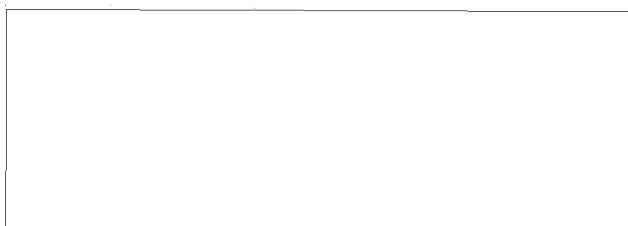




Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

April 22, 2008



Re: Appeal 2006-0272 [redacted], Case 197610,  
Granite City Chemical Workers Pension Plan (the  
"Granite City Plan")

Dear [redacted]:

We are responding to the appeal you filed on behalf of [redacted] concerning PBGC's determination that he is not entitled to a benefit under the Granite City Plan. For the reasons stated below, we changed PBGC's determination by finding that [redacted] is entitled to a benefit. PBGC's Benefits Administration and Payment Department will send [redacted] a new determination of his benefit amount and annuity start date, with a new 45-day appeal right.

PBGC's Correspondence and Your Appeal

PBGC's June 30, 2005 determination explained that the Plan required at least five years of vesting service to qualify for a benefit. PBGC said that [redacted] had only 3.3 [redacted] years of service when the Plan terminated, effective December 6, 2002. PBGC also included a benefit statement showing the information PBGC used to calculate his benefit.

[redacted] August [redacted], 2005 appeal said that he was employed by National Steel Corporation for six years from October of 1996 until May [redacted], 2002. To support his appeal, he included (1) a copy of his earnings history from the Social Security Administration for the years 1996 through 2002, and (2) copies of two *Revised Bricklayer Layoff and Recall Lists* from National Steel, one dated April 11, 2000 and the other October 12, 2000, which show his hire date as October [redacted], 1997.

In accordance with established PBGC procedures, we asked PBGC's Benefits Administration and Payment Department ("BAPD"), the group responsible for determining and paying PBGC benefits, to provide [redacted] with a further explanation. BAPD's February 1, 2006 response said that he was hired on October [redacted], 1996 as a temporary employee with an employee code of FTNB ("full-time with no benefits"). His temporary employment was terminated three times before he was converted to a regular full-time employee on March [redacted], 2000. BAPD explained that, under the Plan, his continuous service began as of his last hire date. BAPD noted that National Steel itself determined he had 3.3 [redacted] years of continuous service as of December [redacted], 2002.

BAPD's letter also said that the list [redacted] submitted with his appeal included language specifically stating that the purpose of the list was for layoff/recall, vacation and time off, and that National Steel did not use this list for pension purposes. BAPD gave [redacted] 30 days to provide the Appeals Board with additional information if he still believed PBGC's determination was wrong.

According to the appeal you filed for [redacted] February 26, 2006, neither the collective bargaining agreement between Granite City and the Bricklayers and Allied Craftworkers International Local #8 (the "CBA") nor the Granite City Plan excludes "temporary employees" from pension coverage. In particular, you noted that --

- (1) Section 2 of the CBA provides that Local #8 is the exclusive collective bargaining representative "for all its members employed by the Company" and that "all members" clearly includes temporary employees;
- (2) the Employee Retirement Income Security Act ("ERISA") requires a Plan to base participation on hours and years of service as an employee with no exception for an employee simply because an employer calls him "temporary;" and
- (3) even if the CBA did state that service as a temporary employee did not count for pension purposes, "that concept would be contradicted by the clear language of the Plan Document itself," which provides that "'Employee' means any Employee who . . . is covered by a [CBA]" and that "'Participant' means any Employee who shall have had at least one year of continuous service and shall have attained the age of 21 years and who, from

time to time during the period in which this [CBA] is effective, is accruing continuous service."

You further stated that, under the Elapsed Time Method used by the Plan to measure continuous service, [redacted] accrued more than five years of vesting service between October [redacted], 1996 (the date he first performed an Hour of Service with Granite City) and December [redacted], 2002 (the date the Granite City Plan terminated). You contend that (1) his absences due to lack of work during this period were layoffs, not terminations and (2) because no such absence exceeded two years, he had no breaks in continuous service.

