



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

JUN 24 2005

Re: [redacted] Bethlehem Steel Corporation Pension Plan, Case # 196603

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's April 26, 2004 determination that you are not entitled to a Rule-of-65 Retirement under the Bethlehem Plan. As explained below, we are denying your appeal.

*PBGC's Determination and Your Appeal*

PBGC's letter said that paragraph 2.7 of the 1999 Pension Agreement between Bethlehem and the United Steelworkers of America sets forth specific requirements relating to age, service and termination of employment for a participant to be eligible for Rule-of-65 Retirement. PBGC explained that, for a benefit to be guaranteeable under Federal law and PBGC regulations, a participant must have met the eligibility requirements for the benefit on the plan's termination date. PBGC noted that the Bethlehem Plan terminated, effective December 18, 2002, and that after that date there are no further service accruals. Although PBGC concluded that you met the age and service requirements for a Rule-of-65 benefit, PBGC determined you are not entitled to the benefit because, as of December 18, 2002, Bethlehem had not advised you that you would not be offered suitable long-term employment and you had not incurred a break in continuous service.

Your April 26, 2004 appeal described in detail your employment at various Bethlehem facilities from 1995 to 2003. You said you became entitled to Rule-of-65 Retirement due to a shutdown of a Bethlehem plant in November 19, 1995, and again in 1997, 1998 and 2003 due to different shutdowns at Sparrows Point. You believe you are entitled to Rule-of-65 Retirement under the "second shutdown" provisions in the 1999 Pension Agreement.

*Discussion*

The Bethlehem Plan terminated, effective December 18, 2002, 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 your entitlement to a guaranteed benefit. PBGC's regulations require that, to be entitled

to a guaranteed benefit, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit as of the date the Plan terminated.

According to paragraph 2.7 of the 1999 Bethlehem Plan for the Steel Division (represented hourly employees) --

Any participant (i) who shall have had at least 20 years of Continuous Service as of his last day worked, and (ii) who has not attained the age of 55 years, and (iii) whose combined age and years of Continuous Service shall equal 65 or more but less than 80, and

- (a) whose Continuous Service is broken by reason of a layoff or disability, or
- (b) whose Continuous Service is not broken but who is absent from work by reason of a layoff resulting from his election to be placed on layoff status as a result of a permanent shutdown of a plant, department or subdivision thereof,

and who has not been offered suitable long-term employment [as defined in Appendix A of the 1999 Pension agreement] shall be eligible to retire [under a Rule-of-65 Retirement] . . . In the case of the Represented Hourly Employee Group [a participant will be eligible to retire] on the earlier of (A) the date the Participant's Employing Company determines that suitable long-term employment will not be offered; or (B) the date that is 24 months after the commencement date of a layoff referred to in paragraph 2.7(b) above.

The records PBGC's auditors obtained from the former Plan Administrator and the information you submitted with your appeal show that you were an active employee of Bethlehem's Sparrows Point Tin Mill when the Plan terminated on December 18, 2002. Bethlehem continued to operate the Tin Mill through May, 2003, when Bethlehem sold its assets (including the Tin Mill) to ISG.

The records further show that (1) you had transferred to the Tin Mill in November, 1998, (2) when the Plan terminated on December 18, 2002, you were age 47.75 with 29.5 years of continuous service, (3) when the Plan terminated you were *not* absent from work by reason of a layoff resulting from a permanent shutdown of a Tin Mill plant, department or subdivision, and (4) your employment with Bethlehem ended May 6, 2003. Thus, while you met the Rule-of-65 age and service requirements under Plan paragraph 2.7 as of the Plan termination date, you did not meet the requirements of subparagraphs (a) or (b) as of that date.

You said in your appeal that you are eligible for a Rule-of-65 benefit under the second shutdown rules of the Pension Agreement. According to your *Employment Event History Profile* (copy attached) and your appeal, you were laid off in November, 1995 as a result of the shutdown of Bethlehem's Basic Oxygen Furnace. You said you were offered and required to accept a

transfer to the Sparrows Point (Maryland) Plate Mill in April, 1997, which you said closed 75 weeks later. In September, 1998, you transferred to the Sparrows Point Cold Sheet Mill, which shut down 5 weeks after your transfer. You said that in September, 1998, you bid on and accepted a job at the Sparrows Point Tin Mill. As discussed above, you were working at the Tin Mill for about 5 years when the Plan terminated.

Appendix A of the 1999 Pension Agreement provides certain protections to participants otherwise eligible for Rule-of-65 retirement who are offered and accept suitable long-term employment. The second shutdown rule to which you refer generally permits a participant involved in a second shutdown *within two years of the first* to refuse an offer of suitable long-term employment without losing eligibility for Rule-of-65 retirement due to the second shutdown. Because you were actively employed for more than five years after your last shutdown, the second shutdown rule does not apply to you.

Decision

For the reasons stated above, we must deny your appeal. While we are sympathetic to your situation, PBGC and the Appeals Board must follow the terms of the Plan, the law and PBGC policy. This is the Agency's final decision concerning the Rule-of-65 issue and you may, if you wish, seek court review of this decision.

If you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board

Attachment