



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

MAR 21 2003

Re: Appeal Pan American World Airways, Inc. Defined
Benefit Plan for Flight Engineers (Plan or FE Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's February 28, 1997 determination of your benefit. We appreciate your patience while the appeal was pending and apologize for the delay.

For the reasons stated below, the Appeals Board found no basis presented for changing the determination of your PBGC benefit amount. The Board noted, however, that PBGC has changed its method for adjusting benefits for previous overpayments. As described below, the changes are based on amendments to PBGC regulations that result in a small underpayment balance for you now. PBGC's Insurance Operations Department will contact you directly about the make-up payment.

PBGC Determination and Your Appeal

PBGC determined you are entitled to a Joint and 100% Survivor Annuity (J&100%SA) of \$1,524.93 per month, which is greater than the \$1,504.18 estimated benefit you are receiving. The letter included a Benefit Statement showing how your benefit was calculated and that the form of your benefit included a Modified Cash Refund feature (MCR). PBGC explained they had both over- and underpaid you, the net overpayment was \$2,041.33 at that time, you could repay in lump sum, and if you choose not to repay by that method PBGC would recoup by permanently reducing your future \$1,524.93 payments by \$22.05 to \$1502.88.

Your April 11, 1997 appeal stated that PBGC's "... letter provided no calculations to explain how I have been overpaid. The calculation of FAS-5 (Final Average Earnings) of \$72,797.04 is in variance to my estimated FAS-5 of approximately \$90,000.00. See enclosed pay stubs. Page 2 of PBGC calculations show 'Form adjustment factor' of .7292 on line (8) and .7262 on line (9). . . . One must be incorrect. I am appealing this change in my benefit until the PBGC can verify their calculations and provide more complete data addressing the factors . . ."

Discussion

Your PBGC Benefit Statement shows you were born October 18, 1927, were hired June 16, 1954 and retired on May 1, 1991 at age 63. Documents in PBGC files show you chose the J&100%SA form of benefit when you retired and the FE Plan began paying you \$1,629.32 per

month, which is equivalent to the amount of a your "Single Life Annuity with Death Benefit" (SLA/DB), the Plan's normal annuity form, of \$2,232.86 (see Enclosure 1). The file also shows that effective December 31, 1983, benefit accruals under the FE Plan were frozen. Thus, no credit can be granted for service or earnings after that date. The FE Plan ended on July 31, 1991.

When PBGC is appointed trustee of a terminated pension plan, it pays benefits on an estimated basis. Estimated payments are intended to minimize financial hardship for retirees while PBGC is preparing formal benefit determinations. During this period PBGC completes several tasks, including: (1) the audit of plan records; (2) the calculation of PBGC benefits; and (3) the preparation and mailing of PBGC determination letters and benefit statements. A participant continues to receive estimated benefits until his or her benefit determination becomes final.

The difference between your FE Plan benefit calculated by the former FE Plan Administrator and your PBGC payment is due, in part, to legal limits on guaranteed benefits prescribed by the Employee Retirement Income Security Act of 1974, as amended (ERISA). Your FE Plan benefit is reduced by ERISA's "Maximum Guaranteed Benefit" (MGB) limitation. See ERISA § 4022(b)(3); see also 29 Code of Federal Regulations (C.F.R.) § 4022.22. PBGC also pays benefits based on (1) a priority allocation of a plan's assets as of the plan termination date (ERISA § 4044), and (2) a portion of PBGC's recoveries on certain legal claims (ERISA § 4022(c) benefits). We explain your MGB and your plan asset and 4022(c) benefits below.

Final Average Earnings

You claimed that the 5-year Final Average Earnings (FAS-5) PBGC used to compute your benefit is too low, and you submitted several pay stubs from 1987 through 1991 as evidence. The provisions of the Plan prescribe the method for determining FAS-5. On August 10, 1984, the FE Plan adopted Amendment No. 1984-1 (A1984-1), which changed the definition of Final Pay Compensation (Section 2.20) to read: "An Employee's gross remuneration through December 31, 1983 including bonuses and overtime pay, . . ." Final Pay Credited Service (Section 4.3) was amended to provide: "The period of Final Pay Credited Service shall be the aggregate of the following periods, without duplication or overlap, but only if such period occurs prior to the Member's 65th birthday and prior to January 1, 1984: . . ."

The Internal Revenue Service (IRS) approved the retroactive cessation of the benefit accruals under the Plan in accordance with section 412(c)(8) of ERISA with the condition that A1984-1 was adopted by August 16, 1984. PBGC files reveal that A1984-1 was adopted on August 10, 1984. The Appeals Board, therefore, found that A1984-1 was properly adopted. Thus, under the terms of the FE Plan, only compensation and service you earned prior to January 1, 1984 may be used to compute your FE Plan benefit. Enclosure 2 is a copy of the FE Plan record showing the computation of your FAS-5, including the total Compensation you received during the five years (60 months) between January 1, 1979 and December 31, 1983 (\$363,985.39, or a 5-year average of \$72,797.08).

Maximum Guaranteed Benefit Limitation

The MGB for plans terminating in 1991, such as your Plan, payable in the form of a Straight Life Annuity (SLA) with benefits commencing at age 65 is \$2,250.00 per month. This amount is adjusted for a participant's age at the later of his/her benefit commencement date and the plan termination date and for an annuity form other than an SLA. You retired before the FE Plan ended. Per PBGC regulations, the age adjustment factor for your MGB is **0.9183** based on your age 63 years and 10 months (months rounded up) as of the Plan termination date.

The regulation prescribes a factor of 0.8000 to convert an SLA to a J&100%SA where the retiree and spouse are the same age, nearest birthday, as of the determination date. At that time you were 64 and [redacted] was age (based on her birth date of [redacted]). The factor for a 9-year age difference is 0.9100. Thus, the SLA-to-J&100%SA conversion factor for your MGB is **0.7280** (0.8000×0.9100).

Finally, the rules require that an MGB be adjusted for the possibility PBGC would pay benefits after both the retiree and spouse die (the MCR feature of your annuity), which assures that benefit payments equal at least the amount of the retiree's "Cash Vested/Employee Contributions" (CVEC) as of the determination date. Your PBGC Benefit Statement lists amount as \$45,401.94 for you, which would be returned with 27.86 monthly payments remaining of your full FE Plan benefit ($\$45,401.94 \div \$1,629.32 = 27.87$). The rules adjust the MGB for a 27-month refund period (rounded down) by a factor of **0.9888** ($1/24\%$ for each of the first 60 months = $1 - [.01 \times 1/24 \times 27]$).

The MGB with these adjustments equals is \$1,487.33 ($\$2,250.00 \times 0.9183 \times 0.7280 \times 0.9888$). This amount is somewhat less than the MGB (\$1,500.42) shown on line (9) of your PBGC Benefit Statement. However, given the complex nature of this computation and the understanding that PBGC's determination may have employed some assumptions favorable to you, the Appeals Board accepted as correct the \$1,500.42 amount PBGC calculated as your MGB.

Your Benefit from the FE Plan Asset Allocation

When the FE Plan terminated, its assets could fund only some of its promised benefits. To determine benefits for participants, the FE Plan provides for the assignment of Plan benefits among six "priority categories" (PCs) prescribed by ERISA § 4044 and for the allocation of Plan assets to the benefits in those categories in a specific order, with both assets and benefits valued as of the FE Plan's termination date. You will receive the greater of the amount of your FE Plan benefit that is (1) covered by the allocation of Plan assets or (2) guaranteed and payable by PBGC.

The first two PCs cover voluntary and mandatory employee contributions. PC3 covers benefits that were, or could have been, in pay status three years before the FE Plan termination date (DoPT-3). PBGC determined that FE Plan assets covered all benefits in PCS 1 and 2, but only 62.309034% of the benefits in PC3. Your entire FE Plan benefit is assigned to PC3 because you were 61 years of age as of DoPT-3 and could have been receiving your normal retirement (age 60)

pension if your employment had ended by that time. Based on PBGC's determination that the amount of your FE Plan benefit as of DoPT-3 would have been \$1,688.49,¹ your funded PC3 benefit is only \$1,052.08 ($\$1,688.49 \times 0.62309034$). Because this amount is less than your \$1,500.42 MGB, PBGC will pay you the greater guaranteed amount plus your 4022(c) benefit, described next.

