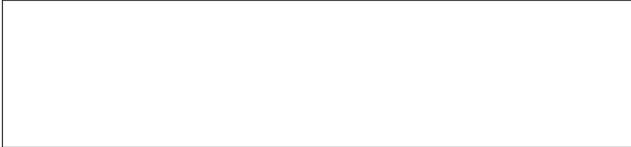




Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

SEP 29 2003



Re: Peter J. Schmitt (PJS) Employees
Retirement Plan (the Plan)

Dear :

The Appeals Board has reviewed your appeal of PBGC's September 18, 2001 determination of your Plan benefit. For the reasons explained below, the Board changed PBGC's determination by finding that PBGC must use the early commencement reduction factors described in Plan § 4.04(b) instead of the Plan's definition of actuarial equivalence to adjust your benefit for early commencement.

When PBGC's Insurance Operations Department, the office that issues benefit determinations, receives a copy of this decision, they will recalculate your monthly benefit in accordance with this decision.

PBGC's Determination and Your Appeal

PBGC's determination letter said you were entitled to a monthly benefit of \$604.88, payable as a Joint and 50% Survivor Annuity. The letter noted that you were then receiving an estimated benefit of \$938.80, and therefore, had been overpaid. PBGC records show that you have continued to receive the \$938.80 amount during the pendency of your appeal.

Your October 22, 2001 appeal claimed that there was a mistake in the calculation of your benefit, and asked the Appeals Board to "review the enclosed documents." On one of those documents, a document you received from the former Plan administrator (PJS) in 1995, you highlighted a schedule of early commencement reduction factors, thereby indicating your disagreement with the early commencement adjustment factor PBGC applied to your benefit. You suggested that according to the Plan provisions, your early retirement factor should be 0.52 and not 0.3856, as shown on your PBGC Benefit Statement.

Discussion

The Appeals Board reviewed the Plan's documents, and found that PBGC used a factor of 0.3856 because PBGC interpreted the Plan documents as requiring use of the Plan's definition of "actuarial equivalence" to calculate your early commencement adjustment factor.

In making its determination, PBGC relied on the Plan's Article Six. Article Six applies to participants like you, whose employment with PJS ended before attainment of age 55. Section 6.04(b) says that separated vested participants with at least 10 years of service may elect to start receiving their benefits as early as age 55. It also says that the amount of the benefit payable as of the early commencement date is equal to the amount that would be payable at age 65, "actuarially reduced to account for the early commencement of benefit payments." PBGC read the quoted phrase in conjunction with Plan section 5.05, which defines "actuarial equivalent" and "actuarial equivalence," and concluded that the Plan's reduction under section 6.04(b) must be based on the definitions in section 5.05.

Our review of the Plan's history shows that the phrase "actuarially reduced to account for the early commencement of benefit payments" has been in Plan section 6.04(b) since 1977, as part of the Plan's 1977 Restatement. Plan section 5.05, on the other hand, was added by the Plan's Sixth Amendment, in response to the enactment of the Retirement Equity Act of 1984, in which Congress required that all qualified defined benefit plans specify actuarial assumptions in a way which precludes employer discretion.

Documents in PBGC's files show that in applying Plan § 6.04(b) to a deferred vested participant's benefit before the adoption of the Plan's Sixth Amendment, PJS used the reduction factors specified in Plan section § 4.04(b), which are the reduction factors the Plan prescribes for "early retirees." "Early retirees" are participants who worked with PJS at least until age 55 and earned at least ten years of service. The files also show that even after the adoption of the Sixth Amendment, PJS always used the reduction factors specified in Plan section § 4.04(b) in calculating deferred vested benefits under Plan § 6.04(b) up until the end of December of 1991.

On December 20, 1991, PJS adopted the Plan's Twelfth Amendment. While that amendment contained many provisions, the only change pertinent to our discussion was a slight change in the reduction factors specified in Plan § 4.04(b). The reduction

factors did not change at all for early retirees who started receiving their benefits at or after age 60, but for example, if an early retiree started receiving a benefit at age 55, the Twelfth Amendment changed the early commencement factor from 0.5333 to 0.52. While the Twelfth Amendment (or any other amendment) did not change the words in Plan § 6.04(b), PBGC files show that PJS used the Plan's definition of actuarial equivalence to determine early commencement adjustment factors for seven deferred vested participants whose monthly benefits commenced between January 1, 1992 and August 1, 1992. But by the time the next deferred vested participant started receiving an early benefit on December 1, 1992, PBGC files show that PJS had reverted to its long-standing interpretation of the words in Plan § 6.04(b), and used the factors in Plan § 4.04(b) from that point forward.

Based on the Plan's consistent interpretation of the words in Plan § 6.04(b) from at least as early as September 1, 1982 through the Plan's termination date (December 31, 1994) except for a brief period in 1992, the Appeals Board found that PBGC should apply the phrase "actuarially reduced to account for the early commencement of benefit payments" in Plan § 6.04(b) as meaning "reduced by the factors specified in Plan § 4.04(b)."

Decision

Having applied the law and Plan provisions to the facts of this case, we changed PBGC's determination by finding that PBGC must use the early commencement reduction factors described in Plan section 4.04(b) instead of the Plan's definition of actuarial equivalence to adjust your benefit for early commencement.

We regret the delay in resolving your appeal and appreciate your patience while we completed our review. When PBGC's Insurance Operations Department receives a copy of this decision, they will recalculate your monthly benefit in accordance with this decision, and send you a corrected determination letter with a new 45-day right to appeal. In the meantime, if you need other information about your benefit, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member