



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

April 26, 2013

Estate of [REDACTED]

% [REDACTED]  
[REDACTED]

Re: Appeal 2012-1664; Case 054297; Standard Tube Union Pension Plan  
(the "Standard Tube Plan" or the "Plan")

Dear [REDACTED]:

This Appeals Board decision responds to your appeal of PBGC's April 18, 2012 determination that there are no survivor benefits payable to the Estate of [REDACTED] (the "Participant") under the Standard Tube Plan. As we explain below, the Board modified PBGC's determination by finding that (1) no benefit is or was payable to the Participant under the Plan because he died in active service; (2) [REDACTED] the Participant's spouse at the time of his death, (the "Participant's Spouse") should have received an unreduced monthly lifetime preretirement survivor benefit starting on August 1, 1977; and (3) PBGC shall make a one-time back payment representing all of the missed monthly payments to the Estate of the Participant's Spouse. As a result of this decision, PBGC will send a new determination to the Estate of the Participant's Spouse regarding the amount of the monthly preretirement survivor benefit that was payable to the Participant's Spouse.

*PBGC's Determination Letter and Your Appeal*

PBGC's April 18, 2012 determination letter stated that "(t)here are no survivor benefits payable to the estate of [REDACTED] as the company did not report any pension benefits were payable under the Plan for him or his estate."

In your March 30, 2012 appeal letter, you stated, in pertinent part, as follows:

... the PBGC has received documentation from the Social Security Administration showing [REDACTED] certainly worked for the company at least up and until his death, [REDACTED] was at his death Fifty Six years (56) of age, he began working for the company, in the year of 1944

and he died in the year of 1977 with a total seniority years of Thirty Three. [REDACTED] only needed a total of thirty years of seniority, to collect his pension benefits, and according to records he had a total of thirty three years (33).

At the time of [REDACTED] death he was married, and his wife received none of [REDACTED] pension which was owed to her, due to his time of service, and according to the UAW contract Between the Standard Tube of Detroit Corporation and the United Auto Workers, Page 29 Chapter 8.5, Page 31 Chapter 9.2b, Page 33 Chapter 9.5, Page 38 Chapter 10. 1, Page 38 Chapter 10.2a, Page 39 Chapter 10.2b, Page 40 Chapter 10.3.

...  
Accompanying this letter is a letter from the John Hancock Insurance Company, dated May 02, 2012, An ITEMIZED STATEMENT OF EARNINGS from the Social Security Administration for [REDACTED] covering the years of 1944 thru 1977 also a copy of the UAW contract with the company, a seniority list with the name, date of hire, and date of birth for [REDACTED].

### Discussion

#### 1. Background

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). If a plan sponsor is unable to support its qualified defined-benefit pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan, subject to legal limitations and requirements set by Congress under ERISA.

Records available to the Appeals Board show that PBGC became trustee of the Standard Tube Plan pursuant to a Consent Order issued by Judge Avern Cohn in the United States District Court for the Eastern District of Michigan on January 11, 1985. The Consent Order set the Plan's termination date as December 30, 1983.

When PBGC becomes trustee of a terminated plan, PBGC obtains plan documents and participant data from the plan's former administrator. PBGC necessarily relies on this information unless (1) PBGC's audit of the information reveals that it is wrong, or (2) a participant supplies PBGC with documents showing that the information is wrong.

Based on our review, we have concluded that the only information PBGC received from Standard Tube of Detroit Corporation ("Standard Tube") regarding the Participant was the information written next to his name on a 1974 union seniority list, which showed that he had 29 years of seniority as of 1974.

Based on the information you provided and documents available to the Appeals Board, we have made the following findings of fact:

- the Participant was born on [REDACTED];
- the Participant started working for Standard Tube on July 17, 1944;
- the Participant was a member of Local 851 of the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW");
- the Participant continued to be employed by Standard Tube until he died on July 22, 1977;
- at the time of his death, the Participant had earned more than 30 years of Accrual Service; and met the eligibility requirements for an unreduced early-retirement benefit under the Standard Tube Plan;
- at the time of his death, the Participant was 56 years old;
- at the time of his death, the Participant was still married to the Participant's Spouse, and they had been married for many years;
- after the Participant died, the Participant's Spouse received the \$6,000 life insurance benefit negotiated for members of UAW Local 851 who terminated employment before April 1, 1978;
- when PBGC became trustee of the Standard Tube Plan on January 11, 1985, the Participant's Spouse was not receiving a monthly survivor benefit, and did not receive any payments from PBGC after it became the Plan's trustee;
- the Plan's former administrator did not pay a preretirement survivor benefit to the Participant's Spouse in the form of a one-time lump-sum payment because the Plan did not allow one-time lump-sum payments if the underlying annuity was more than \$10 per month; and
- the Participant's Spouse died on July 30, 1997.

