



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

MAR 22 2006

Re: Appeal [redacted], Case 198374, Pellet Hourly Wage
Employee Pension Plan (the "Plan")

Dear Ms. [redacted]:

We are responding to your appeal of PBGC's September 26, 2005 determination regarding your monthly pension benefit from the Plan. For the reasons stated below, we are denying your appeal.

PBGC's Determination and Your Appeal

PBGC determined that you are entitled to a monthly PBGC benefit of \$1,153.63 based on your benefit starting on July 1, 2021, in the form of a Straight Life Annuity. PBGC also provided you with a Benefit Statement. The Benefit Statement showed that your "40/15 Deferred Vested Retirement Date," which was the earliest date you could receive unreduced benefits, was July 1, 2018. It also showed that the earliest retirement date was July 1, 2016, and that you would receive an actuarially-reduced benefit of \$974.36 if you started benefits on that date.

Your October 17, 2005 appeal asserted that you were "unjustly" denied pension benefits within the definition of the Plan's "Rule of 65" Retirement provisions. You further claimed that "I am being unjustly denied my pension benefit due to age discrimination. Many people with more age and less years of service are actively collecting their PBGC benefits. Also, my understanding is that the salaried employees that worked for National Steel get an early option to collect their PBGC pension at the age of 55, but my earliest option is the age of 60. Also, people around the same age as myself with 30 years of service to NSPC are actively collecting their PBGC pension and are working for US Steel (who bought NSPC)."

You noted that PBGC terminated the Plan on December 6, 2002, and your employment "officially terminated" on May 19, 2003. You asserted that benefits "should have been due and

payable on June 1, 2003 for the time accrued up to the December date." You also questioned PBGC's decision to terminate the Plan to avoid pension liability, expressing your opinion that "PBGC has willfully and illegally used their fiduciary principles to withhold my pension benefits."

Your letter also stated that PBGC had miscalculated your years of continuous service. You claimed that "May 3, 1976 to Dec. 6, 2002 adds up to 26.7 years, not the 25.2 that is on my benefit statement."

Background

When National Steel Corporation ("National") filed for bankruptcy on March 6, 2002, it was one of the largest integrated steel companies in the United States. National Steel Pellet Company ("Pellet"), a subsidiary of National that operated a mining operation in Keewatin, Minnesota, filed for bankruptcy along with National.

On December 5, 2002, PBGC issued a notice of determination that the Plan and six other pension plans sponsored by National should be terminated and trustee'd by PBGC. At that time, PBGC had found that the National plans were only 47 percent funded, with roughly \$1.3 billion in assets to cover more than \$2.8 billion in benefit liabilities. National further had told PBGC that it would make no further contributions to the plans, and the company had missed more than \$150 million in required funding contributions. When it issued its notice of determination, PBGC had concluded that: (1) each of the seven plans met the plan termination criterion in Employment Retirement Income Security Act (ERISA) section 4042(a)(2) that the plan "will be unable to pay benefits when due;" and (2) the Plan, as well as five of the other National plans, posed a risk that PBGC's long-run loss will increase unreasonably if the plan did not terminate, thus meeting the plan termination criterion in ERISA section 4042(a)(4).

On April 21, 2003, the Bankruptcy Court approved the sale of most of National's assets, including the Pellet operation, to U.S. Steel. U.S. Steel, however, did not assume sponsorship of the seven National pension plans. In May 2003, U.S. Steel completed its purchase of Pellet's assets, and this mining operation has remained open under U.S. Steel's ownership. Also, effective May 31, 2003, PBGC and National entered into an

agreement providing for the termination of the Plan (along with six other National Plans), establishment of December 6, 2002, as the Date of Plan Termination ("DOPT"), and appointment of PBGC as the Plan's trustee.

Relevant Plan Provisions

The July 31, 1999 Amended and Restated Plan document sets forth your benefit rights under the Plan. Enclosure 1 is a copy of certain provisions in this document which address your entitlement to benefits. The Plan provides unreduced early retirement benefits under various conditions, each having its own set of requirements, including:

Age 62/15 Retirement: Attainment of age 62 at the date of termination of employment and completion of at least 15 years of continuous service. See Enclosure 1, section 2.2 of the Plan;

30 Year Retirement: Completion of at least 30 years of continuous service. See section 2.3 of the Plan;

70/80 Retirement: Completion of at 15 years of continuous service and (1) combined age and service equals 70 or more if participant has attained age 55, or (2) combined age and service of 80 or more if the participant has not attained age 55. Additionally, the participant must meet one of the following conditions: (1) his or her continuous service is broken by layoff, disability, or a permanent shutdown of a facility; (2) he or she retires after electing to be placed on layoff status under the provisions of the Basic Agreement applicable to a permanent shutdown; or (3) after being placed on layoff following a permanent shutdown, he or she accepts a job with an Employing Company but then elects to retire within 90 days. See section 2.6 of the Plan; and

"Rule of 65" Retirement: Completion of 20 years of continuous service and combined age and service is greater than 65 but less than 80 at retirement. Additionally, the participant must meet one of the following conditions: (1) his or her continuous service is broken by layoff or disability; (2) he or

she retires after electing to be placed on layoff status under the provisions of the Basic Agreement applicable to a permanent shutdown; or (3) after being placed on layoff following a permanent shutdown, he or she accepts a job with an Employing Company but then elects to retire within 90 days. See section 2.7 of the Plan.

