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

[Redacted box]

Re: [Redacted] Case 164474, Copperweld Steel Salaried Pension Plan (the "Plan")

Dear [Redacted]

The Appeals Board has reviewed your appeal of PBGC's revised benefit determination letter of September 25, 2000. For the reasons given below, the Board changed PBGC's determination and found (1) that your correct Average Monthly Earnings ("AME") figure is \$3,471.32, (2) that you are entitled to receive an unreduced early retirement benefit retroactive to May 1, 2001, with backpayments and accumulated interest, (3) that, as of May 1, 2001, you are entitled to an accrued monthly benefit of \$1,437.13, payable in the form of a Straight Life Annuity (instead of the \$1,272.33 amount quoted in PBGC's revised determination), and (4) that, as of May 1, 2001, you are entitled to a monthly benefit of \$1,029.78, payable in the form of a Joint-and-100% Survivor Annuity.

Determination and Appeal

PBGC's September 25, 2000 determination letter stated that you are entitled to a monthly benefit of \$1,272.33 payable on May 1, 2004. On June 5, 2003, PBGC sent you a copy of PBGC's September 25, 2000 letter (in apparent response to a telephone inquiry on your part).

In a letter postmarked June 30, 2003, you stated that you were appealing PBGC's determination of your AME, because it was inconsistent with the earnings shown on your W-2 statements. The Board referred your letter to PBGC's Insurance Operations Department ("IOD") for a letter of explanation. On September 23, 2003, IOD sent you a letter informing you that "Pension earnings are lower than W-2 earnings because they exclude certain types of earnings." IOD's letter provided you with a 30-day right of appeal.

On September 29, 2003, you filed an appeal in which you asked why your W-2 figures could not be used and how PBGC

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arrived at its AME figure. In addition, you contended that you were not timely informed that you could start receiving an unreduced early retirement benefit on May 1, 2001 and, that, as a result, you should be entitled to receive backpayments with interest retroactive to your earliest unreduced retirement date.

In a letter dated November 2, 2003, you supplemented your appeal filing. You noted that PBGC had recently sent you a copy of a Company (CSC Industries, Inc.) document entitled Salary History Data for Calculation of Final Average Monthly Earnings ("Salary History"). Based on this Salary History, you contended (1) that your highest 60 consecutive months of pension earnings occurred from May of 1979 through April of 1984, (2) that your pension earnings during this period totaled \$205,136.34, and (3) that your correct AME should be \$3,418.94 ($\$205,136.24/60$).

Calculation of Your Average Monthly Earnings

The Board agreed with the way that you calculated your AME in your supplemental appeal filing. However, for the 1983 calendar year, you submitted two W-2 statements, both of which list your Employer as the Copperweld Steel Company. The first W-2 showed that you earned "Wages, tips, and other compensation" of \$35,202.93 (the W-2 amount shown on your Salary History). The second W-2 showed that you earned "Wages, tips, and compensation" of \$3,142.86. The Board found no basis for excluding your second 1983 W-2 earnings amount from your pension earnings. Therefore, the Board found that from May 1, 1979 through April 30, 1984 your pension earnings totaled \$208,279.20 ($\$205,136.34 + \$3,142.86$) and that your correct AME is \$3,471.32 ($\$208,279.20/60$).

Effective Date of Your Unreduced Early Retirement Benefit

Section 5.2-4(D)(5) of PBGC's Operating Policy Manual states: "Any participant eligible for a plan-provided, early unreduced benefit will be entitled under this section to retroactivity to his or her earliest eligibility date on or after DoPT, provided that PBGC receives the participant's application for benefits within ninety days of the date PBGC provided written notification that the plan provided such benefits."

In your September 29, 2003 appeal, you stated that you never received PBGC's September 25, 2000 revised determination: "I did not receive such letter. Please send me all proof that I did."

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In addition, you asked: "Why wasn't I sent a letter when I could start receiving my unreduced benefits on May 01, 2001? I didn't receive this information until correspondence dated June 05, 2003 from Cheryl DeFigio, form attached." On the attached Summary of PBGC Benefits, you noted that 28 monthly payments of \$1,272.33 (from your earliest unreduced retirement date of May 1, 2001 through August 1, 2003) would equal \$35,625.24 (28 x \$1,272.33), and you stated that "This should be enough to prove that I don't know of a letter dated 09-25, 2000."

In a separate correspondence package, dated September 29, 2003, you applied for estimated monthly benefits commencing October 1, 2003. However, you included a cover letter stating that your application for benefit commencement did not mean that you were giving up your right to appeal your benefit: "This filing is not to be construed as my acceptance of the PBGC figures, any other monies owed to me. And all other torts."

The Board found that PBGC's September 25, 2000 determination letter, taken by itself, does not state that you were entitled to an unreduced early retirement benefit on May 1, 2001 (instead, it states that you could start collecting a monthly benefit of \$1,272.33 on May 1, 2004 or choose to retire early with a reduced benefit). Consequently, the Board found that you did not receive written notification of your entitlement to an unreduced early retirement benefit by letter dated September 25, 2000, either because you did not receive the letter at all (as you claim in your appeal) or because the letter, taken by itself, did not constitute adequate written notification. Accordingly, the Board found that you are entitled to receive an unreduced early retirement benefit retroactive to May 1, 2001, with backpayments and accumulated interest.

Your Monthly Benefit as Of May 1, 2001 Adjusted for Benefit Form

The Board's decision to change your AME to \$3,471.32 increases your accrued monthly benefit to \$1,437.13 (payable in the form of a Straight Life Annuity), as follows:

(1.1%) (30 years) (\$3,471.32) =	\$1,145.54
(1.2%) (7 years) (\$3,471.32) =	291.59
Total	\$1,437.13

You elected to receive your benefit in the form of a Joint-and-100% Survivor annuity. Your date of birth was
Your beneficiary's date of birth was Using

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these dates of birth and PBGC's benefit form conversion factors, the Board found that you are entitled to a monthly benefit of \$1,029.78, payable effective May 1, 2001 in the form of a Joint-and-100% Survivor annuity.

Decision

The Board found (1) that your correct Average Monthly Earnings figure is \$3,471.32, (2) that you are entitled to receive an unreduced early retirement benefit retroactive to May 1, 2001, with backpayments and accumulated interest, (3) that, as of May 1, 2001, you are entitled to an accrued monthly benefit of \$1,437.13, payable in the form of a Straight Life Annuity (instead of the \$1,272.33 amount quoted in PBGC's revised determination), and (4) that, as of May 1, 2001, you are entitled to a monthly benefit of \$1,029.78, payable in the form of a Joint-and-100% Survivor Annuity. This is the agency's final decision regarding the issues raised in your appeal. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Will E. Ellis

William E. Ellis
Acting Chair, Appeals Board

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