## 2. ERISA-Required Preretirement Survivor Annuities

Congress passed the Retirement Equity Act ("REA") on August 23, 1984. REA amended ERISA and required qualified pension plans to provide a Qualified Preretirement Survivor Annuity ("QPSA"), subject to a participant's right to reject the QPSA with the written consent of the participant's spouse. A QPSA provides survivor benefits for participants who die before they retire or are eligible to retire. As the Standard Tube Plan terminated before the enactment of REA, however, the provisions of REA do not apply in determining whether the Participant's Spouse was entitled to a preretirement survivor annuity under the Standard Tube Plan.

Before the enactment of REA, however, section 1021 of the original ERISA enacted in 1974 added a new subsection (11) to section 401(a) of the Internal Revenue Code ("I.R.C."). The new section 401(a)(11) required qualified defined-benefit plans to provide for "the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity" for active participants (1) who met the plan's eligibility requirements for early retirement under the plan; and (2) whose age was within 10 years of their Normal Retirement Age under the plan.

Final Treasury regulations were published on January 1, 1977<sup>1</sup> regarding the requirements of the then new I.R.C. section 401(a)(11). The new Treas. Reg. § 1.401(a)-11 explained that a plan had to give written notice to active participants who met the plan's requirements for immediate retirement and who were at least age 55 regarding their opportunity to elect a preretirement survivor annuity<sup>2</sup> for their spouses in the event that they died while actively employed. The regulation also explained, in effect, that if a participant died before receiving the required notice from the plan's administrator, a preretirement survivor annuity would be payable under the plan to the participant's surviving spouse. See Treas. Reg. § 1.401(a)(11)(c)(2)(ii)(B) in Treasury Decision 7458 (cited at footnote 1).

3. The Participant's Spouse Was Entitled to a Preretirement Survivor Annuity under Section 6.05 of the ERISA Restatement

The Standard Tube Plan was amended to conform with the requirements of the new I.R.C. § 401(a)(11) effective November 1, 1976, which was the first day of the Plan's 1976 fiscal year. Although the Plan was properly amended, the provisions of the Plan's conforming amendment (the "ERISA Restatement") were formally adopted by Standard Tube on May 8, 1978 and made retroactively effective to November 1, 1976.<sup>3</sup>

With respect to the "Preretirement Spouse Benefit" and notice of the availability of preretirement survivor coverage, the ERISA Restatement provided as follows:

---

<sup>1</sup> See Treasury Decision 7458, 42 Fed. Reg. 1463 (Jan. 1, 1977).

<sup>2</sup> The regulation referred to the preretirement survivor annuity as an "early survivor annuity."

<sup>3</sup> Please note that the copy of the Standard Tube Plan that you submitted with your appeal letter was adopted on or after July 31, 1979, and some of its provisions were not effective until after the Participant died on July 22, 1977. In determining the Participant's Spouse's eligibility for a preretirement survivor annuity, the Appeals Board must apply the provisions of the Plan document that was in effect when the Participant died.

6.05 Preretirement Spouse Benefit. Each Employee shall be entitled to elect a benefit which will be payable to his surviving spouse upon his death if he dies while employed by the Company after his 55th birthday and prior to his 65th birthday, and has 10 years of Vesting Service. The benefit payable under this Section shall be in the form of an annuity payable to such surviving spouse for her lifetime, commencing on the first day of the month following such Employee's death. Subject to the last sentence of this Section 6.05, the amount of such annuity payments shall be equivalent to the amount which would have been payable to her under the 50% joint and survivor spouse annuity described in Section 6.04(a) if the Employee had elected such annuity and if his retirement had occurred on the day before his death and within the election period described in Section 6.06. In order to offset the cost to the Plan of providing this survivor annuity coverage, the amount of the monthly pension upon which the surviving spouse's benefit is to be determined, or the amount of the Employee's monthly pension if he survives and subsequently retires, shall be reduced by 1/24 of one percent for each calendar month during which this election is in effect, without regard to any reduction under Section 6.04(a).