Section 2.8 of the Plan sets forth the requirements for the **"Deferred Vested Pension."** If the participant terminated employment after attaining age 40 and completing at least 15 years of service, this pension is unreduced for payments beginning at age 62. However, the benefit is actuarially reduced from age 62 in accordance with the table in section 3.3(c)(2) if payments begin at an earlier age. If the participant terminated employment before attaining age 40, or after attaining age 40 but before completing 15 years of service, the pension is payable in full at age 65. However, for this group of participants, the benefit is actuarially reduced in accordance with the table in section 3.3(c)(3) for start dates between ages 60 and 65.

Law and Regulations

When the Plan terminated on December 6, 2002, it did not have 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.

Section 4022(a) of ERISA provides that subject to certain limitations, the PBGC shall guarantee the payment of all nonforfeitable benefits under a covered plan that terminates. ERISA defines a "nonforfeitable benefit" as:

". . . a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of . . . [ERISA] (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death)."

ERISA § 4001(a)(8). See also 29 Code of Federal Regulations ("CFR") § 4001.2 (definition of "nonforfeitable benefit"). PBGC regulations provide that a guaranteed benefit, among other conditions, must be nonforfeitable as of the plan's termination date. See 29 CFR § 4022.3.

As discussed under "Plan Provisions," one requirement for "Rule of 65" Retirement is that the participant's termination of employment is due to disability, a break in continuous service due to layoff, or retirement after a permanent shutdown. Conditions such as this, which involve how the employment relationship is terminated, are substantive requirements established under pension plan terms that must be satisfied by the plan's termination date. See *Fetty v. PBGC*, 915 F. Supp. 230 (D. Colo. 1996), *aff'd*, 104 F.3d 367 (10th Cir. Dec. 23, 1996), *cert. denied* 522 U.S. 812 (1997) (subsidized early retirement benefits based upon plan shutdown are not guaranteed if the shutdown occurs after the date of plan termination); see also *PBGC v. Republic Technologies Int'l*, 386 F.3d 659 (6th Cir. 2004) (court affirms PBGC's selection of a pre-shutdown termination date that avoided vesting of shutdown benefits).

Section 4044 of ERISA requires PBGC, as the Plan's trustee, to allocate plan assets to plan benefits as of the plan's termination date. Plan assets are allocated to nonforfeitable benefits before they may be allocated to forfeitable benefits. Also, PBGC may allocate an additional amount to unfunded, nonguaranteed benefits that is based on PBGC's recoveries on its claims against plan sponsors (see ERISA § 4022(c)). For your Plan, however, PBGC has determined that the Plan's assets and the 4022(c) amount were insufficient to pay any forfeitable benefits.

Discussion

According to PBGC's Benefit Statement, you were born on [redacted], 1956, and you were hired by Pellet on May [redacted], 1976. On the DOPT, which was December [redacted], 2002, you were 46 years old and had 25 years and 3 months of continuous service. PBGC records and your appeal indicate that your employment with Pellet after DOPT.

1. Your Claim for "Rule of 65" Retirement

It is undisputed that you met the combination of age and service for this type of benefit. However, as stated above under "Plan Provisions," an additional requirement for "Rule of 65" Retirement is that your continuous service be broken due to layoff or disability, or that you retired following a permanent shutdown. You asserted that you met this requirement because, when your employment with Pellet terminated in May 2003, Pellet had ceased to exist as a result of the sale of its assets to U.S. Steel.

As discussed above in "Law and Regulations," ERISA and PBGC regulations require (among other things) that a guaranteed benefit be nonforfeitable as of the pension plan's termination date. This means that you must satisfy the substantive conditions for entitlement to the benefit, including any requirements that are based on how the employment relationship is terminated, as of the Plan's DOPT. In your case, you did not satisfy all of the conditions for "Rule of 65" Retirement as of DOPT. Rather, the termination of your employment with Pellet and the sale of Pellet's assets to U.S. Steel both occurred after DOPT.

2. Your Continuous Service

According to data PBGC obtained from the Plan administrator, you were on layoff from April 24, 1982, to August 13, 1989, for a total of seven years and approximately four months. The Plan provides generally that continuous service is broken after an employee has been absent for two years due to a layoff. See Enclosure 2, section 5.1 of the Plan. However, if a participant is absent due to a layoff and returns to work after July 1, 1994, the break in service is removed and the participant is credited with up to five years of continuous service during the layoff period (measured from the date the participant last worked, but not to exceed the length of the absence from work). Additionally, a 1993 Letter of Agreement between National and the United Steelworkers of America increased the five-year period to six years. See Enclosure 3.

