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



JAN 29 2004

Re: Appeal  MCD, Inc. Retirement Plan for  
Hourly Employees (the "Plan")

Dear :

The Appeals Board reviewed your appeal of PBGC's May 6, 2003 determination that you have been entitled to receive a monthly benefit of \$57.83 since December 1, 1996 (the first of the month following the date of Plan termination, November 8, 1996). For the reasons stated below, the Board changed PBGC's determination by finding (1) that you were not entitled to retire until April 1, 2002, the first of the month following your attainment of age 55, (2) that, as of April 1, 2002, you were entitled to receive a monthly benefit of \$81.75, (3) that, as of your Normal Retirement Date, April 1, 2012 (the first of the month following your 65<sup>th</sup> birthday), you would be entitled to a monthly benefit of \$163.50, and (4) that, since you were placed into pay status prior to your first date of eligibility, you may now elect to be taken out of pay status and to reapply and reenter pay status later or to remain in pay status and to receive a monthly benefit subject to the Plan's early retirement reduction factors applicable as of the effective date of your election. If, for example, the effective date of your election were March 1, 2004 and you were to elect to remain in pay status, you would be entitled to receive a monthly benefit of \$102.64 (expressed in the form of a Straight Life Annuity with no survivor benefits). PBGC's Insurance Operations Department ("IOD") will contact you directly regarding this election.

Benefit Determination and Appeal

PBGC's May 6, 2003 letter stated that you are entitled to a monthly payment of \$57.83, instead of the estimated monthly benefit of \$145.50 you have been receiving. In your May 12, 2003 appeal, you stated: "I went out on disability on 7-19-94 not 12-1-96 [which was the disability retirement date that PBGC used]. I received no benefits for the period of 7-19-94 to 12-1-96. I come up with 29 or 30 months with no benefits. According to an amended sheet that was with one of our checks, I was to receive

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\$10.00 per year, for each year of service [whereas PBGC used a benefit rate of \$9.00 per year of service]. That would be \$181.68 [18.1667 years of credited service x \$10.00 benefit rate] in benefits for me."

Applicable Plan Provisions

Section 2.2 of the Plan states that the Accrued Benefit "of a Participant or Inactive Participant as of any date, hereinafter called the accrual date, before his Normal Retirement Age shall equal the sum of the benefits earned for each Year of Credited Service as provided in Section 5.1, prior to the accrual date." Section 2.7(a) defines Annuity Start Date as "the first day of the first period for which an amount is payable as an annuity . . . ."

Section 2.15 defines Disability as follows: "Disability shall mean the permanent and total inability of a Participant to engage in any substantial gainful activity due to physical or mental impairment or both, which can be expected to result in death or, which has lasted for a continuous period of not less than 12 months. A Participant shall be considered disabled only if he is eligible for disability benefits from the Social Security Administration."

Section 2.16 provides that Early Retirement Age "shall mean the first day of the month coincident with or next following Age 55 and the completion of 10 Years of Service." Section 2.17 provides that Early Retirement Date "shall mean the date on or after his Early Retirement Age on which the Participant elects, pursuant to Section 5.2, to retire from employment and begin receipt of early retirement benefits."

Section 2.28 defines Normal Retirement Age as sixty-five (for all Participants, such as yourself, with at least five Years of Service). Section 2.29 defines Normal Retirement Date as "the first day of the month coincident with or next following the Normal Retirement Age."

Section 5.1 ("Normal Retirement") provides that the monthly normal retirement benefit shall be "Nine dollars (\$9.00) times the Participant's number of Years of Credited Service (not to exceed 35 years)."

Section 5.2 ("Early Retirement") states: "A Participant who has not attained his Normal Retirement Age [65], but has

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attained his Early Retirement Age [55], may elect to retire as of the first day of any calendar month following written notice to the Employer and to the Committee. . . . Such early retirement benefit . . . shall equal his Accrued Benefit as of his Early Retirement Date, reduced by one-thirtieth (1/30) for each of the first five years and one-fifteenth (1/15) for each year thereafter by which his Early Retirement Date precedes Age sixty-five [which amounts to a 50% reduction at age 55]."

Section 5.3 ("Disability Retirement") states: "A vested Participant who has not attained his Normal Retirement Age [65] and suffers Disability may elect Disability retirement under this Section 5.3. A Participant who is on Disability retirement shall continue to receive credit for Years of Credited Service under this Plan for purposes of Section 2.2 [Accrued Benefit], 5.1 [Normal Retirement] and 5.2 [Early Retirement] until the earlier of any subsequent Annuity Start Date and Age sixty-five. . . ."

Discussion

In your appeal, you contended that your Disability Retirement Date should have been July 19, 1994 and that, as a result, you should receive back payments to July 19, 1994. PBGC allowed you to retire effective December 1, 1996 (the first of the month following the date of Plan termination, November 8, 1996), at which point you were only 49 years of age. In accordance with Section 5.2 of the Plan, however, the Board found that you were not entitled to retire (i.e., commence receiving your monthly disability retirement benefit) until April 1, 2002 (the first of the month following your attainment of age 55).

In your appeal, you stated that "[A]ccording to an amended sheet that was with one of our checks, I was to receive \$10 per year, for each year of service." As noted above, however, the Plan document states that the Plan's benefit rate was Nine dollars (\$9.00) times the Participant's Years of Credited Service at Normal Retirement Age (Section 5.1) or at any earlier point at which the accrued benefit was calculated (Section 2.2). Accordingly, the Board found no basis presented in your appeal for changing PBGC's determination that the Plan's benefit rate was \$9.00 per year of Credited Service.

Under Section 5.3 of the Plan you continued to earn Credited Service after you became disabled, but under PBGC's regulations,

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Credited Service ceased at the Date of Plan termination. Thus, PBGC credited you with 18.1667 years of Credited Service from your date of hire, October 17, 1978, through the date of Plan termination, November 8, 1996.

Under Sections 2.2 and 5.3 of the Plan, your monthly Accrued Benefit payable on your normal retirement date, April 1, 2012, is equal to \$163.50 (18.1667 years of Credited Service x \$9.00 Benefit Rate). Under Section 5.2, the monthly benefit payable at your earliest retirement date, April 1, 2002, is equal to \$81.75 (\$163.50 Accrued Benefit x 50% Early Retirement Reduction Factor). In addition, Section 5.2 provides that if you elect to retire between your earliest retirement date and your normal retirement date, your Accrued Benefit will be reduced by one-thirtieth (1/30) for each of the first five years and one-fifteenth (1/15) for each year thereafter by which your Early Retirement Date precedes age 65.

Decision

Based on its review of the Plan's provisions and PBGC's policies, the Board found that since you were placed into pay status prior to your first date of eligibility, you may now elect to be taken out of pay status and to reapply and reenter pay status later or to remain in pay status and to receive a monthly benefit subject to the Plan's early retirement reduction factors applicable as of the effective date of your election. As noted, IOD will contact you directly regarding the election just described. In addition, IOD will contact you with regard to any alternate benefit forms that you may be entitled to elect and with regard to the recoupment of the overpayments that you have received. Please note, however, that recoupment is generally limited to 10% of your future monthly payments

This is the agency's final action regarding the issues raised in your appeal. You may, if you wish, seek court review of this decision. If you need other information from PBGC, please call our Customer Service Center at 1-800-400-7242.

Sincerely,



Michel Louis  
Acting Chair, Appeals Board