Section 4022(c) Benefits

Section 4022(c) of ERISA provides a portion of the unfunded benefits that PBGC does not guarantee based on amounts PBGC recovers from sponsors of terminated, underfunded plans (the 4022(c) amount). ERISA assigns the 4022(c) amount in the order of PCS described above. For the FE Plan, PBGC determined that the 4022(c) amount pays 13.034377% of all unfunded nonguaranteed benefits in PC3. Your 4022(c) benefit is \$24.51 (calculation shown below), and your total PBGC-provided benefit is \$1,524.93 ($\$1,500.42 + \24.51), the same amount PBGC determined.

| | |
|------------------------------------|------------|
| Your benefit assigned to PC3: | \$1,668.49 |
| Less: Your PBGC-guaranteed benefit | 1,500.42 |
| Equals: Your unfunded PC3 benefit | 188.07 |
| Times: 4022(c) allocation factor | .13034377 |
| Equals: Your 4022(c) benefit | \$ 24.51 |

Over/Underpayments and Recoupment

When the FE Plan ended July 31, 1991 you were receiving \$1,629.32 per month. Effective March 1, 1993, PBGC reduced your benefit to an estimated amount of \$1,504.18, which you have been receiving since that date. PBGC's letter dated February 2, 1993 advised you of the reduction and that the new amount was an estimate.

PBGC determined you were overpaid for 19 months at \$112.24 per month or \$2,132.56 [$19 \times (\$1,629.32 - \$1,517.08)$] and underpaid for 48 months (3/1/93 - 2/28/97) at \$12.90 per month or \$619.20 [$48 \times (\$1,517.08 - \$1,504.18)$], for a net overpayment, including interest, of \$2,041.33. It is not clear why this calculation used an amount of \$1,517.08. Please note, however, that due to the continued underpayment and PBGC's revised method of calculating the net over/underpayment balance, which is favorable to you, you will have a net underpayment amount of approximately \$573 if your monthly payment is increased to \$1,524.93 of the next PBGC pay adjustment date, May 1, 2003.

¹ \$1,688.49 equals your \$2,232.86 accrued benefit as an SIA/DIB adjusted by a factor of 0.7562 for the J&100%SA form as of DoPT-3. This amount is greater than your \$1,629.32 J&100%SA determined as of your actual retirement date due to the operation of the form conversion factors based on different ages as of the two date.

Decision

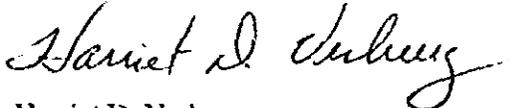
Having applied the law, the regulations and provisions of the PB Plan to the facts in this case, the Appeals Board found no basis presented in your appeal for changing PBGC's determination that you are entitled to receive a J&100%SA/MCR of \$1,524.93 per month. (Please note that the MCR period has now expired.) The Board also found no basis for changing PBGC's determination that Plan Amendment No. 1984-1, which froze benefit accruals, is a valid Plan amendment adopted August 10, 1984.

The Appeals Board, however, changed PBGC's determination by finding that, due to the continued underpayment and a change in PBGC rules for determining the net over/underpayment amount, you now have a net underpayment balance and will receive a make up payment. PBGC's Insurance Operations Department will contact you directly about this matter and the increase in your future monthly payments from \$1,504.18 to \$1,524.93.

This is the final agency decision on the matters appealed and you may, if you wish, seek court review.

We regret the delay in our response and appreciate your patience while we reviewed your case. We will send a copy of this letter to PBGC's Insurance Operations Department (IOD), the office responsible for making PBGC determinations and payments. IOD staff will increase your future monthly PBGC payments and determine the exact amount of your make-up payment as of the change date. Meanwhile, if you need other information from PBGC, please call the Customer Service Center at 1-800-400-7242.

Sincerely,



Harriet D. Verburg
Chair, Appeals Board

Enclosures