

# 1247347



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

MAR 29 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 that your PBGC benefit is \$2,122.63 per month as a Joint and 50% Survivor Annuity (J&50%SA) before a reduction for the recoupment of overpayments. We appreciate your patience while your appeal has been pending and apologize for the delay.

Based on a change in PBGC policy that became effective while your appeal was under review, the Appeals Board changed PBGC's determination by increasing the amount of your PBGC benefit to \$2,774.00 per month, the amount of your full FE Plan benefit as explained below. PBGC's Insurance Operations Department, the office responsible for making determinations and payments for PBGC, will contact you directly about the adjustment to future payments and back pay.

#### PBGC Determinations and Your Appeal

PBGC's letter pointed out that the \$2,122.63 benefit determined is greater than the \$2,025.00 estimated payment you are receiving, and it included a Benefit Statement showing how your benefit was calculated. The letter explained that you had been both over- and underpaid, the net overpayment was \$10,636.80 as of February 28, 1997, and PBGC would recoup the overpayment by permanently reducing your future payments by \$107.83 if you do not repay in a single sum.

Your April 19, 1997 form-letter appeal referenced the Pan American World Airways, Inc. Cooperative Retirement Income Plan (CRIP). This letter requested that PBGC stay the processing of the appeal until the resolution of the lawsuit entitled "Al Pineiro, Richard Brooks and Leonard Beaumont on behalf of themselves and all other similarly situated v. Pension Benefit Guaranty Corporation" (the Pineiro case). It also requested that your appeal be consolidated with the appeals of all other CRIP participants and with the Pineiro case. The form letter asked for an explanation of your PBGC benefit calculation and claimed entitlement to a "subsidized" early retirement benefit.

The form letter asked PBGC to recuse itself from making any determinations of benefits and to appoint an independent trustee. It asserted that PBGC had failed to retain sufficient qualified personnel to perform benefit calculations and that benefits were not reviewed by the independent actuarial firm, Milliman USA (Milliman), retained by PBGC for Plan calculations. The form letter

# 1247347

-2-

also asked PBGC to provide you with all documents, notes, records and computations that relate to you and your benefit determination. (Note: Your PBGC Benefit Statement provided information used to compute your PBGC benefit. The record also shows that PBGC's Disclosure Officer sent you a copy of the information contained in your PBGC participant file on June 3, 1997, and by letter dated September 9, 1998 the Clerk of the Appeals Board sent copies of the Plan documents the form letter requested.)

### Discussion

The form letter cited the CRIP. Please note that PBGC's February 28, 1997 determination pertains solely to your benefit under the FE Plan, as does this appeal decision. The FE Plan is a Pan Am pension plan separate from the CRIP. (The record shows you also have a benefit under the CRIP and that PBGC is paying you \$79.61 per month under that plan.)

Documents in your PBGC file and your PBGC Benefit Statement for the FE Plan show that you were born July 24, 1921, hired March 9, 1943, and retired January 1, 1983 (age 61), more than 8 years before the Plan ended on July 31, 1991. The FE Plan Administrator determined and authorized payment of your \$2,774.00 monthly J&50%SA.

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.

### **Maximum Guaranteed Benefit Limitation**

The difference between your FE Plan benefit calculated by the former FE Plan Administrator and the amount PBGC calculated is due to a legal limits on guaranteed benefits prescribed by the Employee Retirement Income Security Act of 1974, as amended (ERISA). PBGC determined that your FE Plan benefit is limited by ERISA's "Maximum Guaranteed Benefit" (MGB), which we explain next. See ERISA § 4022(b)(3); see also 29 Code of Federal Regulations (C.F.R.) § 4022.22. As stated above, however, **due to a policy change while you appeal has been pending, the MGB no longer limits your PBGC payments.**

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 and you were older than age 65 as of the Plan termination date. Thus, a reduction for payments before age 65 was not required, and the rules in effect when your determination letter was issued did not increase the MGB for your age greater than 65 as of the FE Plan termination date.

# 1247347

-3-

PBGC regulations convert the MGB as an SLA to your J&50%SA form by a factor of 0.9000 for a same-age (nearest birthday) couple, resulting in an MGB of \$2,025.00 ( $\$2,250.00 \times .9000$ ). This is the same amount shown on line (2) of your PBGC Benefit Statement.

