March 31, 2003) are not included in PC3 benefit amounts.<sup>25</sup> Your appeal did not advance any arguments concerning the 415(b) limits for disabled participants that differed from the arguments advanced under Issue #4 in the Consolidated Decision. Accordingly, we see no reason to discuss the 415(b) limit issue further here.

#### Disability Claim #4: PBGC's Use of Early Benefit Commencement Factors in PC3 Calculations

Your appeal asserts that the Actuarial Case Memo improperly stated that the Plan's early retirement factors applied to the benefits of T & P disabled participants who

<sup>24</sup> Your appeal states, at AB 23, that US Airways recognized the need to provide COLAs for T & P disabled participants "when it directed Towers Perrin to convert [REDACTED] retirement pension to a disability retirement pension using the COLA provided in the Plan." US Airways' actions with respect to [REDACTED] however, involved a 100% lump sum payment that occurred before the Plan terminated. We concluded that, because of the specific ERISA requirements that apply to PC3 benefits, US Airways' actions with respect to [REDACTED] do not provide a basis for PBGC to change the COLA amounts in PC3.

<sup>25</sup> See pages 19-22 of the February 29, 2008 Consolidated Decision.

started receiving Plan benefits before normal retirement. You claim that the Plan “provides no early retirement penalties for T & P disabled retirees.” AB at 22.

We disagree with your assertion concerning what the Plan provides. All benefits referenced in Plan section 4.1, including the benefit determined under the disability retirement formula, are normal retirement benefits that provide “basic retirement income.” Furthermore, the Plan provides that each of the normal retirement benefits referenced in section 4.1 is to be adjusted by the reduction factors set forth in Plan sections 5.2 and 6.2 if commencement of Plan benefits begins before normal retirement. See Plan section 4.4 (“Amount of Normal Retirement Income”), which provides that a participant’s normal retirement income amount equals the amount determined in section 4.1 multiplied by the applicable benefit form adjustment factors specified in the Plan.

The Plan’s reduction factors for early commencement of Plan retirement benefits are set forth in Plan section 5.2 (which applies to early retirees) and section 6.2 (which applies to deferred-vested participants). Plan sections 5.2 and 6.2 each state that the benefit described in Plan section 4.4 (“Amount of Normal Retirement Income”) is “reduced by .25% for each month after his 55th birthday by which his Benefit Commencement Date precedes his Normal Retirement Date and by .50% for each month by which his Benefit Commencement Date precedes his 55th birthday . . . .” Moreover, neither sections 5.2 or 6.2 of the Plan, nor any other section, contains language that would suggest that the Plan’s factors for the early benefit commencement do not apply to participants who start their Plan retirement benefits early if their Normal Retirement Benefit happens to be under disability retirement formula in section 4.1(E).

The Appeals Board also researched US Airways’ benefit calculations for pilots who were T & P disabled and who retired or terminated employment before age 60. We found, however, very few such individuals because (other than pilots who chose to retire under the Early Retirement Incentive Program (“ERIP”)) nearly all T & P disabled pilots we identified retired at age 60. It appears that the reason that the number of such individuals is limited is because, aside from ERIP retirees, it generally was in the interest of a T & P disabled pilot to collect benefits under the Disability Plan until age 60 and to then (or later) retire under the Plan.<sup>26</sup> For example, since the Plan (unlike the Disability Plan) reduced benefit payments for early commencement, a T & P disabled pilot’s benefits before age 60 ordinarily would be greater under the Disability Plan than under the Plan.

The Appeals Board did identify two appellants [REDACTED] and [REDACTED] and one non-appellant who were T & P disabled and who retired before age 60. Before [REDACTED] retirement from US Airways in December 2001 at age 59 and two months, he had received a monthly Disability Plan benefit of \$8,311.23. After retirement, US Airways continued to pay [REDACTED] combined benefits from the Plan

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<sup>26</sup> As discussed in the Background section at pages 4-5 and footnote 9, a pilot must stop receiving an ABP disability benefit in order to start receiving a Plan benefit before normal retirement age (age 60). We also note that the Disability Plan provided for an offset for benefit amounts that were paid from the Plan. Disability Plan § 3.8 (“Integration of Benefits with Retirement Benefits”).

and from US Airways' non-qualified "Top Hat" plan that equaled what he had received from the Disability Plan (except for an adjustment for benefit form). As is further detailed in his Enclosure, the amount US Airways paid ██████████ from the Plan (\$7,999.53) was calculated under the Plan's basic (non-disability) formula, with service projected to his Normal Retirement Date and no reduction for early benefit commencement. US Airways paid ██████████ an initial Top Hat plan benefit of \$355.58, which later was increased by COLAs to \$517.12 from the Top Hat plan. The Appeals Board also found that the non-appellant, who retired in 2001 at age 55 10/12, had his US Airways' benefits calculated in a similar manner to ██████████

US Airways used a different calculation method, however, for appellant ██████████ ██████████ retired on January 1, 2003, at age 56 and five months, when his (pre-retirement) Disability Plan benefit was \$6,747.23. Like ██████████ and the non-appellant described in the paragraph above, ██████████ (1) after retirement received combined benefits from the Plan, the Top Hat plan, and from the Disability Plan that equaled what he had received from the Disability Plan (except for an adjustment for benefit form); and (2) had his Plan benefit calculated under the basic (non-disability) formula, rather than under the disability retirement formula (which would have provided a larger Plan-paid portion). ██████████ Plan benefit, however, was based on service through his retirement date (rather than projected service to normal retirement) and included a 10.75% reduction for early benefit commencement.

The Appeals Board was unable to reconcile the language in the Plan document with the US Airways calculations for these three individuals. We concluded, however, that because the Plan clearly provides for use of early benefit commencement factors, any US Airways' calculations that omit those factors are incorrect.<sup>27</sup>

Accordingly, the Appeals Board concluded that the Plan's factors for the early benefit commencement apply to T & P disabled participants who begin receiving Plan retirement benefits before the Plan's normal retirement age (60). Also, for benefits in

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<sup>27</sup> Moreover, we concluded that US Airways' calculations for these individuals are entitled to little or no weight with respect to how Plan provisions should be interpreted. First, the calculations for ██████████ and the nonappellant are not consistent with the calculation for ██████████. The most significant discrepancy is that, for ██████████ US Airways used a reduction factor for early benefit commencement, but, for the other two individuals, a reduction factor was not applied. Also, the Appeals Board was unable to determine a coherent rationale for US Airways' Plan disparate benefit calculations for these individuals.

Although in all three cases US Airways had used Top Hat funds (or other corporate funds paid through the Disability Plan) in combination with Plan funds to preserve the benefit amounts the participants previously had received from the Disability Plan, PBGC cannot continue to preserve those benefits. PBGC is not responsible for the Top Hat plan or for US Airways' other corporate obligations, and, accordingly, PBGC is unable to provide benefits that US Airways previously had paid from sources outside of the Plan.

Finally, for a fourth T & P disabled participant, appellant ██████████ who retired at age 60, U.S. Airways administrators determined the Plan could provide only the ordinary (non-disability) benefit, and the remainder of the 4.1(E) benefit would be provided from the Top Hat plan. See Enclosure 25.

PC3, the early benefit commencement factor applicable to a benefit starting at DOPT-3 (i.e., on April 1, 2000) is applied in determining the PC3 benefit amount.

Disability Claim #5: PBGC's Application of the Disability MGB

Your appeal asserts, at AB 22, that Plan retirees with SSA Disability awards are entitled to have their PBGC guaranteed benefits calculated based on the age-65 "Disability MGB" in ERISA section 4022.

As we stated previously, PBGC, before issuing Benefit Determinations, concluded that the Plan's disability retirement formula in section 4.1(E) is a "benefit payable by reason of disability" for purposes of the Disability MGB in ERISA section 4022(b)(3). We further note that PBGC has adopted a "Disability Benefit" policy (Enclosure 2) that, among other things, interprets how PBGC will apply ERISA's Disability MGB provision. Section D.2(a) of the Disability Policy provides:

The Disability Maximum Guarantee applies, regardless of retirement type . . . , where the participant meets the requirements . . . for entitlement to the plan's disability benefit on or before DOPT *and* demonstrates to the satisfaction of PBGC that the Social Security Administration has determined that he or she satisfied the SSA disability definition on or before the earlier of (a) the date of retirement or (b) DOPT.

