



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

SEP 23 2004



Re: Case 179944, International Boiler Works
(IBW) Retirement Plan (the Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's June 9, 2003 determination of your benefit under the Plan. For the reasons stated below, the Board changed PBGC's determination by increasing your PBGC benefit from \$10.46 per month payable as a Ten-Year Certain and Continuous Annuity (10C&CA) to \$28.06 per month payable as a Straight Life Annuity (SLA) and increasing the lump-sum value of your benefit as of the Plan's termination date from \$355 to \$867.

PBGC's Determination and Your Appeal

PBGC's letter explained that you were entitled to receive a lump-sum benefit of \$355, plus interest from the Plan's termination date (September 11, 1996) to the date of payment, or a deferred lifetime annuity. PBGC provided a Benefit Statement, detailing the information used to calculate your benefit and showing that instead of a lump-sum payment, you could have elected to receive a monthly benefit of \$10.46 per month beginning at age 65 payable as a 10C&CA. PBGC records show that you chose the lump-sum option.

Your July 23, 2003 appeal said that IBW advised you that when IBW was sold, you would be 100% vested in the Plan. Your letter also mentioned that although you did not have a copy of the document, IBW also advised you that the lump-sum value of your benefit was close to \$5,000 and asked us why the amount calculated by PBGC is so much lower.

Discussion

1. Background

PBGC provides pension insurance according to the Employee Retirement Income Security Act of 1974, as amended (ERISA). If a

plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan subject to limitations set by Congress under ERISA.

2. Your Vested Percentage under the 1984 Plan

Section 1.59 of the Plan's governing document effective April 1, 1984 (the 1984 Plan) defined "Vested" as meaning the portion of a Participant's Accrued Benefit that is nonforfeitable. Section 5.8(b) of the 1984 Plan states that the "Vested portion of any Participant's Accrued Benefit shall be a percentage of such Participant's Accrued Benefit determined on the basis of the Participant's number of Years of Service according to the vesting schedule specified in the Adoption Agreement." Section 6D of the 1984 Adoption Agreement provides the following vesting schedule:

Years of Service	Percentage
0-1 years	0%
2 years	20%
3 years	40%
4 years	60%
5 years	80%
6 years	100%

PBGC files show your date of hire as November 4, 1991 and your date of termination as June 26, 1994. Based on this information, for vesting purposes, you earned two Plan Years of Service (from April 1, 1992 through March 31, 1994). Therefore, based on the table above, PBGC concluded that you were 20% vested in your Accrued Benefit.

Records available to the Appeals Board indicate that PBGC determined that IBW formally adopted an amendment to the Plan on March 1, 1995 and that the amendment (the 1995 Plan) was made retroactive to March 1, 1989. The vesting schedule under the 1995 Plan was changed to the five-year-cliff schedule under which a person does not become vested at all until after earning five Years of Service. However, because the 1995 Plan was adopted by IBW after your employment ended, PBGC preserved your vested accrued benefit under the 1984 Plan as of the date your employment ended in accordance with ERISA's requirements.

We noted that section 9.2 of the 1995 Plan, as required by federal law, provides that if

"the Employer terminates or partially terminates the Plan, or it is otherwise terminated or partially terminated, the rights of the Participants affected thereby to benefits then accrued, to the extent funded, shall be fully vested and nonforfeitable."
(Underlining added.)

It appears that IBW was relying on section 9.2 when IBW told you that you would be 100% vested when IBW was sold. PBGC has no evidence that the Plan had sufficient assets to fund nonvested benefits at the time your employment ended, so the conditions for a "partial termination" benefit under section 9.2 may not have been satisfied. In any case, PBGC does not guarantee benefits that become vested as the result of the termination or a partial termination of a plan. Finally, due to the Plan's underfunding when it terminated, PBGC is unable to pay your nonvested benefits out of Plan assets.

3. Your Statement That IBW Told You the Cash Value of Your Benefit Was Close to \$5,000

In reference to your statement that IBW told you the cash value of your benefit under the Plan was close to \$5,000, please note that the Plan provides that if the value of a Participant's vested benefit is \$5,000 or less, the Plan Administrator will cash out the benefit. This provision does not suggest you are entitled to \$5,000.00.

Although we did not find any statements from IBW that you had accrued a benefit with a cash value near \$5,000, we did find a calculation of your accrued benefit as of the end of the 1992 Plan Year calculated by IBW's former actuaries, Creative Benefit Services (CBS). The Appeals Board confirmed that your accrued benefit at that time was calculated by CBS based on a reasonable application of the Plan provisions described in CBS's 1991 and 1992 Actuarial Valuation Reports (AVRs). See **Enclosure 1**.

Although the vesting schedule under the Plan provisions described in the 1991 and 1992 AVRs was the same as the vesting schedule in the 1984 Plan, the other Plan provisions described in the 1991 and 1992 AVRs were quite different from the 1984 Plan's provisions. After noting that plan actuaries generally do not calculate benefits for annual AVRs based on plan provisions that have not been adopted by the plan's sponsor and that the results of the 1991 and 1992 AVRs were used to pay lump-sum cashouts to several Plan participants, the Appeals Board decided that there was sufficient evidence to conclude that those Plan provisions were adopted by IBW, and therefore, to allow PBGC to calculate your vested accrued benefit under the Plan provisions described in the 1991 and 1992 AVRs.

Based on the above, the Appeals Board recalculated your benefit under the Plan provisions described in the 1991 and 1992 AVRs. We have shown our calculation of your benefit on Enclosure 2.

Decision

Having applied Plan provisions and the law to the facts of this case, the Appeals Board changed your PBGC benefit amount from \$10.46 per month payable as a 10C&CA to \$28.06 per month payable as an SLA and the one-time lump-sum value of that benefit from \$355 to \$867. This decision is the agency's final action regarding the issues your appeal raised. You may, if you wish, seek court review of this decision.

We will forward a copy of this decision to PBGC's Insurance Operations Department (IOD), the department that issues benefit determinations and pay benefits. After reviewing your payment history, IOD will calculate any amounts by which PBGC has underpaid you, and then pay any such additional amounts in accordance with applicable PBGC policies.

In the meantime, if you have other questions about your PBGC benefit, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

Enclosures (2)