While the Board did not find PBGC's application of the MGB limit to your benefit to be incorrect, the Board has previously found that benefits such as yours should be recalculated in accordance with PBGC policy that went into effect during the pendency of your appeal. Under this new policy, PBGC adjusts the MGB upward for retirees who were over age 65 as of a plan's termination date. PBGC's over-age-65 adjustment factor for a person 70 years and 1 month of age as of July 31, 1991 is 1.6830 (PBGC Late Retirement Factors from Actuarial Technical Manual). The resulting MGB adjusted for annuity form and age is \$3,408.08 ( $\$2,250 \times 1.6830 \times .9000$ ). Please note, however, that PBGC may not pay you more than your FE Plan benefit. **The Appeals Board found, therefore, that you are entitled to receive your full FE Plan benefit of \$2,774.00.**

When you retired the FE Plan began paying you \$2,774.00 per month. Effective March 1, 1993, PBGC reduced your payments to an estimated amount of \$2,025.00. PBGC's letter dated February 2, 1993, advised you of the reduction and that the new amount was an estimate. You, therefore, have been underpaid since March 1, 1993.

#### Other Matters

The form letter cited the Pineiro case, which was filed by some CRIP participants and does not seek relief for FE Plan participants. It asked that PBGC stay the processing of your appeal pending the resolution of Pineiro. Extensions pending resolution of that case are not necessary since, if a court in the Pineiro case were to issue a final order granting any relief to CRIP participants and if PBGC also decided that FE Plan participants should receive similar treatment, PBGC would provide the relief to similarly-situated FE Plan participants without regard to whether they had filed appeals of their benefit determinations or whether their appeals were previously decided.

The form letter asked that your appeal be consolidated with the appeals of other similarly situated appellants. The Appeals Board may, at its discretion, consolidate appeals where the facts and relief sought are the same. See 29 C.F.R. § 4003.56 [2002]. The Board decided to consolidate appeals under the FE Plan with respect to certain issues raised in the form letter that are discussed below

The form letter asked that PBGC recuse itself from making any determination of benefits and that PBGC appoint an independent trustee. The Appeals Board has concluded there is no conflict of interest with respect to its deciding appeals of FE Plan participants. PBGC established the Appeals Board to provide an independent review of benefit determinations to assure they comply with ERISA, PBGC regulations and the terms of the plans PBGC trustees. Furthermore, a participant may seek judicial review of the Board's decision. Therefore, the Appeals Board sees no reason why it should not review the appeals of FE Plan benefit determinations.

# 1247347

-4-

The form letter questioned the accuracy of PBGC's determinations based on who issued them. The Appeals Board previously found that all the determinations PBGC has issued on all of the Pan Am pension plans, including the FE Plan, are based on the actuarial work performed by Milliman. Also, in certain instances where PBGC was unable to obtain the underlying data upon which pension calculations were based, Milliman and PBGC accepted the calculations previously made by Pan Am. However, Milliman did not check the former FE Plan Administrator's calculation of the benefit of every participant receiving a benefit when the FE Plan ended.

The form letter claimed that you may have been improperly denied payment of a "subsidized" early retirement benefit. Please note that the "subsidized" early retirement provisions of the CRIP do not apply for the FE Plan.

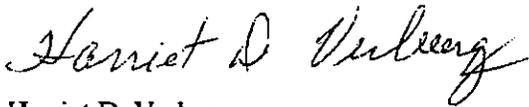
Decision

Having applied the provisions of the FE Plan, the law and PBGC rules to the facts of your case, the Appeals Board found that the future monthly payments will be increased to \$2,774.00, the full amount of your FE Plan benefit. PBGC's Insurance Operations Department will implement this decision and contact you directly regarding back pay.

The Appeals Board has previously decided the issues raised in the form letter. Because you have not presented a basis for changing these matters (29 C.F.R. § 4003.54), we must deny your appeal of these issues. This is the final agency decision and you may, if you wish, seek court review.

We regret the delay in our response and appreciate your patience while your appeal has been pending. If you need any other information from PBGC, please call the Customer Service Center at 1-800-400-7242.

Sincerely,



Harriet D. Verburg  
Chair, Appeals Board

cc: