

EC19803CB-EEF9-11D6-9



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

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OCT 31 2002

[Redacted]

Re: Appeal [Redacted] Republic Retirement Plan (the "Plan")

Dear [Redacted]

The Appeals Board reviewed the appeal of PBGC's March 5, 1999 determination of your guaranteed benefit under the Plan. The appeal was filed by your former attorney, the late [Redacted] on your behalf. For the reasons we state below, we have changed PBGC's determination by finding that PBGC will not ask you to repay overpayments, if any, that you may have received before age 65.

PBGC's determination letter said that you were entitled to a monthly pension payment of \$280.52 payable as a Straight Life Annuity, which provides a benefit for your lifetime and no survivor benefit, but that, effective January 1, 1994, your net monthly basic payment is \$0.00 because your worker's compensation payments are larger than your monthly annuity.

The letter said that because you received estimated monthly payments of \$376.66 that were larger than the \$280.52 monthly payments you were entitled to receive from January 1991 through November 1993, you had been overpaid. The letter asked you to remit a payment of \$3,364.90.

In [Redacted] March 22, 1999 appeal letter, he said that you should not have to repay the \$3,364.90 because you had already completed making payments under a payment plan with PBGC under which PBGC received full repayment of the overpayments that you had received. [Redacted] did not raise any issue regarding your workers' compensation payments, which PBGC offset against your monthly Plan benefit payable after age 65, resulting in a post-age-65 PBGC benefit of \$0.

Please note that the payments that you agreed to and did repay to PBGC were for overpayments that you received after age 65. The overpayment amount of \$3,364.90 stated in PBGC's determination letter was based on the benefits you received from PBGC before you

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attained age 65.

However, in previous Appeals Board decisions for other Plan participants, the Board found that PBGC had erroneously applied a guaranteed benefit limitation found in PBGC regulations called the "accrued at normal" limit. That is, the Board has previously found that the accrued at normal limit does not apply to participants receiving Plan benefits under the Plan's Permanent Incapacity Retirement type. Your PBGC Benefit Statement clearly indicates that you are receiving a Plan benefit based on the Permanent Incapacity (disability) Retirement type, and thus, PBGC improperly applied the accrued at normal limit to your pre-age-65 Plan-defined benefit. It thus appears that as a result of your previous repayment of the post-age-65 payments that you received in error, your overpayment balance is now \$0.

Furthermore, due to a change in PBGC's policy concerning PBGC's efforts to seek repayment of previous overpayments through small reductions in future PBGC benefit payments, which went into effect after PBGC sent your determination letter, the Appeals Board found that even if your overpayment balance were larger than \$0, PBGC will not require you to repay any remaining overpayment.

Please note that if your workers' compensation payments were to decrease or stop before you die (other than by commutation of the future monthly payments for life into a one-time lump-sum payment), PBGC benefits could once again become payable. Please keep PBGC informed of any decrease or cessation of your workers' compensation payments.

Having applied PBGC's rules to the facts in this case, the Appeals Board changed PBGC's determination by finding that PBGC will not ask you to repay overpayments, if any, that you may have received before age 65.

This is the agency's final decision on the issues raised in Mr. Vesmas's appeal. We regret the delay in resolving this appeal and appreciate your patience while we completed our review.

Sincerely,



Michel Louis
Appeals Board Member

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