



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



MAY 12 2005

Re: Bethlehem Steel Corporation Pension Plan, Case # 196603

Dear

We are responding to your appeal of PBGC's November 18, 2004 determination that you are not entitled to a benefit under the Bethlehem Plan. For the reasons discussed below, we are denying your appeal.

PBGC's Determination and Your Appeal

PBGC's letter said that the Bethlehem Plan required at least 10 years of continuous service for a participant to qualify for a vested pension benefit. PBGC explained that: (1) you had 8 years, 5 months and 9 days of continuous service when your Bethlehem Steel service was broken July 3, 1973, and (2) your subsequent reinstatement February 9, 1976, and break in service September 30, 1976, resulted in 7 months and 21 days of continuous service. PBGC determined, therefore, that you are not entitled to a benefit under the Bethlehem Plan.

Your December 10, 2004 appeal said that you qualify for a vested pension because your service began in January of 1965 and terminated in February of 1976 due to a layoff. You submitted a number of documents to support your appeal. One of these is a letter from the Assistant Secretary of the Employee Benefits Administration Committee, dated July 7, 1994, which describes in detail your service history based on your service record card (see Enclosure 1). For convenience, the table below summarizes key dates from that July 7, 1994 letter:

1	Date of hire	January 26, 1965
2	Laid off	July 3, 1971
3	Service broken	July 3, 1973
4	Reinstated	February 9, 1976
5	Laid off	February 13, 1976
6	Recalled to 620 Dept; failed to answer recall	September 10, 1976
7	Service broken; failed to answer recall	September 30, 1976

In addition, with your permission, we obtained your Social Security earnings history for the years 1965 through 1976 (see Enclosure 2). The Social Security data is consistent with the work history Bethlehem provided for you.

You did not dispute that you were laid off on July 3, 1971 and became actively employed again on February 9, 1976. You contended, rather, that your "inactive time" for the period July 3, 1973 (*i.e.*, two years after your last day worked) to July 3, 1976 was due to Bethlehem's failure to honor your seniority and to call you back to work before employees with lesser seniority. You also said that Bethlehem did not notify you that your service was broken for the first time on July 3, 1973 and you assumed you would be recalled some day. You indicated that your employment history before 1973, with its string of layoffs and reinstatements, shows that you responded to every recall.

As for your second period of employment, you submitted a *Call and Receipt Card*, dated September 17, 1976, which you said was the last notice you received from Bethlehem. That card included the notation "please disregard recall notice sent to you on 9-10-76." Thus, you disagree with Bethlehem's statements that you failed to answer a September 10, 1976 recall to the #620 (Home) Department and that, because of your failure to answer, your service was broken for the second time on September 30, 1976.

Lastly, you asked that PBGC provide you with copies of Bethlehem documents from the 1970's that you said you have been trying to get from Bethlehem officials since 1994. These include a roster of #620 employees at the time of the July 1971 layoffs, a list of employees called back with date of recall and seniority date, and copies of *Call and Receipt Cards* signed by you for the period in question.

Background

Bethlehem filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code on October 15, 2001. On March 12, 2003, Bethlehem entered into an agreement that provides for the sale of substantially all of the company's assets to a third party, which agreement was approved by the bankruptcy court on April 22, 2003. Bethlehem's Pension Plan terminated, effective December 18, 2002, without sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act (ERISA), and PBGC subsequently became the Plan's trustee. The terms of the Plan, the provisions of ERISA and PBGC's regulations and policies determine your entitlement to a guaranteed benefit.

Paragraph 5.1(b)(4) of the Pension Agreement between Bethlehem Steel and the United Steelworkers of America (USWA) in effect after your July 3, 1971 layoff provides that continuous service is broken at the end of the two-year period following a layoff. The 1976 Pension Agreement in effect when your second period of employment ended, requires that a participant have 10 years of continuous service to qualify for a vested benefit.

Discussion

When PBGC becomes responsible for a terminated pension plan, its auditors obtain pension records from the former plan administrator. PBGC relies on these records, prepared at the time by plan and company officials familiar with plan terms and practice, to determine the benefits PBGC can pay. The records PBGC's auditors obtained when the Bethlehem Plan terminated did not include any

of the nearly 30-year-old documents you requested in your appeal. The only available Company document concerning your Bethlehem employment is the enclosed service record card.

The applicable Labor Agreement between Bethlehem Steel and the United Steelworkers of America governed disputes involving seniority and recall. Your claims that you were not properly recalled by Bethlehem between July 3, 1971 and February 9, 1976, or again in September of 1976, were issues to be raised at that time under the Agreement's grievance procedures. These procedures contained specific time limits for the filing of a grievance, in part so that the information and personnel needed to resolve the dispute would be available and corrective remedies, such as reinstatement, could be applied. Under the Agreement, failure to file a timely grievance was deemed acceptance of the situation.

You did not assert, nor is there any evidence available to the Appeals Board, that you filed a timely grievance concerning your seniority and recall rights during the 1971 - 1976 period at issue. However, you said in your appeal that you received no notification from Bethlehem that your pension service for your second period of employment ended September 30, 1976, and assumed that service continued while you were on layoff. As for your first period of employment, you said you did not become aware of the seniority and recall issues you raised until about 1994.

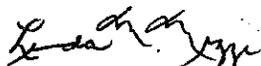
Even assuming you had no reason to question these decisions at the time Bethlehem made them, the Assistant Secretary of the Employee Benefits Administration Committee, in his July 7, 1994 letter, gave you an opportunity to invoke the *Plan's* Appeals Procedure. Under that Procedure, any "dispute between the Company and a participant as to a participant's eligibility for pension or the amount of pension is to be resolved by the Company and the Union, or the Company and the Union may submit it to arbitration." Again, you did not assert, nor is there any evidence in the record, that you filed a timely appeal in 1994 under the *Plan's* Appeals Procedure. While we are sympathetic to your situation, PBGC and the Appeals Board must follow the terms of the *Plan*, the law and applicable regulations.

Decision

Because you have not presented any grounds that could change PBGC's November 18, 2004 determination that you are not entitled to a Bethlehem Plan benefit, we must deny your appeal. 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 (2)