



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

Re: Case 178287
Connecticut Refining Company Pension Plan (the "Plan")

Dear

The Appeals Board has reviewed your appeal of PBGC's September 5, 2002 determination that you are not entitled to a Top Heavy Plan benefit. For the reasons stated below, we are denying your appeal.

Benefit Determination and Appeal

In its September 5, 2002 determination (reissued November 12, 2003), PBGC stated you are entitled to a \$1,339.65 monthly benefit. In a December 5, 2003 letter, you noted that previous benefit calculations sent to you by PBGC included a Top Heavy Plan benefit of \$2,770.53. You asked why PBGC's formal determination omitted the Top Heavy calculation.

In a December 11, 2003 letter, PBGC explained that PBGC had determined you were a Key Employee and that a Key Employee was not entitled to the Plan's Top Heavy benefit. In your July 27, 2004 appeal, you contended you did not fall under the Plan's definition of a Key Employee.

Top Heavy Plan and Top Heavy Plan Benefit

The Plan's actuarial firm (Pension Consultants of Farmington, Connecticut) determined the Plan was Top Heavy from January 1, 1984 through December 31, 1993. PBGC accepted that determination.

The Plan was amended and restated in a document effective January 1, 1984 (the "1984 Plan") and in a document effective January 1, 1989 (the "1989 Plan"). The 1989 Plan was in effect when you terminated employment on June 30, 1994.

Section 5.1 of the 1989 Plan defines the Plan's regular Accrued Benefit. Section 5.2 of the 1989 Plan provides that a Non-Key Employee is entitled to a Top Heavy Plan benefit ("minimum

Accrued Benefit"). A Key Employee is entitled to the regular Accrued Benefit under Section 5.1, but not to the Top Heavy Plan benefit under Section 5.2.

Ownership Interest in the Company

In a February 18, 2005 telephone conversation with the Board's staff, you said you had no ownership interest in the Company (Benzoline Energy Company F/K/A Connecticut Refining Company). Your claim is supported by the Plan's 1994 Actuarial Valuation Report ("AVR") and by PBGC's audit (controlled group analysis).

Definition of Key Employee

Section 1.32 of the 1989 Plan provided:

"Key Employee" means an Employee as defined in Code Section 416(i) and the Regulations thereunder. Generally, any Employee or former Employee (as well as each of his Beneficiaries) is considered a Key Employee if he, at any time during the Plan Year [calendar year] that contains the "Determination Date" [in this case, the last day of the calendar year] or any of the preceding four (4) Plan Years, has been included in one of the following categories [underlining added]:

(a) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416) having annual "415 Compensation" greater than 50 percent of the amount in effect under Code Section 415(b)(1)(A) for any such Plan Year. . . .

[The remaining three categories do not apply to you since they involve different types or degrees of ownership interest in the Company.]

The Key Employee definitions under the 1984 Plan and the 1989 Plan differ with respect to the compensation threshold applicable to officers of the Employer, as described below:

Section 1.23(a) of the 1984 Plan refers to an officer of the Employer whose annual Section 415 compensation is "greater than 150 percent of the amount in effect under Code Section 415(c)(1)(A) for any such Plan Year."

Section 1.32(a) of the 1989 Plan refers to an officer of the Employer whose annual Section 415 compensation is

"greater than 50 percent of the amount in effect under Code Section 415(b)(1)(A) for any such Plan Year."

PBGC identified you as a Key Employee, because you were an officer of the Employer whose compensation exceeded the applicable compensation limits. Please note that PBGC did not consider you a member of any of the Key Employee categories involving an ownership interest in the Company.

The Compensation Threshold

From 1984 through 1988, your Plan Compensation exceeded the compensation threshold under Section 1.23(a) of the 1984 Plan. From 1989 through 1993, your Plan Compensation exceeded the compensation threshold under Section 1.32(a) of the 1989 Plan. Please see Attachment A.

PBGC's compensation data is based on its audit of the Plan's records. Under the definitions in both the 1984 and 1989 Plan documents, your Plan Compensation was identical (or virtually identical) to your Section 415 Compensation.

