

CS14871B3-0D1B-11D7-9

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



DEC 09 2002

Re: Appeal [redacted] [redacted] Franklin Steel
Company Hourly Pension Plan (the "Plan")

Dear [redacted]:

We are responding to your January 21, 2002 appeal of PBGC's corrected benefit determination letter dated January 9, 2002. For the reasons stated below, we granted your appeal and found your client, [redacted] entitled to a Permanent Incapacity Retirement benefit retroactive to the date of Plan termination, March 31, 1994.

In your January 21, 2002 appeal, you stated that although PBGC's January 9, 2002 determination informed your client that he was entitled to a Rule-of-65 retirement, it did not address [redacted] eligibility for a Permanent Incapacity Retirement benefit. You noted that you had previously argued that [redacted] was entitled to a Permanent Incapacity Retirement benefit in correspondence addressed to the Appeals Board dated July 6, 1998.

Although PBGC's January 9, 2002 determination letter did not explicitly address [redacted] entitlement to a Permanent Incapacity Retirement benefit, a review of the administrative record reveals that PBGC's Insurance Operations Department ("IOD") concluded that [redacted] was not entitled to a Permanent Incapacity Retirement benefit because the date of [redacted] Social Security disability award was set after the date Plan termination.

On July 25, 2002, you resubmitted a complete copy of your correspondence of July 6, 1998, and added a cover letter summarizing your argument:

"I request your review of these medical records, which I submit as evidence of the disability of my client, [redacted], prior to the March 31, 1994 plan termination date. Eligibility for a Permanent Incapacity Retirement benefit does not require a Social Security

LS:4871B3-8D1B-11D7-9

1142235

Disability award [which [redacted] received as of October 6, 1994, his 50th birthday]; rather the degree of disability must preclude the employee from 'engaging in any employment of the type covered by the Basic Agreement.' Section 2.5"

In the cover letter to your July 6, 1998 correspondence, you stated:

"[redacted] suffered a compensable work injury to his back on December 11, 1987 at Franklin Steel Company. His worker's compensation claim was accepted by notice of compensation payable dated January 11, 1988. His last day of work at Franklin Steel was on or about September 11, 1988. He continued to receive weekly total disability workers' compensation benefits until July 1996, when his benefits were commuted to a lump sum."

With respect to [redacted] Social Security disability award, you stated:

"Under Social Security law and regulations, presumptions of residual capacity to perform sedentary work change upon reaching age 50. Therefore, the Social Security award should not be construed to suggest that no disability preexisted the onset date of October 6, 1994. In fact, the medical evidence noted by the ALJ established that [redacted] suffered chronic L4-5 disc problems, degenerative joint disease and limited range of motion about the cervical and lumbar spines."

The Board concurred with your reasoning regarding the date of your client's Social Security disability award.

Your July 6, 1998 correspondence includes a Bureau of Workers' Compensation document, "Supplemental Agreement for Compensation for Disability or Permanent Injury" ("Supplemental Agreement"). The Supplemental Agreement states:

"The claimant's [redacted] condition changed as of 07/09/96. The claimant is capable of performing light duty work that has been made available to him by Franklin Steel and The PMA Group [authorized agent or insurance carrier] that would reduce the payment of benefits from total to partial . . . Although the claimant is capable of performing the light duty described above, he has chosen not to accept that work

1142235

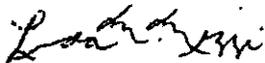
but, instead, has voluntarily resigned from the work force."

The Supplemental Agreement indicates that [] was injured on December 11, 1987, and that, as of July 9, 1996, his condition **changed** so as to make him capable of light duty. Thus, the Supplemental Agreement supports the conclusion that as of Plan termination, which was **prior** to July 9, 1996, [] was **not** capable of light duty and, as such, was **not** capable of "engaging in any employment of the type covered by the Basic Agreement."

Decision

Based on the evidence and argument presented in your appeal and on the Board's disagreement with PBGC's reason for denying your client's claim, the Board found that [] was entitled to a Permanent Incapacity Retirement benefit as of Plan termination. PBGC's Insurance Operations Department will contact your client directly regarding the payment of amounts due him retroactive to Plan termination, including interest. We appreciate your patience while your appeal has been pending. If you need other information from PBGC, please call the Customer Service Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

cc: []