



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

AUG 15 2005

Re: [REDACTED] Case 199929, Thunderbird Mining Company
(TMC) Pension Plan (the Plan)

Dear [REDACTED]

The Appeals Board reviewed your appeal of PBGC's May 11, 2005 determination that your client, [REDACTED] was not entitled to a disability retirement benefit from the Plan because the Social Security Administration did not deem your client to be permanently disabled on or before July 24, 2003, the Plan's termination date. For the reasons stated below, the Board changed PBGC's determination by finding that [REDACTED] satisfied the Plan's conditions for a Permanent Incapacity Retirement benefit before the Plan terminated.

As a result of our finding, PBGC will determine [REDACTED] **estimated** disability retirement benefit commencement date, his **estimated** monthly disability retirement benefit amount, and his **estimated** disability retirement benefit end date, if any. PBGC will begin paying your client the estimated disability benefit amount in the near future. Once PBGC finishes processing the Plan, it will send [REDACTED] a new determination of his final PBGC monthly benefit amount(s), and his final benefit commencement date(s). He will have 45 days to appeal that determination.

Background

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, as amended (ERISA). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays benefits as defined in the plan subject to the limitations and requirements set by Congress under ERISA.

PBGC's records show that the Plan terminated on July 24, 2003 and that PBGC became the Plan's trustee on August 19, 2004. PBGC's records also show that [REDACTED] [REDACTED] and was hired by Eveleth Taconite Company, a predecessor of TMC, on June 3, 1976. The record indicates that [REDACTED] last worked for TMC on June 25, 2002.

With an April 19, 2005 letter to PBGC, you enclosed a "fully favorable decision of

the Social Security Administration on [redacted] finding him disabled beginning June 15, 2002." Your letter noted that the SSA's decision also found that your client "had medical improvement and that his disability ended October 6, 2003." Your letter informed PBGC that [redacted] has reapplied for social security disability benefits and you expect a favorable decision, which will find [redacted] disabled again beginning in May 2004 due to "subsequent worsening." Your letter concluded with the following statement: "I assume that he will receive his pension now."

The record shows that your client suffers from a degenerative disease in both knees, and that [redacted] underwent a series of surgical procedures, which provided him with enough relief so that the SSA considered him no longer to be disabled.

PBGC responded to your April 19, 2005 letter by a letter addressed to [redacted] dated May 11, 2005. That May 11, 2005 determination letter told your client that because the SSA's award letter did not deem him "permanently" disabled on or before the Plan's termination date (July 24, 2003), he is not eligible to receive a disability pension from the Plan.

Because PBGC's May 11, 2005 letter did not state that your client had 45 days to appeal PBGC's denial of disability retirement benefits, the Appeals Board accepted your July 7, 2005 letter to FBA Pension Benefit Analyst Cindy Hochgesang as a timely appeal. Your July 7 appeal letter said that PBGC's determination letter is "very confusing." Your letter said that while it "is true that the disability ended in October 2003 . . . [redacted] has reapplied for Social Security benefits and we expect a favorable decision finding him disabled, a second time, beginning May 2004 and thereafter, with no end date to the disability (unlike the first time)."

Discussion

Section 2.5 of the 1999 Pension Agreement between TMC and the United Steelworkers of America provides as follows:

"Permanent Incapacity Retirement"

- 2.5 Any participant who shall have had at least 15 years of continuous service and who shall have become permanently incapacitated shall be eligible to retire on or after **August 1, 1999** and shall upon his retirement (hereinafter 'permanent incapacity retirement') be eligible for a pension. A participant shall be considered to be permanently incapacitated (as 'permanently incapacitated' is used herein) only (a) if he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type covered by the Basic Agreement, and (b) after such total disability shall have continued for a period of five consecutive months, and, in the opinion of a qualified physician, it will be permanent and continuous during the remainder of his life. **Effective July 31, 2000, for any cases pending on or after that date, a participant shall also be considered to be permanently incapacitated (as 'permanently incapacitated' is used herein) if the participant has been granted**

disability benefits under the Social Security Act with an award effective during the period he was accruing continuous service as provided in Section 5. Incapacity contracted, suffered or incurred while the participant was engaged in, or resulted from his having engaged in, a criminal enterprise, or resulting from future service in the armed forces and which prevents him from returning to employment with the Company and for which he receives a military pension, shall not entitle a participant to a pension under this paragraph 2.5. Such pension shall be discontinued if such participant shall cease to be permanently incapacitated prior to age 62. The permanency of incapacity may be verified by medical examination prior to age 62 at any reasonable time."

The bold text in the body of section 2.5 is in PBGC's copy of the 1999 Pension Agreement and reflects changes from the 1994 Pension Agreement.

Based on the above, the Plan's provisions deem a participant to be "permanently incapacitated" if the participant receives an award of disability benefits from the SSA.

The record clearly shows that the SSA awarded [redacted] a disability benefit for a period of disability that started before the Plan terminated while he was accruing continuous service and that [redacted] was still disabled as of the Plan's termination date. As a result, the Appeals Board found that your client satisfied the Plan's eligibility conditions for a disability retirement benefit on or before the Plan's termination date.

Please note, however, that Plan section 2.5 above states that any disability retirement payments under the Plan "shall be discontinued if such participant shall cease to be permanently incapacitated prior to age 62." Similarly, PBGC regulations provide as follows:

"a participant may be required, upon the request of the PBGC, to submit to an examination or to submit proof of continued total and permanent disability. If the PBGC finds that a participant is no longer so disabled, it may suspend, modify, or discontinue the payment of the disability benefit."

29 Code of Federal Regulations § 4022.6(c).

Thus, because of the possibility of suspension, it is **very important** that you submit documentation to PBGC as soon as it becomes available regarding any further disability benefit determinations that your client receives from the SSA based on his degenerative knee disease. Please send any SSA documentation to:

Pension Benefit Guaranty Corporation
Attn: Benefits Administration & Payment Department
Trusteeship Processing Division 8
P. O. Box 151750
Alexandria, Virginia 22315-1750

Decision

Having applied Plan provisions, the law, and PBGC's rules to the facts of this case, the Appeals Board changed PBGC's determination by finding that [redacted] satisfied the Plan's conditions for a Permanent Incapacity Retirement benefit before the Plan terminated.

The Appeals Board will forward a copy of this decision to PBGC's Benefits Administration & Payment Department (BAPD), the organization responsible for issuing benefit determinations and making benefit payments. BAPD will determine [redacted] **estimated** disability retirement benefit commencement date, his **estimated** monthly disability retirement benefit amount, and his **estimated** disability retirement benefit end date, if any. PBGC will begin paying your client the estimated disability benefit amount in the near future.

In the meantime, if [redacted] has any questions, he may call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

cc:

