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

#2046754

MAR 31 2006



Re: Appeal ; Weirton Retirement Program, PBGC Case #197614

Dear Mr. :

The Appeals Board has reviewed your appeal of PBGC's September 20, 2005 determination of your benefit under the *Weirton Retirement Program*. For the reasons explained below, the Board found no basis presented for changing PBGC's determination. Therefore, your appeal is denied.

Background

National Steel Corporation (National) owned the Weirton Steel Division until 1984. Through an employee buyout, a new company, Weirton Steel Corporation (Weirton), purchased the operating assets of Weirton Steel Division effective January 11, 1984.

Both before and after the sale, National sponsored and maintained the Weirton Retirement Program (which we will refer to as the "National Plan"). Also, effective January 11, 1984, Weirton established a separate, new plan, the Weirton Steel Corporation Retirement Plan ("Weirton Plan"), PBGC Case #201097. As part of the sales agreement, Weirton agreed that the Weirton Plan would assume responsibility for benefits accrued by Weirton Steel Division employees after May 1, 1983.

Both the National Plan and the Weirton Plan terminated without sufficient assets to provide all benefits under Title IV of the Employee Retirement Income Security Act (ERISA). The National Plan terminated as of December 6, 2002, and the Weirton Plan terminated as of October 21, 2003. PBGC is the trustee of both Plans.

You were a participant in both of the Plans. Under the terms of the National Plan, your benefit is calculated using your years of service with both National and Weirton. The benefit provided by the National Plan is calculated using your years of service with both employers

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multiplied by a factor equal to your years of service as of May 1, 1983, divided by your total service with the two employers.¹ (The National Plan, however, limits "Earnings" to the amounts paid by National prior to May 1, 1983.²)

Your Weirton Plan benefit, which is calculated based on the terms of that Plan, also is calculated using your years of service earned with both employers. Additionally, the Weirton Plan provides for a reduction (offset) for the amount you are entitled to receive under the National Plan.

Please note that benefits under the Plans are paid separately. Also note that PBGC's September 20, 2005 letter is its determination of your benefit under the *National Plan only*. You will receive a separate determination, including appeal rights, of your benefit under the Weirton Plan at a later date. (The files show that PBGC sent you an *estimate* of your Weirton Plan benefit by letter dated March 11, 2004. To understand your benefits, you should also refer to this Weirton Plan correspondence.)

PBGC's Determination, Your Appeal and Related Correspondence

PBGC's September 20, 2005 letter said that you are entitled to a National Plan benefit of \$161.91 per month as a Straight Life Annuity if payments begin on March 1, 2020, your normal retirement date. The letter enclosed a benefit statement which shows how your National Plan benefit was calculated and the data used in the calculation, including; (1) May 3, 1974 as your Continuous Service Start Date; (2) October 2, 1974 as your Continuous Service Start Date Adjusted for Breaks in Service after May 1, 1983; (3) you had 28.17 Total Years of Credited Service (or benefit service); and (4) as of May 1, 1983, you had 9.00 Years of Credited Service with National.

In your September 24, 2005 and November 7, 2005 letters of appeal, you state that your employment with Weirton began on May , 1974 and ended on May , 2004, for a total of 30 years and 16 days of service and, therefore, you should have started receiving an immediate pension, which you believe to be more than \$1,600.00 per month. You also disputed the October 2, 1974 Adjusted Continuous Service Start Date, stating that the May , 1974 Service Start Date was reinstated. You asked that we correct your benefit amount, immediately start paying you your monthly pension, and pay you the missed payments in a lump sum.

¹National Plan document effective January 1, 1998 ("1998 Document"), Part 1, Section I (19) ("Service and Related Terms"); Part 2, Section II ("Eligibility for Pension"); and Part 2, Section III ("Amount of Pension").

²1998 Document, Part 1, Section 1, (7) and (8).

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Discussion

When PBGC becomes the trustee of a terminated pension plan, PBGC pays benefits to the participants according to the terms of the plan, subject to the requirements and guarantee limits of ERISA.

According to the records PBGC obtained from Weirton, you began working for the Weirton Steel Division of National on May [], 1974; you were laid off on October [], 1981 and returned March [], 1984, for a period of absence of two years and five months; and, you were actively employed with Weirton when the National Plan terminated on December 6, 2002.

For individuals, like yourself, who worked as an hourly employee for National, eligibility for benefits and pension benefit amounts under the National Plan are determined based on your "Continuous Service."³ The National Plan defines Continuous Service to include periods of employment both with National prior to the asset sale and with Weirton after the sale.⁴

The National Plan document also provides that absences from work for periods longer than two years normally constitute a break in Continuous Service. Although the National Plan and applicable collective bargaining agreements allow such a break to be removed if the employee later returns to work, the National Plan also specifically treats absences of more than two year duration as follows:

- (1) There shall be no deduction for any time lost which does not constitute a break in Continuous Service, *except that in determining the length of Continuous Service for purposes of this Program:*
 - (i) that portion of any absence which continues beyond two years from commencement of absence due to a layoff, physical disability or leave of absence *shall not be creditable as Continuous Service*

Thus, while a layoff longer than two-years' duration does not constitute a break in Continuous Service if an employee returns to work, only the first two years of such a layoff counts in determining a participant's total length of Continuous Service. We further note that, with respect

³1998 Document, Part 1, Section I (19)(d).