The Disability Policy accordingly states that the Disability MGB generally is applied to participants who meet both their pension plan's requirements for a disability retirement benefit and the SSA's disability standard as of the dates specified in the policy.

PBGC thus has concluded, based on its application of the Disability Policy to the Plan, that a pilot qualifies for the Disability MGB if, effective as of the earlier of retirement or DOPT, he or she: (1) had been or was receiving disability benefits under the Additional Benefit Programs; (2) was T & P disabled; and (3) had been determined by SSA to be permanently disabled. For example, PBGC determined that appellant [REDACTED] (whose benefits are discussed in more detail in his Enclosure 25) had met these conditions, and, therefore, the Disability MGB applies to his benefits.

PBGC also applied the Disability MGB to appellant [REDACTED] benefits, but since he (unlike [REDACTED] has a larger benefit in PC3, he will receive the larger PC3 benefit amount. Although PBGC's benefit determination did not provide the Disability MGB to [REDACTED] (whose benefits are discussed in your appeal), the Appeals Board has corrected this error, as is explained in his Enclosure.

Disability Claim #6: The Request that PBGC Correct Benefits for Disabled Lump Sum Retirees

Your appeal asks that PBGC re-evaluate the status of any T & P disabled pilot who received a lump sum distribution prior to DOPT and states that “any sums due and owing should be paid.” AB at 23. For this claim, your appeal refers to a list of “100% lump sum retirees” that was provided to PBGC before PBGC’s issuance of benefit determinations.

Of the 32 appellants whose benefits are addressed in this supplemental decision, none received a 100% lump sum retirement benefit. Since this Appeals Board’s decision applies only to these 32 appellants, we will not address the benefits of any T & P disabled pilot who may have received a 100% lump sum distribution. As a general matter of policy and fairness, PBGC will always review any new, specific evidence submitted by a participant or their representative in support of a claim that their benefit is wrongly calculated. If you are aware of participants with such new and specific evidence, please advise them accordingly.

**DECISION**

Having applied Plan provisions, ERISA, other applicable law, and PBGC regulations and policies to the facts in this case, the Board decided that four of the 32 appellants [REDACTED] and [REDACTED] will receive new benefit determinations, with a new 45-day appeal right, for the reasons detailed in their respective Enclosures.<sup>28</sup> Because these appellants will receive new Benefit Determinations, this decision is not yet the final Agency action in their respective cases.

For the following eight appellants, we denied their appeals with respect to the disability issue: [REDACTED] and [REDACTED]. But since these appellants all must receive new Benefit Determinations based on our February 29, 2008 decision, the Board’s decision is not yet the final Agency action in their respective cases.

The Appeals Board further determined that the following seven appellants are entitled to increases in their PBGC benefits, in the amounts detailed in their respective Enclosures: [REDACTED] and [REDACTED]. This decision is PBGC’s final Agency action with respect to these seven appellants.

Finally, for the remaining 13 appellants not named above, their appeal on the disability issue is denied and our decision constitutes PBGC’s final Agency action with respect to their appeal.

<sup>28</sup> In the case of [REDACTED] this is a decision only on his disability claim. [REDACTED] August 5, 2008 appeal remains open with respect to all other issues.

For the 20 appellants for whom this decision represents the final Agency action on your appeal, they may seek review of this decision in an appropriate federal district court. If any appellant needs other information regarding his or her PBGC benefits, he or she may contact PBGC's Authorized Plan Representative at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script, appearing to read "William D. Ellis".

William D. Ellis  
Appeals Board Member

The 34 Enclosures are listed on the following page

34 Enclosures:

1. Listing of the 30 Appellants promised a Disability decision in our February 29, 2008 decision
2. PBGC Operating Policy Manual 5.9-1 "Disability Benefit" Policy, dated 08/20/03

Specific Findings by the Appeals Board are at the Following Enclosures:

