



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

MAR 17 2005



Re:  Case # 196603, Bethlehem Steel Corporation Pension Plan

Dear

The Appeals Board has reviewed your appeal of PBGC's July 16, 2004 determination of your benefit under the Bethlehem Plan. For the reasons discussed below, the Board changed PBGC's determination by finding that you are entitled to \$77.18 per month as a Straight Life Annuity from January 1, 2003 (the first of the month following the Plan's termination date) through April 1, 2003 (the last month for which you received a Worker's Compensation payment), and to \$397.18 per month thereafter. The Board also found that, if you are married at the time of your death, your then spouse will be eligible for a Surviving Spouse's Benefit provided you and she were married for at least the three years prior to your death.

*PBGC's Determination and Your Appeal*

PBGC's letter said that you are entitled to \$397.18 per month in the form of a Straight Life Annuity, which is the same amount you are currently receiving and the same amount you received from the prior Plan Administrator. PBGC explained that the Plan also provided a separate Surviving Spouse's Benefit payable to eligible spouses of participants who died before age 65. Lastly, PBGC noted that your spouse will not receive this benefit because you are now older than 65.

According to your July 26, 2004 appeal, you are receiving a Total Permanent Disability pension because of a serious work-related accident in January, 1974, at the Jacksonville Steel plant. Your letter said that Bethlehem deducted \$320 per month from your pension, which was the amount of your Worker's Compensation payment. You said your Worker's Compensation payments stopped when Bethlehem went bankrupt. You believe, therefore, that PBGC should add back the \$320 per month, for a total monthly pension of \$717.18.

Permanent Incapacity Pension Benefit

The Bethlehem Plan terminated, effective December 18, 2002, without sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act (ERISA). The files PBGC's auditors obtained from the former Plan Administrator show that you retired under the Permanent Incapacity Retirement provisions of the 1972 Steel Salaried Plan on January 31, 1975, at age 46.75 with 26.17 years of credited service. You elected to receive your benefit in the form of an unreduced monthly benefit for your lifetime with no benefits payable after your death (a Straight Life Annuity).

Under Plan section 3.3, a participant's regular monthly benefit at each age is the highest of three amounts: the "percent pension," the "minimum pension" and the "total retirement 1½ % pension." Any total retirement 1½ % pension amount payable after age 65 must be reduced by 50 % of the participant's unreduced Social Security old-age insurance benefit computed under specified Plan assumptions (Plan section 3.9(b)). If a retired participant also receives Worker's Compensation, section 3.11 requires that amounts payable under any of the three pension formulas be reduced by the Worker's Compensation payments. That reduction does not start until age 65, however, for a Permanent Incapacity retiree. Please see Enclosure 1 for a copy of the relevant Plan provisions.

Information available to the Appeals Board shows that, at the time you retired, your regular benefit was highest under the total retirement 1½ % formula, which produced a benefit of \$379.00 per month. Please see Enclosure 2 for a copy of the calculation sheet Bethlehem prepared for you when you retired. Your regular benefit amount computed under one or more of the benefit formulas increased slightly after you retired because of Plan amendments that became effective in 1975, 1978, 1980 and 1981. For your convenience, the chart below summarizes your regular monthly benefit under the different benefit formulas:

Effective Date	Regular Monthly Pension Under Each Benefit Formula			Benefit Payable
	Percent	Minimum	Total 1½ %	
2-1-1975	\$210.00	\$226.00	<b>\$379.00</b>	\$379.00
8-1-1975	\$276.00	\$305.00	<b>\$379.00</b>	\$379.00
8-1-1978	\$291.00	\$320.00	<b>\$394.00</b>	\$394.00
8-1-1980	\$329.59	\$358.59	<b>\$432.59</b>	\$432.59
8-1-1981	\$368.18	\$397.18	<b>\$471.18</b>	\$471.18
4-1-1993	\$368.18	<b>\$397.18</b>	\$319.03	\$397.18

Your benefit continued to be highest under the total retirement 1½ % formula until age 65. At that point, the Plan required your total retirement 1½ % benefit amount to be reduced by 50% of the unreduced Social Security old-age insurance benefit. After applying the Plan's Social Security offset of \$152.15, your benefit under the total retirement 1½ % formula after age 65 became \$319.03 per month. Because the amount under the minimum formula was highest after age 65, the Plan began paying you \$397.18 per month under the minimum formula effective April 1, 1993, the first of the month with your 65<sup>th</sup> birthday. *Thus, the decrease in your monthly benefit from \$471.18 to \$397.18 at age 65 resulted solely from the operation of the Plan's benefit formulas.*

As noted on page 2 of this letter, pension benefits payable to a Permanent Incapacity retiree after age 65 must be reduced by any Worker's Compensation (WC) benefits to which he or she is entitled. The files show that you were receiving WC payments of \$320 per month. Due to administrative error, however, Bethlehem *did not reduce* your pension benefit at age 65 to account for your WC payments. You continued receiving \$397.18 per month after reaching age 65, instead of the \$77.18 per month to which you were entitled (which equals your \$397.18 monthly Plan benefit minus your \$320.00 monthly WC payment).

You said in your appeal that your WC payments ended when Bethlehem went bankrupt. According to information obtained by the Appeals Board, your last WC payment was made April 1, 2003. Because you are no longer receiving WC payments, the Board found that you are entitled to your full (unreduced) Plan benefit of \$397.18 per month effective May 1, 2003.

#### Overpayments

Because of the administrative error by Bethlehem, you were overpaid \$320 per month from April 1, 1993 through April 1, 2003. PBGC's regulations require that PBGC recover overpayments made under the Bethlehem Plan *after December 18, 2002*, the date the Plan terminated. PBGC does this by reducing future monthly payments until the overpayment, without interest, is repaid.

#### Surviving Spouse's Benefit

PBGC's July 16, 2004 letter also noted that the Plan provided a separate Surviving Spouse's Benefit (SSB) payable to eligible spouses of participants who died before age 65. In the case of a participant (1) who retired under the Permanent Incapacity provisions of the 1972 Salaried Plan with 15 or more years of service and (2) whose age plus service total less than 80 (yours total 72.92), the 1972 Plan provides that an SSB is payable to an eligible spouse only if the participant's death occurs after age 55 and before age 65.

The Appeals Board found, however, that certain SSB provisions under the 1972 Plan were amended, effective July 31, 1975, and made retroactive for participants like you who retired under the 1972 Plan after July 31, 1974. These amendments changed the requirement that the death of an otherwise eligible participant must occur between ages 55 and 65 for an SSB to be payable. In a situation like yours in which a participant marries after retiring, his or her spouse is eligible for the SSB if they were married on the participant's date of death and had been married for at least the prior three years.

If an eligible surviving spouse is less than age 60, the SSB until he or she reaches age 60 is equal to the greater of 50% of the participant's basic monthly benefit or \$127.50. When an eligible spouse is or reaches age 60, the Plan requires that the pre-age 60 monthly SSB amount be reduced, but not below \$77.50, by 50% of the amount of the Social Security widow's or widower's benefit that could have become payable to the surviving spouse if he or she had been eligible and had applied for such a benefit.

Decision

Having applied the law, the provisions of the Plan and PBGC's regulations to the facts in this case, the Appeals Board found that you are entitled to \$77.18 per month as a Straight Life Annuity from January 1, 2003 (the first of the month following the Plan's termination date) through April 1, 2003 (the last month for which you received a WC payment), and to \$397.18 per month thereafter. PBGC's Insurance Operations Department, the organization responsible for determining and paying benefits, will contact you directly concerning the total overpayment amount for the 4-month period from January through April of 2003.

The Board also found that, if you are married at the time of your death, your then spouse will be eligible for a Surviving Spouse's Benefit provided you and she were married for at least the three years prior to your death.

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 call our Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board

Enclosures (2)