⁴1998 Document, Part 1, Section I (13) (definitions of "National," "Weirton, and "Company"; Section I (19)(d) (definition of "Continuous Service").

⁵1998 Document, Part 1, Section I, (19)(d) (1) [emphasis added].

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to layoffs of more than two years, the National Plan does not distinguish between periods of layoff with National, with Weirton, or which straddle an individual's employment with both companies.

In your case, you were absent from work for a period of two years and five months. Although your break in Continuous Service was removed when you returned to work on March , 1984, the National Plan (as discussed above) did not allow you to receive Continuous Service credit for your entire period of layoff. Rather, the Plan provided that only your first two years of your layoff period (i.e., from October 11, 1981 through October 10, 1983) would count.⁶

Please note that it was the National Plan's practice to adjust the employee's date of hire in situations involving breaks in service, rather than to account for such breaks separately. Thus, for you, the National Plan's administrators used an October 2, 1974 adjusted date of hire, which is five months after your actual date of hire (May , 1974). Thus, the adjusted date of hire that the National Plan's administrators and PBGC used in your case for calculation of your Continuous Service was consistent with the National Plan's terms.

Under ERISA and PBGC regulations, participants do not receive pension credit for service after a plan's termination date, even if they continue to work for their employer after the plan terminated (ERISA Section 4022(a); Code of Federal Regulation (CFR) Part 4022.4(a)). Therefore, for purposes of your PBGC benefits with respect to the National Plan, your Continuous Service is calculated from your adjusted Date of Hire (October 2, 1974) to the date the National Plan terminated (December 6, 2002). As PBGC determined, this is equal to 28 years and two months, or 28.17 years.

As PBGC's Benefit Statement shows, the National Plan provided several benefit formulas, with the Minimum Pension Formula providing you with the largest benefit amount. The National Plan, however, provides that this benefit amount (shown as \$512.73 per month in the Benefit Statement) must be reduced by fraction, which is referred to in the Benefit Statement as the "Pro-Ration Factor." The numerator of this Pro-Ration Factor is the number of years (and fractions calculated to the nearest month) of Benefit Service with National to May 1, 1983, and the denominator is the number of years (and fractions) of Benefit Service with National and Weirton.⁷

⁶1998 Document, Part 1, Section I (19)(d)(1).

⁷1998 Document, Part 2, Section VI ("Adjustments in Pension or Benefit Amounts"). Please note that the reference to "Effective Date" in this Section is defined in Part 1, Section I (8)(a) as "May 1, 1983."

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As previously noted, you did not experience a break in Continuous Service until October , 1983, which was two years after your layoff date. As a result, in determining your service with National up to May 1, 1983, there was no need to adjust your date of hire. Thus, as shown on the Benefit Statement, you receive full credit for the entire nine (9.00) years from May , 1974 through April 30, 1983, which is the numerator of the Pro-Ration factor.

For individuals who had worked for National as hourly employees, "Benefit Service" has the same meaning as "Continuous Service."⁸ Thus, for you, the denominator of the Pro-Ration Factor is 28 years and two months, or 28.17 years (see discussion above). The Pro-Ration Factor, therefore, is equal to 9.00 years divided by 28.17 years, or 0.319489, which is what PBGC calculated.

As discussed above, the National Plan documents provided that you continued to be covered under that Plan's benefit provisions even after you became an employee of Weirton. Furthermore, your National Plan benefit is based on your Continuous Service with both employers, with the benefit then reduced using the Pro-Ration Factor. Thus, since the National Plan clearly provided that periods of layoff in excess of two years were excluded (even if it occurred after you started working for Weirton), the Appeals Board found no basis to change how PBGC determined your service under the National Plan. Even assuming that you were an active employee with no break in service from your May , 1974 date of hire to the Weirton Plan's termination date of October 21, 2003, you still would not have 30 years of service.

You stated that "according to the agreement with Weirton Steel Corporation, the Independent Steelworkers Union, and PBGC, I should have started receiving my retirement benefits immediately." It appears that you are referring to the fact that, shortly after PBGC terminated the Weirton Plan, the Company and Union attempted to amend the Plan by agreement to remove the two-year limitation with respect to the crediting of service after a layoff. PBGC informed them that the Agency could not give effect to such post-termination amendment and, therefore, any increase in benefits resulting from such an agreement could not be guaranteed by PBGC. The Appeals Board found that there was no agreement binding on PBGC that would provide you with a right to an immediate benefit.

As noted earlier, benefits under the two Plans are paid separately. PBGC will send you a separate determination of your benefit under the Weirton Plan. You will also have appeal rights with respect to that determination. Please keep in mind that, in accordance with the terms of the Plans, your Weirton Plan benefit is offset (reduced) by your benefit amount under the National Plan.

⁸1998 Document, Part 1, Section I (19)(b).

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Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC regulations to the facts in this case, the Appeals Board found no basis presented for changing PBGC's September 20, 2005 determination. This is the Agency's final decision on the issues your appeal raised 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,



Sherline M. Brickus
Member, Appeals Board

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