



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

1503824

SEP 29 2003



Re: Appeal Container Products Inc United
Steelworkers Pension Plan (the "Plan")

Dear

The Appeals Board reviewed your appeal of PBGC's January 18, 2001 determination of your benefit under the Plan. As explained below, the Board found no basis presented in your appeal for changing PBGC's determination.

Benefit Determination and Appeal

In its January 18, 2001 determination letter, PBGC stated: "The amount you will receive, \$523.43, is smaller than the estimated benefit you had been receiving, \$891.83, which was then reduced to \$491.83 on June 1, 2000, while we reviewed your benefit. Because we have paid you, \$16,998.81 too much, we will reduce your future payments by \$52.34 until you have repaid the difference, without interest. Therefore, you will start receiving \$471.09 (\$523.43 - \$52.34) on April 1, 2001." In addition, PBGC's letter stated: ". . . you are entitled to a monthly payment of \$151.00, starting January 01, 2002, (age 60). After age 62, on January 01, 2004, your benefit will be \$119.40."

In your January 29, 2001 appeal (and prior correspondence), you contended (1) that you are entitled to the \$400.00 monthly supplement which PBGC cut, (2) that PBGC's reduction to your estimated monthly benefit represents a significant personal and financial hardship, (3) that PBGC's policy on recoupment of overpayments is inequitable, (4) that you are not being treated in the same way as other participants with respect to the \$400.00 supplement, (5) that if PBGC would not guarantee the \$400.00 supplement, then liability for the supplement should revert to U.S. Steel (which sold the plant at which you worked to Container Products, Inc., "CPI", on January 1, 1984), and (6) that you should receive a refund of any money recovered by PBGC from CPI.

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Applicable Facts from PBGC's Benefit Statement

PBGC Case Number: 16653701
Date of Plan Termination: June 30, 1994

Participant Data

Participant Name:
Gender: Male
Date of Birth:
Date of Hire: 05/29/1959
Date of Termination of Employment: 06/27/1986
Actual Retirement Date: 10/01/1986
Normal Retirement Date: 01/01/2007
Date of Plan Benefit Freeze: 02/16/1990
Years of Credited Service (CS): 27.0800
Average Monthly Compensation (ACOMP) \$1,101.34
Plan Supplemental Benefit (SUPP): \$400
U.S. Steel Offset (OFFSET): \$372.43
Pre-Pension Spouse Coverage Reduction Factor (PPSC): 0.9996
Type of Retirement: Rule of 65
Form of Annuity: Joint and 50% Survivor

Beneficiary Data

Beneficiary Name:
Date of Birth:

The PBGC's Benefit Statement was enclosed with its January 18, 2001 benefit determination letter. In addition to the participant and beneficiary data reproduced above, PBGC's Benefit Statement included a section entitled "Calculation of PBGC Monthly Benefit." The Appeals Board notes that you did not dispute any of the participant data, beneficiary data, or benefit calculations shown on PBGC's Benefit Statement, except insofar as you claimed entitlement to the \$400.00 supplement.

Discussion of Points Raised in Your Appeal

(1) Temporary Supplement

The Plan did not have sufficient assets as of June 30, 1994, its termination date, 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's regulations and policies determine your entitlement to a

guaranteed benefit.

The PBGC cannot guarantee a temporary benefit which, when combined with the lifetime benefit, exceeds the accrued monthly benefit payable at the normal retirement age (age 65 in your plan). The \$400 supplement which you were receiving was to be paid until you reach age 62. Since it is not payable at your normal retirement age, it cannot be guaranteed by the PBGC.

For your reference, this limitation on guaranteed benefits is set forth at 29 Code of Federal Regulations ("CFR"), Subpart B--Limitations on Guaranteed Benefits, 4022.21(a)(1), which states:

Subpart B--Limitations on Guaranteed Benefits

§ 4022.21 Limitations; in general.

(a)(1) Subject to paragraphs (b), (c) and (d) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date. If the plan does not provide a straight life annuity either as its normal form of retirement benefit or as an option to the normal form, the PBGC will for purposes of this paragraph convert the plan's normal form benefit to a straight life annuity of equal actuarial value as determined by the PBGC.

(2) Hardship

Although the Appeals Board is sympathetic to your situation, the Board does not have the authority to consider hardship as a basis for changing a benefit determination.

(3) Recoupment

The Appeals Board does not have the authority to change PBGC's policy on recoupment of overpayments.

(4) Equal Treatment of Other Participants

The Board has no specific evidence - either provided by you or arising out of our own review of this case - that PBGC has issued a formal determination to any participant similarly-situated to yourself stating that he or she is entitled to receive the \$400.00 temporary supplement. Please note (1) that there may be other Plan participants in this Plan, who, like

yourself, received temporary supplemental benefits after Plan termination on an estimated basis, (2) there may be other participants who received their temporary supplements through age 62, but prior to Plan termination, and (3) there may be disabled participants who are receiving the \$400.00 temporary supplement, which would be permitted under 29 CFR Section 4022.21(a)(2)(ii).

(5) Alleged U.S. Steel Liability for the \$400.00 Supplement

According to the administrative record available to the Board, U.S. Steel sold five of its facilities (including the one in which you worked) to CPI on January 1, 1984. PBGC's actuarial valuation report states that U.S. Steel purchased annuities for all affected participants covering their full accrued benefits as of January 1, 1984. Moreover, the Board notes that you did not contend in your appeal that U.S. Steel failed to purchase an annuity in your case or that such annuity failed to cover your full accrued benefit as of January 1, 1984. Under the facts and circumstances described above, U.S. Steel acted in compliance with the requirements of ERISA, in effect at the time.

(6) Refund of Money Recovered by PBGC from the Plan Sponsor

Acting on an interim basis effective June 1, 2000, PBGC cut your estimated monthly benefit from \$891.83 to \$491.83, because your \$400.00 temporary supplement is not guaranteed. PBGC's January 18, 2001 determination letter increased your \$491.83 interim benefit by a (pre-age 62) monthly benefit of \$31.60 to arrive at a (pre-age 62) monthly benefit of \$523.43 (\$491.83 + \$31.60). This (pre-age 62) monthly benefit of \$31.60 is a non-guaranteed benefit that represents the amount of money allocated to your pension plan under Section 4022(c) of ERISA based on PBGC's experience in recovering on its claims against plan sponsors.

Decision

Having applied the law, the provisions of the Plan and PBGC regulations and policies to the facts in this case, the Appeals Board found no basis presented in your appeal for changing PBGC's determination of your benefit. This is the Agency's final decision on this matter, and you may, if you wish, seek court

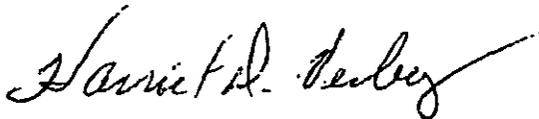
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review of this decision. If you need other information from PBGC,
please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Harriet D. Verburg
Chair, Appeals Board