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



APR 18 2003

Re: Appeal McLouth Steel Products Corporation
Pension Plan (the "MSPC Plan," Case #: 173584)

Dear

The Appeals Board has reviewed your appeal of PBGC's April 3, 2002 determination that you are not entitled to a disability retirement under the MSPC Plan. As explained below, we changed PBGC's determination by finding you are entitled to Permanent Incapacity Retirement.

Discussion

As I explained to you in my January 10, 2003 letter, MSPC Plan section 2.5 ("Permanent Incapacity Retirement") provides that "any participant who shall have had at least 15 years of continuous service and who shall have become permanently incapacitated shall be eligible to retire on or after November 1, 1989, and shall upon his retirement (hereinafter "permanent incapacity retirement") be eligible for a pension. A participant shall be considered to be permanently incapacitated . . . only (a) if he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type covered by the Basic Agreement, and (b) after such total disability shall have continued for a period of six consecutive months and, in the opinion of a qualified physician, it will be permanent and continuous during the remainder of his life."

PBGC's regulations require that, for a disability benefit to be guaranteeable, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit on or before the earlier of the date the participant's employment ended or the date the plan terminated (see 29 Code of Federal Regulations (CFR) §§4022.3, .4(a)(3)). PBGC's files show that your employment termination date for this purpose is the same as the Plan termination date of August 13, 1996. Based on the information then available to the Appeals Board, you did not show that you met the MSPC Plan's definition of permanent incapacity on or before the Plan termination date.

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To support your claim that you are entitled to a Permanent Incapacity Retirement, you submitted additional information that included, among other items, a copy of your complete medical file from [redacted] of the Detroit Institute of Physical Medicine and Rehabilitation, the specialist to whom you were referred by your primary care physician and who continues to treat you. These records document [redacted] findings from your initial visit (December 2, 1994) through the more than 40 visits that followed (the most recent was February 22, 2003).

The earlier Appeals Board decision relied on [redacted]'s September 24, 1996 letter to McLouth's Supervisor of Employee Benefits concluding that you do "not qualify for permanent incapacity retirement through the description in paragraph 2.5 of the McLouth Steel contract." We have reviewed [redacted] stated basis for this conclusion, in light of new facts in the record and also of somewhat inconsistent statements in the letter itself.

PBGC's files include documents that PBGC's auditors obtained from the prior Plan Administrator after the Plan terminated that show you (1) suffered a work-related injury in late 1993, (2) received Workers' Compensation benefits from December 18, 1993 through June 7, 1994, (3) returned to work for about two months, and (4) went back on Workers' Compensation from August 29, 1994 until May 22, 1995. You then attempted to return to work in a less physically-demanding job as a ladle and pot hauler and were unable to do so successfully. MSPC records show September 30, 1995 as both your "last day worked" and the date on which you returned to Workers' Compensation status. Your January 31, 2003 letter said you continued receiving Workers' Compensation until the McLouth plant closed.

[redacted] letter noted that [redacted] at the Detroit Rehab Center wrote a prescription to modify your work on a permanent basis. In an October 12, 1994 letter, [redacted] after treating you in 1994, limited your lifting to 25 pounds, and occasionally 50. He added that there was "risk of injury without great caution" and that it is "sometimes difficult to exercise this great caution and meet productivity demands." [redacted] reported that you returned to work in 1995 as a ladle and pot hauler "with restrictions," but that employment ended in September and you had not worked since. He also noted the fact, confirmed by documents in the record, that you actively sought this work, even filing a Disabilities Act grievance with McLouth for a job consistent with your disabilities.

[redacted] "Impressions" included findings that your prognosis was "poor" and your "pain behavior is well established." His "Conclusion" was that your original heavy work "would not be realistic." However, he said a modified work description might be developed "which would include no heavy lifting frequently or repetitively over 25 pounds. Then duties could be fulfilled as a ladle and pot hauler." In sum, [redacted] is predicting that your condition will not improve, but you would somehow be able to handle the same job you already tried, and failed, to do in 1995.

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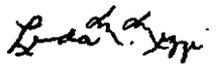
The new documents you submitted show that you have been under continuous medical care for the pain and physical restrictions resulting from your work-related injury. The documents further show that, before the Plan terminated on August 13, 1996, you were unable to engage in any employment of the type covered by the Basic Agreement and that this disability was expected to be permanent and continuous during the remainder of your life. [redacted] report of his most recent examination (February 22, 2003) summarizes your course of care: "The pateint has been under care since 12/94 . . . with the continuing functional limitations preventing his work and work-related activities for which no job was available within his restrictions . . ." Based on this information, the Appeals Board found that you satisfied the Plan's definition of Permanent Incapacity before the Plan termination date and are, therefore, entitled to a Permanent Incapacity Retirement under Plan section 2.5.

Decision

Having applied the law, the provisions of the Plan and PBGC policy to the facts in this case, the Appeals Board found that you are entitled to a Permanent Incapacity Retirement. We will forward a copy of this letter to PBGC's Insurance Operations Department, the organization responsible for determining and paying benefits. They will send you a new determination of your Permanent Incapacity benefit amount and benefit start date, with a new 45-day right of appeal. They will also pay you, in a single lump sum with interest, any underpayments to which you may be entitled.

Meanwhile, if you have any questions, please call PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board