6.06 Election and Revocation of Election of Benefits.

(a) Information to be Provided by the Board Prior to the Election of Benefits.

(1) The Board shall, 180 days prior to the earlier of (a) the first day an Employee is eligible for a thirty-year retirement benefit, (b) the later of the Employee's 55th birthday or the date upon which he becomes an Employee, or (c) his 65th birthday if he is not eligible for early retirement, furnish such Employee with the following written information relating to the 50% joint and survivor spouse annuity described in Section 6.04(a) and, if applicable, the preretirement spouse benefit described in Section 6.05: a general description of the annuity forms, the circumstances under which the annuities will be paid, the availability of the election out of the 50% joint and survivor spouse annuity, the availability of the preretirement spouse benefit election, a general explanation of the relative financial effect on an Employee's retirement annuity of each election, and the availability of the additional information specified in subsection (2) and how to obtain this additional information.

Under section 6.05, the Participant was eligible to elect a Preretirement Survivor Annuity for the Participant's Spouse because he died at age 56 with 10 years of Vesting Service after November 1, 1976. In accordance with the version of Treas. Reg. § 1.401(a)(11)(c)(2)(ii)(B) that was in effect when the Participant died, because the Participant met the eligibility requirements for an unreduced 30-year early-retirement benefit and was age 56 when he died, the Participant's Spouse is entitled to a Preretirement Survivor Annuity if the Participant did not receive the required written notice of his eligibility to elect the Preretirement Survivor Annuity.

As the Appeals Board does not have a copy of any election filed by the Participant for Preretirement Survivor Annuity coverage, the question posed by your

appeal is whether or not the Participant received the required written notice of his eligibility to elect Preretirement Survivor Annuity coverage for the Participant's Spouse.

We note that the fact that Standard Tube did not *formally* adopt the ERISA Amendment until May 8, 1978 does not necessarily result in the conclusion that the Participant did not receive the required notice of eligibility to elect Preretirement Survivor Annuity coverage before he died. That is so because there are often delays in the formal adoption of amendments for various reasons and when there is such a delay, plan administrators often act in accordance with the provisions of a plan that they know will be later formally adopted with a retroactive effective date.

Based on the our review of the provisions of the collective bargaining agreement that was signed on April 2, 1977, the Appeals Board has concluded that it is unlikely that the Plan's administrator had any clear vision in April 1977 of the eventual provisions of the ERISA Amendment regarding the Preretirement Survivor Annuity. As Treas. Reg. § 1.401(a)(11)(c)(2)(ii)(A) required at least a 90-day election period, the Appeals Board has concluded that it is unlikely that the Participant received the required written notice before he died in July 1977.

Based on the preponderance of the available evidence, the Appeals Board has concluded that the Participant did not receive the required written notice of his eligibility to elect the Preretirement Survivor Annuity under section 6.05 of the ERISA Amendment before he died in July 1977.

Based on Treas. Reg. § 1.401(a)(11)(c)(2)(ii)(B) that was in effect at the time of the Participant's death, the Appeals Board has concluded that the Plan's former administrator erred in not paying a monthly preretirement survivor benefit under section 6.05 of the ERISA Restatement because the Participant did not receive the required notice. As a result, PBGC will reimburse the Estate of the Participant's Spouse for the monthly benefit payments that should have been made to the Participant's Spouse from August 1, 1977 through July 1, 1997.

#### Decision

Having applied Plan provisions and the law to the facts of this case, the Appeals Board modified PBGC's determination by finding that (1) no benefit is or was payable to the Participant under the Plan because he died in active service; (2) the Participant's Spouse should have received an unreduced monthly lifetime preretirement survivor benefit starting on August 1, 1977; and (3) PBGC shall make a one-time back payment representing all of the missed monthly payments to the Estate of the Participant's Spouse. As a result of this decision, PBGC will send a new determination to the Estate of the Participant's Spouse regarding the amount of the monthly preretirement survivor benefit that was payable to the Participant's Spouse.

We regret the delay in responding to your appeal and appreciate your patience while PBGC prepares the new determination letter. Meanwhile, if you need additional information from PBGC, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the Standard Tube Plan (Case 054297).

Sincerely,

A handwritten signature in cursive script, appearing to read "Michel Louis".

Michel Louis  
Appeals Board Member