



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

JUL 29 2005

Re: Case 194600, Northwestern Steel & Wire
Company (the "Company") - Pension Plan A (the "Plan")

Dear

The Appeals Board reviewed your appeal of PBGC's July 28, 2004 determination of your benefit from the Plan. For the reasons stated below, the Board found no basis presented in your appeal for changing PBGC's determination. However, because your appeal suggested that you thought you had waived all survivor benefits, the Board decided that PBGC will give you the opportunity, with your spouse's written consent, to waive the Plan's "Free" Surviving Spouse Benefit ("SSB").

Benefit Determination and Appeal

In its letter, PBGC informed you that you are entitled to a PBGC monthly benefit of \$984.41, which is smaller than the \$993.02 estimated monthly benefit you have been receiving. PBGC also informed you that because you have been overpaid, PBGC would reduce your future monthly payments by \$9.94 per month to \$974.47 until the total overpayment has been repaid, without interest. Please note that because the total overpayment has increased during the pendency of your appeal, the monthly recoupment amount will be increased but will not be more than 10% of your PBGC benefit.

PBGC's letter also said that your benefit is paid in the form of a Straight Life Annuity with an SSB. It explained that under this form of benefit, you receive a monthly benefit of \$984.41 for the rest of your life. It also said that if you die first, your eligible surviving spouse would receive \$492.21 per month until she attains age 60, and thereafter, she would receive \$492.21 minus 50% of her Social Security Widow's Benefit or, if larger, \$150 per month.

In your August 22, 2004 appeal, you suggested that your correct monthly benefit should be \$1,051.54 (the product of PBGC's unadjusted 2001 Maximum Guaranteeable Benefit of \$3,392.05 and an early retirement adjustment factor of 0.3100).

Your appeal also stated: (1) you and your wife revoked the

spouse benefit, (2) Company pensions were "never based on age, only years of service", and (3) PBGC is giving some of the pensioners the temporary supplement, but excluding others.

Discussion

1. Background

PBGC provides pension insurance in accordance with 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 and requirements set by Congress under ERISA.

PBGC records show that the Plan terminated on August 28, 2001 and that PBGC became the Plan's trustee on August 31, 2001. The records also show that you quit working for the Company on May 31, 2001, retired on June 1, 2001, and received a Special Pension in lieu of the first three months of retirement benefits.

When the Plan terminated, it did not have sufficient assets to provide all Plan benefits. Therefore, the provisions of the Plan, the provisions of ERISA, and PBGC's regulations determine your benefit entitlement.

Subject to certain limitations, ERISA requires PBGC to guarantee the payment of all basic nonforfeitable benefits under a covered plan that PBGC trustees. PBGC regulations make it clear that most supplemental benefits are not guaranteeable by PBGC because they are in addition to the basic regular monthly annuity payments that retirees receive under pension plans.

2. Your Maximum Guaranteed Benefit

Your PBGC benefit is less than your regular monthly Plan benefit because of the legal limits on guaranteed benefits set by Congress when it enacted ERISA. One of these limits, the Maximum Guaranteeable Benefit ("MGB"), affects your PBGC benefit amount.

For plans that terminated in 2001, the MGB payable in the form of a Straight Life Annuity ("SLA") starting at age 65 cannot be more than \$3,392.05 per month. Because you began receiving your monthly benefit before the Plan's termination date, PBGC must adjust that \$3,392.05 amount to account for your age as of the Plan's termination date (August 28, 2001), and the form of your benefit.

Age Adjustment

PBGC regulations require a reduction of your MGB by 7/12 of 1% for each of the first 60 months, 4/12 of 1% for each of the next 60 months, and 2/12 of 1% for each of the next 120 months by which you were under age 65 as of August 28, 2001. There are 202 complete months between August 28, 2001 and your 65th birthday (July 21, 2018). So, PBGC used an age adjustment factor of 0.3133 [$1 - 60(7/12)(.01) - 60(4/12)(.01) - 82(2/12)(.01)$].