Depending on the Plan year in question, your Plan Compensation was two to four times greater than the corresponding compensation threshold. Therefore, we have concluded that your Section 415 Compensation exceeded the applicable compensation limit in all Plan Years (calendar years) from 1984 through 1993.

Officer of the Employer

Section 1.32(a) of the 1989 Plan and Section 1.23(a) of the 1984 Plan apply to an Employee who was an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416).

In a February 18, 2005 telephone conversation with the Board's staff, you stated that your job title was Vice-President. You said you were hired by the owner (in June of 1983) as an efficiency expert to save the Company money by reviewing costs and other matters and making recommendations. You said that from 1990 to 1994 you supervised, without authority to hire or fire, five or six division managers. You said your compensation included a salary and bonus, but you had no ownership interest in the Company or entitlement to its profits.

The regulations under Code Section 416 provide:

Whether an individual is an officer shall be determined upon the basis of all the facts, including, for example, the source of his authority, the term for which elected or appointed, and the nature and extent of his duties. Generally, the term officer means an administrative executive who is in regular and continued service. The term officer implies continuity of service and excludes those employed for a special and single transaction. An employee who merely has the title of an officer but not the authority of an officer is not considered an officer for purposes of the key employee test. Similarly, an employee who does not have the title of an officer but has the authority of an officer is an officer for purposes of the key employee test. . . . [26 CFR § 1.416-1, T-13.]

PBGC's Benefit Statement shows you earned 11.0833 years of credited service from June 8, 1983 to June 30, 1994. Thus, the Board concluded you were in "regular and continued service" and you were not employed for a "special or single transaction."

The Plan's 1994 AVR identified you as an officer. You stated your job title was Vice-President. Thus, you clearly had the title of an officer.

The Board notes that your February 18, 2005 statement that you acted without authority to hire and fire could be taken as a claim that you had the "title of an officer, but not the authority of an officer." In reviewing this possibility, the Board took into consideration the following factors:

- The Plan's 1994 AVR only identified two other individuals as officers of the Employer.
- You described your job as one which appears to have involved multiple and significant responsibilities, including the supervision of division managers.
- The Regulation does not single out hire/fire authority as an example of one of the facts to be used as a basis for determining whether an individual is an officer. Moreover, the Regulation does not state that an officers's authority to make a decision (such as a hire/fire decision) must be unilateral in nature.

- You were a Trustee of the Plan. ("The Connecticut Refining Company Pension Trust Agreement" was amended as of October 16, 1985 to appoint you and three other individuals as Trustees of the Plan.)
- You were Director of the Company. ("A Consent to Corporate Action" signed on April 25, 1995 identifies you as one of the three Directors of the Company.)
- You acted in the capacity of Plan Administrator. (PBGC's June 10, 1999 Termination and Trusteeship Memorandum identifies you as a former officer of the Company performing the role of Plan Administrator.)
- You were the most highly compensated employee under the Plan (according to PBGC's actuarial valuation, as measured by average compensation at termination of employment, excluding any income or profit which may have been associated with ownership of Company stock.)

Based on our review of the administrative record, we did not find a sufficient basis for concluding that you had the "title of an officer but not the authority of an officer." Thus, we found you were an "officer of the Employer."

Your Status as a Key Employee

The Board found you were a Key Employee, as defined under Section 1.23(a) of the 1984 plan and Section 1.32(a) of the 1989 Plan, because you were an officer of the Employer whose Section 410 Compensation exceeded the stipulated compensation limits in all Plan years that the Plan was Top Heavy (i.e., from 1984 through 1993).

Decision

Applying the provisions of the Plan to the facts in this case, the Appeals Board found no basis for changing PBGC's determination that you are not entitled to a Top Heavy Plan benefit. This is the agency's final action regarding your appeal.

You may, if you wish, seek court review of this decision. If you need other information from PBGC, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script that reads "Sherline M. Brickus". The signature is written in black ink and is positioned above the typed name.

Sherline M. Brickus
Member, Appeals Board