



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

JAN 28 2004

Re: Appeal [redacted] 164964, Abrasive Industries Inc.  
Pension Plan (the Plan)

Dear [redacted]

The Appeals Board reviewed the appeal filed by your late husband, [redacted] of PBGC's September 13, 2002 determination of your husband's PBGC benefit. For the reasons stated below, we changed PBGC's determination by finding that [redacted] was entitled to a disability benefit under the Plan.

The Insurance Operations Department (IOD), the PBGC office responsible for issuing benefit determinations, will send you a corrected determination letter with a new 45-day right to appeal.

#### ***Determination and Appeal***

PBGC determined that your husband was entitled to a monthly early commencement benefit of \$95.23, payable as a Joint & 100% Survivor Annuity (J&100%SA), which provided your husband a benefit for his lifetime and you with the same monthly amount for your lifetime after his death. PBGC noted that that amount is less than the \$182.59 amount he was receiving at the time of the determination letter.

[redacted] October 13, 2002 appeal stated that he had been forced to retire early because of medical disabilities. His appeal pointed out that Coopers & Lybrand had calculated his disability benefit at \$182.59 for the J&100%SA option, which he chose instead of the Joint and 50% Survivor Annuity option. His appeal also asked why his benefit was reviewed after seven years.

#### ***Discussion***

Your husband provided Social Security Administration (SSA) documentation that SSA found him disabled as of May 25, 1990, and that SSA disability payments were continuing in 2002. [redacted] told an appeals analyst that there was a period when disability payments were suspended because he had a bypass operation that

enabled him to resume work in 1992. He said that his heart problems recurred in 1993, and he was unable to continue working from that time. This history is consistent with company records that show he worked 2,073 hours in 1989, 1,081 in 1990, 176 in 1991 and 1,912 in 1992.

You and [ ] supplemented his appeal with copies of "attending physician" statements, one of which appears to be have been signed by [ ]. It appears that Dr. [ ] was [ ] attending physician when he became permanently disabled in 1993. Dr. [ ] July 15, 1993 report states that a Thallium stress test was positive, but estimated that your husband would be able to return to work on September 1, 1993. After an August 20, 1993 visit, however, Dr. [ ] submitted a supplementary statement in which he changed his appraisal to "NEVER - THE PATIENT IS TOTALLY AND PERMANENTLY DISABLED." In a July 11, 1994 report, Dr. [ ] listed the date of your husband's first visit during his then current absence from work, June 28, 1993, as the starting date of total disability. For the ending date, he wrote "NEVER."

The Plan defines "Total and Permanent Disability" as "a physical or mental condition which, in the judgment of the Company, based on medical reports and other evidence satisfactory to the Company, including evidence that the Participant is eligible for Social Security Disability benefits, presumably permanently prevents an Employee from performing any substantial gainful activity . . ." While [ ] did not apply for a disability retirement benefit until 1996, Dr. [ ] reports establish that he was in fact disabled before the Plan terminated on April 8, 1994. The Plan's former sponsor was administering the Plan at the time [ ] application for disability retirement was approved. The Plan's former sponsor was satisfied, and the record shows that its judgment was supported by medical and SSA evidence.

### **Decision**

Having applied Plan provisions, the law, and PBGC's rules to the facts in this case, the Appeals Board changed PBGC's determination by finding that your husband was entitled to a disability benefit under the Plan.

When IOD receives a copy of this decision, they will recalculate your late husband's benefit and your resultant survivor benefit based on the Plan's disability retirement provisions instead of its early commencement provisions. IOD will then send you a corrected determination letter with a new 45-day right to appeal.

We regret the delay in resolving  appeal and appreciate your patience while we completed our review. If you have other questions about your benefit, please call the Customer Contact Center at 1-800-400-7274.

Sincerely,

A handwritten signature in cursive script that reads "Michel Louis".

Michel Louis  
Acting Chair, Appeals Board