Therefore, you were granted only six years of continuous service for the time you were on layoff, instead of the entire elapsed time between your date of layoff and your date of re-hire. Also, as you recognized in your appeal, PBGC cannot count

a participant's service beyond DOPT in determining the participant's guaranteed benefit. The table below summarizes how your continuous service up to DOPT is calculated.

Dates	Elapsed Time	Continuous Service
May <input type="checkbox"/> , 1976 to April <input type="checkbox"/> , 1982	6 years	6 years
April <input type="checkbox"/> , 1982 to August <input type="checkbox"/> , 1989 (Layoff)	7.33 years	6 years
August <input type="checkbox"/> , 1989 to December <input type="checkbox"/> , 2002	13.25 years	13.25 years
Totals	26.58 years	25.25 years

Please note that the 25.25 years of continuous service used to calculate your benefit is the same that the former Plan administrator used and is the amount shown in PBGC's benefit statement. Thus, the Appeals Board found no basis to change your continuous service.

3. Other Claims in Your Appeal

You asserted that PBGC's denial of your claim for benefits under the Plan's "Rule of 65" Retirement provisions is unjust and due to age discrimination. You stated that other Pellet employees who are older than you but have less years of service are collecting benefits from PBGC. You also considered it unfair that salaried employees who worked for National Steel could elect to start receiving their benefits at age 55, but your earliest benefit start date is at age 60.

The differences you observed are explained by Plan terms. For example, as you noted, the Plan provides that employees with more than 15 but less than 30 years of service generally cannot start receiving benefits until they reach age 60. The Pellet Salaried Employees Pension Plan, on the other hand, allows salaried employees to start receiving benefits at age 55 if they have 15 years service. PBGC guarantees the benefits of both groups of retirees and must pay benefits due to them based on the terms of their respective plans, subject to the requirements and guarantee limits of ERISA. ERISA § 4022(a). Neither ERISA nor any other law applicable to PBGC provides a basis for PBGC to pay additional benefits to you for the reasons you asserted.

You also stated that PBGC had started paying benefits to 30-year employees upon the sale of Pellet's assets to U.S. Steel. Please note that such payments have occurred because PBGC concluded that Plan participants could qualify for a guaranteed 30-Year Retirement, if they had completed at least 30 years of continuous service as of DOPT. Since a layoff or a permanent shutdown was not a requirement for 30-Year Retirement, ERISA permitted PBGC to guarantee this type of benefit for these participants even though Pellet was still operating at DOPT. PBGC concluded, however, that it could not start payments to 30-year employees while they were working for Pellet, since neither Plan provisions nor PBGC policy permit participants to receive benefits while they were working for Pellet or a member of its controlled group. PBGC also concluded that eligible employees could start receiving benefits after the sale, even if they worked for U.S. Steel, based on PBGC's finding that U.S. Steel was an unrelated party who did not assume any of the pension liabilities. Thus, since the requirements for 30-Year Retirement were different than for "Rule of 65" Retirement, the Appeals Board found no inconsistency in PBGC's treatment of the two types of benefits.

You also asserted that PBGC "has willfully and illegally used their fiduciary principles to withhold my pension benefits." You felt that PBGC terminated the Plan prematurely to avoid some pension liability.

PBGC determined that seven of National's pension plans had to be terminated, primarily because National stopped funding them and no one else wanted to sponsor them. PBGC had found that the pension obligations for the seven plans exceeded the plans' assets by approximately \$1.5 billion at the time of their termination. PBGC also decided that one of the reasons for the Plan's termination (as well as for five other National plans) was to prevent PBGC's long-run loss from increasing unreasonably, which PBGC concluded likely would occur if a later DOPT was established.

ERISA specifically permits PBGC to seek termination of a pension plan to prevent unreasonable long-run loss to PBGC. ERISA § 4042(a)(4). As a Federal court of appeals has stated, "ERISA provides for involuntary termination proceedings precisely so that PBGC can protect its own financial interests and 'avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the

liability of the fund.'" *PBGC v. Republic Technologies Int'l*,
386 F.3d 659, 668 (6th Cir. 2004).

Furthermore, section 4048(a)(3) of ERISA provides that, when PBGC terminates a pension plan, the date of plan termination is "the date established by the [PBGC] and agreed to by the plan administrator." If an agreement on the date cannot be reached, section 4048(a)(4) provides that the termination date is established by the court. As discussed above, PBGC and National entered into an agreement establishing December 6, 2002, as DOPT. Please note that the Appeals Board has no authority to change an established plan termination date.

Decision

Having applied Plan provisions, the law, and PBGC regulations to the facts in your case, we found no basis for changing PBGC's September 26, 2005 determination. This is the PBGC's final action in your case and you may, if you wish, seek court review of this decision. If you need other information from PBGC, please contact the Customer Contact Center at 1-800-400-7242.

Sincerely,



Charles W. Vernon
Chair, Appeals Board

Enclosures