

7/28/2004/02:31:29 PM



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

1854969

JUL 21 2004



Re: (Case No: 161810), The Retirement Plan for Salaried
Employees of Sharon Steel Corporation

Dear

The Appeals Board reviewed your appeal of PBGC's December 16, 1999 determination under the Sharon Plan. As explained below, the Board changed PBGC's determination by finding that you are entitled to a monthly benefit of \$696.60, payable in the form of a 50% Joint and Survivor Annuity. Consequently, you have been underpaid and not overpaid.

PBGC's Determination and Your Appeal

PBGC determined that you are entitled to a monthly benefit of \$541.45 payable in the form of a 50% Joint and Survivor Annuity. PBGC noted that this amount is less than the estimated monthly benefit of \$656.60 which you have been receiving and that your overpayment then totaled \$8,866.55. PBGC records show that you have continued to receive the larger \$656.60 amount while your appeal has been pending.

In your January 10, 2000 appeal, you contend that an early retirement factor should not be applied to your PBGC benefit because you retired under the Plan's 70/80 Immediate Severance Retirement. You noted that a 70/80 Immediate Severance Retirement pays an unreduced early retirement benefit to a participant who at the time of retirement: (1) has been employed for at least 15 years; (2) has attained age 55 and whose combined age and years of service total 70 or more; and (3) whose service is broken by reason of a reduction in force. You request that your early retirement benefit be recalculated by removing the early retirement factor from the Plan's 70/80 "CRP yearly accrual formula." On March 16, 2004, you supplemented your appeal with a copy of a Summary Plan Description that you believe supports your contention.

You also asked that we review the application of PBGC's Benefit Guarantee Ratio (line 11 of your PBGC benefit statement) in light of the above information.

BEST COPY AVAILABLE

#1854969

Plan History

The Plan adopted an amendment on March 11, 1988, that froze benefit accruals (but not vesting or eligibility service) retroactively to June 30, 1987. Because this freeze was retroactive and reduced participants' accrued benefits, it required IRS approval under section 412(c)(8) of the Internal Revenue Code and section 302(c)(8) of the Employee Retirement Income Security Act (ERISA). On September 8, 1988, the IRS approved the amendment. The terms of the amendment did not place any conditions on its effectiveness, nor did the amendment contain an expiration date. On January 1, 1989, the Plan was amended to "unfreeze" benefit accruals, effective June 1, 1991. This amendment did not restore benefit accruals for the period the freeze was in effect, i.e., between June 30, 1987 and June 1, 1991.

When the Plan terminated, effective October 17, 1993, its assets were not sufficient to provide all benefits PBGC guarantees under Title IV of ERISA. Because of legal limitations under ERISA and PBGC's regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

Phase-in of PBGC's Guarantee of Benefit Increases

ERISA sections 4022(b)(1) and (b)(7) phase-in PBGC's guarantee of "any increase in the amount of benefits under a plan resulting from a plan amendment" made or effective within the five years before Plan termination. This phase-in is equal to the greater of 20 percent of the benefit increase per month, or \$20.00 per month (but not more than the amount of the increase), for each full year the Plan amendment was in effect before Plan termination. Under ERISA, the time a benefit increase is in effect begins with the later of the date the increase was adopted or the date it became effective.

Section 4022.2 of PBGC's regulation on *Benefits Payable in Terminated Single-Employer Plans* defines a benefit increase as "any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan." This section further states that "benefit increase" includes "any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments."

PBGC treated the Plan amendment unfreezing benefit accruals as a benefit increase subject to phase-in. PBGC determined that this amendment was "in effect" under ERISA for two full years between its effective date (June 1, 1991) and the Plan's termination date (October 17, 1993). Thus, PBGC phased-in its guarantee of benefits attributable to post-June 1, 1991 accruals at the rate of 40%/\$40.00 per month.

BEST COPY AVAILABLE

7/28/2003/03:31:29 PM

1854969

Benefit under 70/80 Plan Provisions

Section 5.09 of the Plan document, as amended and restated effective January 1, 1989 (see Enclosure 1), states that a participant retiring under the "Immediate Severance" retirement provisions is entitled to receive the greater of:

- (1) The actuarial equivalent of the benefit calculated using the "CRP yearly accrual formula", or
- (2) The benefit calculated using the Percent or Minimum Formula without actuarial adjustment.

However, the Summary Plan Description (SPD) you provided as an addendum to your appeal makes no mention of an actuarial reduction to the "CRP yearly accrual formula" in its description of benefits payable under the Plan. While the SPD is undated, the Introduction section states that the SPD is based on the plan provisions effective October 1, 1979.

Discussion

According to the records PBGC's auditors obtained from the former Plan Administrator, when you retired effective June 1, 1992, the Plan officials responsible on an ongoing basis for calculating and paying benefits applied the "CRP yearly accrual formula" to your benefit without an actuarial reduction for early retirement. The record further reveals that Plan officials calculated *the benefits of other similarly-situated participants the same way. It appears that in using this method to calculate benefits, the Plan officials had resolved a conflict between the SPD and the Plan document. The Appeals Board notes that several courts have held that when the SPD conflicts with plan language, the SPD will control. See Burstein v. Retirement Account Plan for Employees of Allegheny Health, Education and Research Fund, 334 F.2nd 365 (3d Civ. 2003). Based on the circumstances, the Board found the "CRP yearly accrual formula" should be applied to your benefit without an actuarial reduction for early retirement.*

On December 16, 2003, the Appeals Board found that: (1) the Freeze Amendment, which froze benefit accruals (but not vesting or eligibility service) between June 30, 1987 and June 1, 1991, was validly adopted; (2) participants received proper notice under ERISA and the Code; (3) the 1991 Plan amendment lifting the freeze on benefit accruals is a benefit increase under ERISA section 4041(b)(1)(B); (4) the amendment was in effect under ERISA for two full years before the Plan termination date; and (5) PBGC's guarantee of the amount of any benefit increase resulting from the Plan amendment is phased-in at the 40%/\$40.00 rate.

Your appeal also asked for an explanation of PBGC's Guarantee Ratio. Enclosure 2 explains how this ratio was calculated and how phase-in applies to your benefit.

BEST COPY AVAILABLE

7/28/2004/02:31:29 PM

#1854969

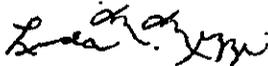
- 4 -

Decision

Based on the information described above, the Appeals Board changed PBGC's determination by finding that you are entitled to \$696.60 per month, payable as a 50% Joint & Survivor Annuity. This is the agency's final decision on this matter and you may, if you wish, seek judicial review of this decision in the appropriate Unites States District Court. For your information, we enclosed a corrected benefit statement detailing your revised benefit amount (see Enclosure 3).

We will forward a copy of this letter to PBGCs Insurance Operations Department, who will contact you directly with respect to any backpayments and accrued interest PBGC owes you. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

Enclosures (3)

BEST COPY AVAILABLE