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



APR 28 2004

Re: Case 192187, Duro-Test Corporation
(Salaried) Pension Plan (the "Plan")

Dear

The Appeals Board reviewed your appeal of PBGC's October 28, 2003 determination of your benefit under the Plan. As explained below, the Board found no basis presented in your appeal for changing PBGC's determination.

Benefit Determination and Appeal

PBGC's letter stated that "the amount you currently receive, \$381.47, is the correct amount of your benefit." The amount of your benefit was based on your service with the Duro-Test Corporation from June 16, 1986 to February 18, 2000. However, in your appeal (postmarked November 26, 2003), you contended that you were first employed by Duro-Test between 1953 and 1970, and that when you were re-hired by Duro-Test in 1986 you were promised that your earlier service would be restored.

Discussion

A review of the administrative record indicates (1) that you were first hired by Duro-Test on April 9, 1953, (2) that you resigned on October 9, 1970, (3) that you were rehired by Duro-Test on June 16, 1986, (4) that you subsequently worked through February 18, 2000, (5) that you retired and went into pay status effective March 1, 2000, and (6) that the Plan terminated on March 28, 2000.

Section 4.1(a) of the Plan defines the accrued benefit attributable to a Member's service prior to July 31, 1984, as follows: "For each employee who was a Member of the Plan on July 31, 1984, the benefit determined as of July 31, 1984 as if the Member terminated under the Plan in effect on July 31, 1984;" Thus, you could only have a benefit based on your service prior to July 31, 1984, if you were a Member of the Plan as of July 31, 1984.

Under Section 2.3 of the Plan, a Member had to be an active employee, an employee on an approved absence, a retired employee,

1763892

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or a separated employee with a deferred vested pension. As noted, our records show that you resigned from Duro-Test on October 9, 1970, that you were rehired on June 16, 1986, and that you retired on March 1, 2000. Thus, as of July 31, 1984, you were not an active employee, an employee on an approved absence, or a retired employee. According to your participant file, you did not have a deferred vested right to a pension benefit as of July 31, 1984, because when you left Duro-Test in 1970, the Plan did not provide a deferred vested benefit (and when the Plan was first amended in 1976 to provide a deferred vested benefit, that amendment only applied to employees who were on the payroll in 1976). The former Plan Administrator ("PA") did not regard you as a Member of the Plan as of July 31, 1984. In particular, the former PA determined that you were not entitled to a benefit under Section 4.1(a) of the Plan (i.e., that you were not entitled to a benefit based on your service prior to July 31, 1984). You have presented no evidence in your appeal that you were a Member of the Plan as of July 31, 1984, and, as a result, you have presented no evidence that you are entitled under the terms of the Plan to a benefit for your service prior to July 31, 1984.

Instead, your appeal is based on your claim that when you were rehired by Duro-Test in 1986, one or more persons in a supervisory or management capacity provided you with oral assurances that your earlier service would be restored. The Board considers your claim to be credible. However, PBGC cannot guarantee a benefit based on oral assurances which are at variance with the written terms of the Plan, the Plan's general practice, and the Plan's actual practice in your own case (i.e., the PA's determination of your benefit at the time of your retirement).

Decision

The Board found no basis presented in your appeal for changing PBGC's determination. 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 our Customer Contact Center at 1-800-400-7242.

Sincerely,

W. E. Ellis

William E. Ellis
Acting Chair, Appeals Board