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

JUN 15 2004



Re: Hartz Foods, Inc. Employee Pension Plan and Trust,
Case #: 191921

Dear

The Appeals Board has reviewed your appeal of PBGC's September 26, 2003 determination of the benefit your father, was entitled to under the Hartz Plan. For the reasons stated below, the Board found no basis for changing PBGC's determination that PBGC cannot pay the Plan's pre-retirement *death* benefit. The Board further found that your father was entitled to an actuarially-reduced pension benefit beginning October 1, 2002. PBGC's Insurance Operations Department, the organization responsible for determining and paying PBGC benefits, will contact you directly concerning your father's *pension* benefit.

PBGC's Determination and Your Appeal

PBGC's September 26, 2003 determination said that your father was entitled to a benefit of \$501.46 per month, if payments began on February 1, 2009, the first of the month following his 65th birthday, as a Straight Life Annuity with No Survivor Benefit. PBGC's letter also said that reduced payments could begin as early as October 1, 2003 and that he could elect a different benefit form when he was ready to retire.

Although PBGC was aware that your father died on April 5, 2003, PBGC's September 26, 2003 determination did not show the effect of his death upon his PBGC benefits. However, PBGC had also sent a letter on April 18, 2003 in response to one of your earlier phone calls asking about survivor benefits. That letter said that no one other than your father was eligible to receive benefits under the Hartz Plan.

According to your November 2, 2003 appeal and December 29, 2003 supplement, your father knew he was terminally ill and called PBGC a number of times to make sure you would receive any death benefits payable under the Hartz Plan. You said that at different times you were both given conflicting information about your entitlement to death benefits. You believe you are

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entitled to a death benefit because Plan section 3.07 (which you submitted with your appeal) provides for a death benefit and your father named you as his beneficiary on forms he filled out for PBGC.

Discussion

As we discussed on the phone, there are two types of benefits that pension plans may provide when a participant dies: "death" benefits and "survivor" benefits. However, when a plan like the Hartz Plan terminates without sufficient assets to provide all plan benefits, the terms of the plan, the provisions of the Employee Retirement Income Security Act (ERISA), and PBGC regulations and policies determine the benefits PBGC can *guarantee*. For a benefit to be guaranteeable, PBGC's regulations require that a participant 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 or the date the plan terminated* (see Enclosure 1).

The files available to the Appeals Board show the following information for your father:

1.	Date of birth	
2.	Date of hire	January 1, 1968
3.	Date employment terminated	January 28, 1993
4.	Date Plan terminated	January 14, 2000
5.	Date of death	April 5, 2003
6.	Plan's earliest retirement date	February 1, 2004
7.	Plan's normal retirement date	February 1, 2009

As you noted in your appeal, the Hartz Plan does provide a separate pre-retirement death benefit. Section 5.1(e) of the Adoption Agreement to the 1993 Plan¹ provides that "the benefit payable on account of death is the present value of the Participant's Accrued Benefit" (see Enclosure 2). However, PBGC cannot *guarantee* pre-retirement death benefits payable on account of a death that occurs after the plan's termination date because the "the conditions of the plan necessary to establish the right to receive the benefit" were not satisfied on or before that date. Although ERISA requires that plans like the Hartz Plan provide a Qualified Pre-Retirement Survivor Annuity (QPSA), that requirement *only* applies to vested participants who are married on their date of death. Further, the only person entitled to the survivor portion of the QPSA is the participant's spouse on that date.

¹ The pre-retirement death benefit provision you included with your appeal is from an earlier Plan document adopted in March 1976, and restated effective October 1, 1984.

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Under Plan section 5.1(a)(3), the automatic form of benefit for a participant who is not married on his or her annuity starting date is a single life annuity for the life of the participant with no survivor benefit. The Plan allows a single participant to elect a different form, but that election can only be made within 90 days of the annuity starting date and would not take effect until the annuity starting date. Your father's earliest annuity starting date for an actuarially-reduced benefit under the terms of the Plan would have been February 1, 2004, the first of the month following his 60th birthday.

PBGC's *Earliest PBGC Retirement Date (EPRD)* regulation, however, provides that under certain circumstances PBGC will allow a participant to receive an actuarially-reduced benefit starting at age 55. The EPRD regulation applies, for example, when a pension plan allows benefits to begin in an annuity form immediately upon separation from employment regardless of the participant's age. As is discussed in the next two paragraphs, PBGC personnel apparently did not mention the EPRD regulation to your father. This likely occurred because (1) it was a new provision, with the final rule being published in the Federal Register on April 8, 2002; and (2) PBGC had not yet determined that this EPRD rule applied to the Plan.

The files available to the Appeals Board show that your father first contacted PBGC about his pension and any death or survivor benefits payable in September, 2002, when he was age 58.5. PBGC's files include a completed PBGC Form 707 (*Designation of Beneficiary*), signed and dated by your father on October 1, 2002, which designated you as his beneficiary. His submission of this form is consistent with your statement that your father desired to provide you with any survivor or death benefits that were payable by PBGC.

At that time, PBGC had not made its determination regarding the applicable EPRD. Had the determination been made, PBGC would have advised your father that he could apply for an actuarially-reduced pension benefit immediately and provided him with a list of optional benefit forms (e.g., life only, life with survivor benefit, period certain and continuous) from which to choose. According to PBGC's benefit payment procedures, PBGC will begin paying a benefit for which a participant is immediately eligible, effective the first of the month following receipt of a completed application for the benefit. Based on the facts described above, the Board found that your father would have applied for his benefit in September, 2002 had he been told about the EPRD rules. As a result, we further found that his annuity starting date is October 1, 2002.

Decision

Having applied the law, PBGC's regulations and the provisions of the Hartz Plan to the facts in this case, the Appeals Board found no basis for changing PBGC's determination that PBGC cannot pay the Plan's pre-retirement death benefit. The Board further found that your father was entitled to begin receiving an actuarially-reduced pension benefit on October 1, 2002.

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We will forward a copy of this letter to PBGC's Insurance Operations Department. They will contact you, as your father's designated beneficiary, concerning both the form of his benefit and the amount of any backpayments owed. This is the agency's final decision on this matter and you may, if you wish, seek court review.

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

Sincerely,



Linda M. Mizzi
Member, Appeals Board

Enclosures

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