



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

January 30, 2006



Re:  (Case No: 195672), Retirement Plan  
For Employees of Walter Pye's Stores (the "Plan")

Dear

We are responding to your appeal of PBGC's December 23, 2004 determination that you are not entitled to receive a PBGC benefit. For the reasons stated below, we are denying your appeal.

PBGC's Benefit Determination and Your Appeal

PBGC determined that based on Plan records, you were paid a lump sum by the prior Plan Administrator and, consequently, are not entitled to receive additional benefits from PBGC. PBGC's March 8, 2005 letter to you explained that, after additional research, PBGC determined you were paid a lump sum of \$2,398.00 by the prior Plan Administrator on December 1, 1998.

In your January 6, 2005 and March 22, 2005 appeal letters, you stated that "to the best of my knowledge, I never received any lump-sum payment from . . . [the Plan]", and asked the Appeals Board to review your case. Further, on September 29, 2005, in response to a PBGC request, you submitted copies of your 1998 and 1999 Federal Income Tax Returns as well as a 1999 Internal Revenue Service W-2 form, as proof of non-payment.

Discussion

PBGC files show that the Plan terminated on May 5, 1997, and PBGC became trustee on August 15, 2002. As part of its process to determine PBGC-payable benefits, PBGC obtained Plan records, participant data and payment information from the prior Plan Administrators and other sources. The records for the Plan include an executed Participant Distribution Request form on which you elected a Lump Sum Distribution (Enclosure 1), and a list prepared by the prior Plan actuary, MBM Advisors, Inc., which shows you as having been paid a lump sum of \$2,398.00 on December 1, 1998 (Enclosure 2). The records also include a copy of the Plan's check register for the period ending 12/21/1998, which shows a check in the amount of \$2,398.00 was generated and sent to your current address in late December 1998 (Enclosure 3).

An individual who receives the value of his or her vested benefit in a lump sum ceases to be a Plan participant. We checked the 2000 and 2001 actuarial valuation reports prepared by MBM, and you were not included in those valuations.

PBGC's technical procedures provide that when participant payment information provided by a former Administrator has been found reliable, but PBGC does not have copies of cancelled checks, a simple assertion of non-receipt does not constitute sufficient evidence that a lump-sum payment was not issued and received. In this case, PBGC does have proof that a check in the amount of \$2,398.00 was issued and mailed to your current address in late December 1998. Thus, after reviewing the evidence described above, we cannot accept your claim that you did not receive a lump-sum distribution from the Plan.

Decision

Because you have not presented any grounds that could change PBGC's determination (See 29 Code of Federal Regulations § 4003.54), we must deny your appeal. This is the agency's final decision on this matter and you may, if you wish, seek court review. If you need other information from PBGC, please telephone PBGC's Customer Contact Center at 1-800-400-7242, and ask to speak to the Authorized Representative for the Plan.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board

Enclosures (3)