



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

August 24, 2006

Re: [redacted] (Case No: 19837000), National Steel Corp. Hourly Pen. Plan (the "Plan")

Dear [redacted]

We are responding to your appeal of PBGC's August 11, 2005 corrected determination of your benefit under the Plan. For the reasons stated below, we are changing PBGC's determination to allow you to elect a December 6, 2002 retirement date and to have your PBGC benefits recalculated based on 38.583 years of continuous service. You also will receive a new benefit determination to inform you of your benefit amount, with a new 45-day appeal right.

Determination and Appeal

PBGC's corrected determination stated you are entitled to a monthly benefit of \$513.82. This amount is based on your benefit starting on December 1, 1988, which PBGC determined was your earliest retirement date due to disability. The \$513.82 amount also is based on the election of the Straight Life Annuity form, and your spouse further would be provided with the Plan's Free Surviving Spouse Benefit. PBGC additionally determined that you are entitled to a retroactive payment for benefits owed between December 1, 1988, and the present, plus interest.

In your September 12, 2005 letter to the Appeals Board, you disputed your retirement date of December 1, 1988. You stated your continuous service should have accrued until May 2004, when you attained age 60. You provided a page from the Agreement between Great Lakes Steel and the United Steelworkers of America, dated March 1, 1983 (the "1983 Agreement"), as support for changing your continuous service. According to this part of the 1983 Agreement, "Plant continuous service" is broken by:

"For pension purposes only - absence due to nonoccupational physical disability which extends beyond 4 years; provided, however, that plant continuous service for pension purposes only, shall continue to accumulate for no more than 4 years during absence due to nonoccupational physical disability, commencing with the first day of such absence."

You stated that "this section indicates that my service with the company should continue until I file for retirement, because I was on an occupational physical disability rather than a nonoccupational physical disability."

Finally, you asked that your benefit be recalculated as of May 2004.

### Background

The records PBGC obtained from National Steel show that you were born on [ ] hired by National Steel on May [ ] 1964, and sustained an injury on October 10, 1984. It also appears that October [ ] 1984, was the last date you worked for National Steel. You received Workers' Compensation benefits starting in 1986 (or earlier), and these payments continued up to and beyond the Plan's December 6, 2002 termination date. In 2005, you furnished PBGC with a February 23, 1988 letter from Social Security, which stated that you were entitled to Social Security disability benefits with payments beginning as of October 1986.

National Steel's electronic employment records contained an entry showing that the Company had terminated your employment "with benefits" as of November 1, 1988. The records PBGC obtained from National Steel also contained a Notice of Deferred Vested Eligibility that listed a "Termination Date" of November 1, 1988, and "Service Credits" of 24 Years, 5 months, and 25 days. The "Service Credits" equaled the elapsed time you worked between your May [ ] 1964 hire date and the November 1, 1988 "Termination Date." This document does not contain your signature, and it is unclear from the records whether you received a copy.

National Steel's records also contained an undated estimated retirement calculation that showed a benefit of \$515.11 per month based on a retirement date of October [ ] 1988. This estimate also contained the following notation: "Only eligible for Deferred Vested at age 62 - or - if approved - Disability." National Steel also had prepared additional undated estimated retirement calculations, which showed varying benefit amounts based on different retirement dates.

### Plan Provisions

Section 2.5 of the Pension Agreement effective April 30, 1986 between National Steel Corporation and the United Steelworkers of America ("1986 Agreement") provided that a participant who had at least 15 years of continuous service and had become permanently

incapacitated was eligible to retire and to receive an immediate pension.

Section B of Exhibit C to the 1986 Agreement set forth the "continuous service provisions" applicable to employees who worked for the Great Lakes Division. This section defined "continuous service" as the "service prior to retirement calculated from the Employee's last hiring date." It further stated: "There shall be no deduction for any time lost which does not constitute a break in continuous service, except that in determining length of continuous service for pension purposes . . . that portion of any absence which continues beyond four years from commencement of absence due to a non-occupational physical disability, shall not be creditable as continuous service." The language in this provision is consistent with the 1983 Agreement provision that you included with your appeal.

Finally, Section B of Exhibit C provided that continuous service shall be broken by the following events: (1) voluntarily quitting the service; (2) discharge unless reversed by the Basic Agreement's grievance procedure; (3) layoff which extends beyond four years; (4) termination of employment due to a permanent shutdown; and (5) absence in excess of one year due to birth or adoption of a child.

#### Discussion

When the Plan terminated on December 6, 2002, it did not have sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act ("ERISA"), and PBGC became the Plan's trustee. Because of legal limits under ERISA and PBGC's regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

National Steel's employment records indicate that National Steel considered you to be a terminated employee as of November 1, 1988. Furthermore, the Company's general practice for the Great Lakes Division was to terminate an individual's employment on or near the four year anniversary of the last day worked, even if the absence from employment was for reasons of disability.

Ordinarily, the Appeals Board would be hesitant to reverse a determination concerning an individual's employment status after such a long period of time. However, the records PBGC obtained from National Steel do not establish whether or not you were notified of National Steel's employment termination decision. We also found your situation to be unique because you were still receiving Workers' Compensation benefits up to the Plan's

termination date and because you never applied for a pension under the Plan before its termination date.

Furthermore, the Plan's terms provide that continuous service is broken only in certain limited circumstances: voluntary resignation, discharge by the Company, layoff, termination due to a permanent shutdown, or absence in excess of one year due to the birth of a child or the care of an adopted child. While National Steel may have considered your continuous service to have been broken based on one of these events, the record before the Appeals Board is insufficient to establish that one of these events had occurred. Therefore, based on the unique circumstances of your case, we concluded that you did not have a break in service that occurred prior to the Plan's December 2, 2002 termination date.

Section C of the Plan nevertheless provides that there is a deduction from continuous service for any absence that continues beyond four years "due to a non-occupational physical disability." You asserted in your appeal that this four-year restriction does not apply to you, because you were absent from work due to an occupational physical disability, rather than a non-occupational physical disability. We agree with you that the Plan's language indicates that the four-year limitation does not apply to participants such as you who were absent from work due to a physical disability that had its origin in the workplace.

We are unable, however, to grant your request to have your benefits determined as of May 2004. ERISA and PBGC regulations provide that your service in the Plan stops as of the Plan's December 6, 2002 termination date. Therefore, PBGC cannot credit you with additional continuous service after December 6, 2002. Accordingly, we concluded that your continuous service under the Plan was 38.583 years, which equaled the amount of time (calculated to the nearest month of employment) between your hire date of May 6, 1964, and the December 6, 2002 Plan termination date.

Because of legal limits under ERISA and PBGC's regulations, the amount of your PBGC benefits based on a December 6, 2002 retirement date may be less than your Plan benefit. Please also note that your retroactive benefits will be payable from only January 1, 2003, to the present, rather than from December 1988 as PBGC previously had determined.

#### Decision

We changed PBGC's determination to allow you to elect a December 6, 2002 retirement date and to have your PBGC benefits recalculated based on 38.583 years of continuous service. PBGC's

Benefits Administration and Payment Department will issue you a corrected benefit determination to implement this decision, and you will have a new 45-day appeal right with respect to that new determination. Because you will receive a new appeal right, we are closing your current appeal.

We appreciate your patience while PBGC completes this process. Meanwhile, if you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

*Charles W. Vernon*

Charles Vernon  
Chair, Appeals Board