

Pension Benefit Guaranty Corporation

76-69

May 19, 1976

STATUTE/REGULATION SECTION:
4022(a) Benefits Guaranteed.

OPINION:

This is in response to your letter dated April 26, 1976, wherein you inquired whether the benefit of a participant would be guaranteed if the participant had satisfied all of the conditions under the plan necessary to establish entitlement to the benefit at a specified age, but as of the date of plan termination had not yet reached the age at which the benefit is payable. Under the Guaranteed Benefits Regulation, 29 CFR Part 2605, 40 Fed. Reg. 13509 et seq. (September 22, 1975), a benefit is guaranteed if on the date of termination three requirements are met. They are:

1. The benefit must be a pension benefit as defined in § 2605.2 of the regulation,
2. The benefit must be nonforfeitable on the date of termination, and
3. The participant must be entitled to receive the benefit under § 2605.5 of the regulation.

Section 2605.6(a) of the regulation provides, in pertinent part, that a benefit payable with respect to a participant is considered to be nonforfeitable if, on the date of termination of the plan, the participant has satisfied all the conditions required of him under the provisions of the plan to establish entitlement to the benefit. Section 2605.5 of the Guaranteed Benefits Regulation provides that:

A participant . . . is entitled to a benefit if under the provisions of the plan . . . absent an election by the participant, the benefit would be payable upon retirement.

Thus, it is apparent that a benefit which is payable to a participant upon his retirement, regardless of when it occurs, as a result of the participant having satisfied all of the conditions required of him under the plan to establish his right to receive that benefit upon retirement, is guaranteed if the benefit is a "pension benefit" within the meaning of § 2605.2 of the regulation. Therefore, if a participant has at the date of plan termination become entitled to a benefit beginning at normal retirement age and his normal retirement age falls after the date of termination this deferred vested benefit is guaranteed.

Accordingly, under the situation posed in your letter, a pension benefit, which a participant is entitled to begin receiving after the date of plan termination because as of the date of termination the participant had satisfied all of the requirements under the plan necessary to establish entitlement to that benefit, would be guaranteed.

I do not believe that you raising a question which was raised in one arbitration case, but just to be sure I'll answer it anyway. That question arose where a plan provided for an immediate pension, as distinguished from a deferred vested pension, if a participant had a required total of combined age and service. The claim was that, although upon cessation of employment or termination of the plan the participant had a lesser total, his age naturally advanced and therefore when later on his combined service and age reached the required total, he was entitled to an immediate pension. It was correctly found that entitlement to a benefit would not arise under those circumstances and the same answer would apply to your question. It is what the participant was entitled to when the plan terminated which is controlling. If on the date of termination he was entitled to a certain guaranteed benefit, payable beginning at an age

he had not attained, he is entitled to that benefit and payments will begin when he does attain the required age.

I trust this has been responsive to your inquiry. Should you have any further questions, please give me a call.

Kenneth L. Houck
Executive Director