Lastly, you said that even if the Appeals Board finds that service as a temporary employee is treated differently for pension computation purposes, [redacted] is still entitled to service from October [redacted], 1997 (his date of hire shown on the Regular Layoff and Recall List) until December [redacted], 2002.

#### Background

The Granite City Plan terminated, effective December 6, 2002, without sufficient assets to provide all benefits PBGC guarantees under Title IV of ERISA. The terms of the Plan, the provisions of ERISA, and PBGC regulations and policies determine [redacted] entitlement to a guaranteed benefit. PBGC regulations require that a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit on or before the earlier of the date the participant's employment ended and the date the plan terminated.

Section 4A of the CBA established a Regular Layoff and Recall List ("Regular List"). The Regular List, which consisted of 49 bricklayers, was "the only basis for consideration in the event of layoff or recall to work." Appendix C of the CBA permitted Granite City to hire bricklayers from Local #8 who were not on the Regular List "to supplement the available Bricklayers on the Regular List when needed." According to Appendix C, "all Bricklayers who work under the terms of this Agreement who are not on the Regular List will be considered temporary employees."

The records PBGC's auditors obtained from the former Plan Administrator show the following work history for [redacted]:

1.	October <input type="checkbox"/> , 1996	Hired as temporary employee
2.	October <input type="checkbox"/> , 1997	Temporary employment ended
3.	June <input type="checkbox"/> , 1998	Rehired as temporary employee
4.	June <input type="checkbox"/> , 1998	Temporary employment ended
5.	April <input type="checkbox"/> , 1999	Rehired as temporary employee
6.	April <input type="checkbox"/> , 1999	Temporary employment ended
7.	August <input type="checkbox"/> , 1999	Rehired as temporary employee
8.	March <input type="checkbox"/> , 2000	Converted to full-time employee
9.	December 6, 2002	Granite City Plan terminated
10.	May <input type="checkbox"/> , 2003	Employment terminated

Plan records consistently included as Plan participants only those bricklayers who were or had been on a Regular List. When a temporary employee was selected to fill a vacancy on the Regular List under CBA section 4A.5, Granite City (1) converted that employee to regular full-time status, (2) treated the employee as covered under the Granite City Plan on the conversion date, and (3) once the employee became a Plan participant, established the last hire date before the conversion as the pension start date. Based on this information, PBGC determined that  pension start date was August , 1999.

#### Discussion

Section 1.1(b) of the Granite City Plan defines Employee as "any Employee who, from time to time during the period in which this [Pension] Agreement is effective, is covered by . . . [the CBA].  worked as a temporary employee from October , 1996 through March , 2000, and as a regular employee from March , 2000 through December , 2002, the date the Plan terminated. He was a member of Bricklayers Local #8 and covered by the CBA during this entire period. Because the Plan's definition of Employee included all employees of the company covered by the CBA and the CBA covered temporary employees, the Board found that  is an Employee pursuant to Plan section 1.1(b).

Plan section 1.1(c) defines Participant as "any Employee who shall have had at least one year of Continuous Service and shall have attained the age of 21 years and who, from time to time during

the period in which this [Pension] Agreement is effective, is accruing continuous service." [redacted] was over 21 when he was hired and satisfied the one-year participation requirement on October [redacted], 1997.

Under Plan section 2.8, a Participant with at least five years of continuous service is eligible for a Deferred Vested Pension. Section 5.1 defines Continuous Service as service "calculated from the Employee's last hiring date" until his or her employment termination date. Section 5.1(b), however, excludes from Continuous Service that portion of any absence due to layoff or physical disability that exceeds two years. Although [redacted] work for Granite City stopped and started a number of times, his periods of unemployment never exceeded two years. Accordingly, we found that [redacted] had at least five years of Continuous Service from his initial hire date until the Plan's December 6, 2002 termination date.

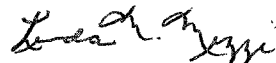
#### Decision

Having applied the law, the terms of the Plan, and the terms of the CBA to the facts in this case, we found that [redacted] has at least five years of Continuous Service and is, therefore, entitled to a benefit under the Granite City Plan.

We will forward a copy of this decision to PBGC's Benefits Administration and Payment Department. They will send [redacted] a new determination of his benefit amount and annuity start date, with a new 45-day appeal right for matters not decided in this letter.

Meanwhile, if you or [redacted] need other information from PBGC, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board

cc: [redacted]