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

JUL 21 2004



Re: [Redacted] Case 187150, Ja-Ce Company, Inc.
(Ja-Ce) Pension Plan (the Plan)

Dear [Redacted]

The Appeals Board reviewed your appeal of PBGC's November 1, 2002 determination that you are not entitled to a PBGC benefit. For the reasons stated below, the Appeals Board granted your appeal by finding that you are entitled to a benefit from PBGC.

PBGC's Determinations, Your Correspondence and Your Appeal

PBGC's September 30, 2002 determination said that you were not entitled to a PBGC benefit because when you terminated employment with Ja-Ce, the Plan required five years of service for a vested pension benefit and the Plan records indicated that you had less than five years of service.

PBGC's November 1, 2002 corrected determination stated:

"We have found an error in our original determination letter regarding your pension benefits. In that letter dated September 30, 2002, we informed you that you are not entitled to a PBGC benefit because your plan required 5 years of service in order to qualify for a vested pension benefit and our records indicate that you had less than 5 years. We have corrected this determination as follows:

When you terminated employment, your plan required 10 years of service in order to qualify for a vested pension benefit. Our records indicate you only had 6 years of service."

Your November 3, 2002 letter included a copy of a July 19, 1988 letter you said was sent to you by Ja-Ce, stating you would become 100% vested in your accrued benefit as of September 30, 1988.

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PBGC's May 2, 2003 response to your November letter said:

"Although, at the time you terminated employment the vesting requirement was 10 years of vesting service, according to your pension plan, 'As of September 30, 1988, all Participants' Accrued Benefits are 100% vested.' This indicates that you were 100% vested. However, according to a letter sent to you on August 2, 1992 from Jacqueline H. Goedsky, Office Administrator at Ja-Ce she states, 'The current value of your pension with Ja-Ce is \$1,160.31, therefore, Ja-Ce Company has chosen to pay off your benefit.'

PBGC believes that you have been paid the value of your benefit and that you are due no further pension from PBGC on behalf of the Ja-Ce Company, Inc. Retirement Plan."

Your May 13, 2003 appeal letter said:

" Although your letter of May 2, 2003 does indeed acknowledge my original contention that I am indeed eligible for the Ja-Ce pension, I have never received any payment in any form. Reference is also made to a letter purportedly sent to me in August of 1992 informing me of a pension payout from Ja-Ce. No such correspondence was ever received, if ever sent at all.

In a telephone conversation with a member of your office on May 7, 2003, I enquired as to what proof could be offered that such a payment was ever made. Your representative stated that the PBGC had simply 'taken the word' of the Ja-Ce actuaries. I am certain that no proof could be offered, since the payment was never made."

Discussion

1. **Your Vested Status**

Records available to the Appeals Board show that your employment with Ja-Ce ended on September 15, 1987. As indicated in PBGC's November 1, 2002 corrected determination letter, the Plan's governing document that was in effect when your employment with Ja-Ce ended required ten years of service in order for your benefit to be vested. A restatement of the Plan's governing document that became generally effective on July 1, 1989 provided for vesting after five years of service except for the accrued benefit as of September 30, 1988, which was fully vested immediately.

The July 19, 1988 letter that you said you received from Ja-Ce states that you would become vested as of September 30, 1988. Because such a letter might have been sent to you in error, the Appeals Board reviewed the PBGC files of participants similarly situated to you and found another participant with fewer than ten years of service whose employment with Ja-Ce

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ended before September 30, 1988. The fact that Ja-Ce calculated and paid a lump-sum with respect to that participant coupled with Ja-Ce's July 19, 1988 letter provide sufficient evidence that the former Plan administrator amended the Plan to provide 100% vesting to a group of participants as of September 30, 1988 even though they terminated employment before that date.

As a result, the Appeals Board decided to agree with PBGC's May 2, 2003 letter and find that you are 100% vested in your accrued benefit.

2. Whether You Received a Lump Sum from Ja-Ce

As noted in PBGC's May 2, 2003 letter, documents in PBGC's files show that Ja-Ce calculated the lump-sum value of your vested benefit in 1992 and prepared a letter to be sent to you, stating that Ja-Ce had decided to pay you the value of your vested benefit in the form of a one-time lump-sum benefit. With that letter was a form with places for your signature and the signature of Ja-Ce's president/plan administrator. PBGC's files do not include any signed copies of that form.

PBGC files also include a copy of a June 14, 1995 letter addressed to you by Ja-Ce's president/plan administrator stating that Ja-Ce was sending you a copy of "a Summary Plan Description of Ja-Ce Company's Pension Plan Document for your perusal."

The Appeals Board decided it is unlikely that Ja-Ce would send you a copy of the Plan's Summary Plan Description in 1995 if Ja-Ce had already paid you the full value of your vested benefit in 1992. As a result, the Board found that although Ja-Ce intended to pay you the lump-sum value of your benefit in 1992, for whatever reason, Ja-Ce did not pay you the lump-sum value of your benefit in 1992. Because PBGC has no record that Ja-Ce paid you the lump-sum value of your benefit at any other time, the Board concluded that you are entitled to a PBGC benefit.

Decision

Having applied provisions of the Plan to the facts in your case, the Appeals Board decided to grant your appeal by finding that you are 100% vested in your accrued benefit under the Plan, you did not receive any payment for your benefit from Ja-Ce, and you are, therefore, entitled to a PBGC benefit under the Plan.

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Upon receipt of this appeal decision, PBGC's Insurance Operations Department will send you a new determination regarding the amount of your vested benefit and related matters. The new determination will include a 45-day right of appeal. Meanwhile, if you need other information about your benefit, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis,
Appeals Board Member

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