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

JAN 08 2004



Re: Appeal [redacted], Horn and Hardart Baking Company
Automat, Cafeteria and Restaurant Employees Union
Local 18 Pension Plan (the "Plan")

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's July 17, 2003 determination that you are not entitled to a benefit under the Plan. For the reasons stated below, the Board changed PBGC's determination and found that you are entitled to receive a deferred vested benefit. PBGC will send you a new determination regarding the amount, form, and commencement date of your deferred vested benefit.

Determination and Appeal

In its benefit determination letter, PBGC stated: "Your plan provided retirement benefits to participants at age 65 with 15 years of service and early retirement benefits at age 55 with 15 years of service. Since you terminated your employment in 1974 at age 37 with approximately 19 years of service, you were never a plan participant."

In your July 29, 2003 appeal, you stated that during your 19 years of service you were never advised that you would not be granted a pension if you were under age 55 at the time your employment terminated.

Discussion

In its original actuarial valuation of the Plan, PBGC determined that an Employee became entitled to a deferred vested benefit after completing 15 years of service. In reviewing your case, however, PBGC analysts determined that you were not entitled to a deferred vested benefit, because you terminated employment in 1974, which was prior to the date, October 1, 1976, when the Employee Retirement Income Security Act ("ERISA")

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would have required the Plan to adopt one of several minimum deferred vesting schedules.

The Board, however, noted that PBGC's original actuarial valuation was based on an analysis of the terms of the Plan document and that this analysis did not depend on whether or not an Employee worked through October 1, 1976. In addition, the Board found that the conclusions drawn in PBGC's actuarial valuation represented a reasonable interpretation of the Plan document. Moreover, the Board noted that the conclusions reached in PBGC's actuarial valuation were implemented in the case of numerous Plan participants who terminated employment prior to October 1, 1976. Thus, the Board concluded that you should be treated in the same way that PBGC treated other similarly-situated participants.

Decision

The Board changed PBGC's determination and found that you are entitled to a receive a deferred vested benefit. This is the agency's final decision with respect to your eligibility for a benefit under the Plan. PBGC will send you a new determination regarding the amount, form, and commencement date of your benefit, and this determination will provide a new right of appeal. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Acting Chair, Appeals Board