Form Adjustment

Section 4.1 of the Plan's governing document provides a Surviving Spouse's Benefit ("SSB") to participants like you who completed at least 15 years of continuous service and quit working when they were eligible for an immediate pension.

PBGC's determination letter and some of the Plan documents in effect before your retirement referred to the SSB as a "Free Surviving Spouse Benefit" because unlike the Automatic 50% Spouse Option ("A50%SO"), which you chose to revoke with your wife's written consent, your Plan benefit is not reduced to pay for the SSB. Because the Plan did not provide for a reduction in your regular Plan benefit to pay for the SSB, the Plan did not provide any mechanism through which you could have revoked the SSB with or without your spouse's consent.

In your appeal, you said that you and your spouse "signed away the spouse benefit." The Enclosure is a copy of the revocation form that you and your spouse signed. It specifies your estimated benefits under the Plan as of the date you signed the revocation. It clearly shows the estimated guaranteed benefits and the estimated Plan benefits (crossed-out) that would be payable depending upon whether you decided to revoke or not to revoke the A50%SO.

In particular, the Enclosure shows that your estimated guaranteed benefit during your lifetime if you chose to revoke the A50%SO would be \$1,051 per month. It also shows that the estimated SSB would be \$525 per month, resulting in a full survivor benefit of \$525 month if you chose to revoke the A50%SO. Just below the estimated dollar amounts, there is a note that states

"The Surviving Spouse's Benefit assumes the spouse is eligible for such benefit and does not reflect the deduction applicable when the surviving spouse attains eligibility for Social Security widow's or widower's benefit."

This note was the way the Company let you know that the full SSB

amount would be payable only until your spouse's age 60 and that her amount would be reduced by one-half of her Social Security Widow's Benefit after she attains age 60.

It is clear from the above that when you revoked the A50%SO with your wife's written consent, you did not revoke the SSB.

PBGC regulations require a reduction of your MGB for the possibility PBGC would pay additional benefits after you die. Based on actuarial calculations, PBGC determined that your SLA/SSB is equivalent in value to a Joint and 23.94% Survivor Annuity. Based on the ages of you and your spouse as of the Plan's termination date, the PBGC benefit form adjustment factor to convert your benefit from the SLA to the SLA/SSB is 0.9263.

Therefore, your PBGC-guaranteed benefit payable as a SLA/SSB is \$984.41 ($\$3,392.05 \times 0.3133 \times 0.9263$).

2. Your Rule-of-65 Supplement

Before the Plan terminated, the Company found that you were entitled to a Rule-of-65 Retirement. Under Section 3.5 of the 1996 Plan, participants who retire under Rule-of-65 Retirement are entitled to an Increased Pension of \$400.00 per month, payable until the participant dies or becomes eligible for a Public Pension, whichever is earlier. The Plan's Increased Pension is also known as a temporary supplemental benefit.

a. Guaranteeable Supplements

Under PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR §4022.21(a)), PBGC may not guarantee any portion of your supplemental benefit, because to do so would cause your combined benefit (your regular pension plus your supplement) to exceed the monthly benefit you would receive under the Plan at your Normal Retirement Age in the form of a Straight Life Annuity.

In your appeal, you noted that PBGC is paying the temporary supplement to some retirees, while denying it to others. One reason why some participants receive temporary supplements is because section 4022.21(a)(2)(ii) of PBGC's regulation provides an exception. This exception covers participants who became entitled, on or before the Plan's termination date, to an annuity payable under the Plan on account of permanent and total disability. PBGC applied this exception to participants who retired under the Plan's Permanent Incapacity Retirement and to participants who could have retired under the Plan's Permanent Incapacity Retirement but who

chose to retire under Rule-of-65 disability or 70/80 disability. As a result, the Plan supplements payable to these participants with disabilities are guaranteed by PBGC.

b. Nonguaranteed Supplements Payable by PBGC

ERISA section 4044 provides that upon termination of a covered Plan, the assets remaining in the Plan shall be allocated to the value of Plan benefits in six different priority categories. Under an allocation of a plan's assets, it is possible for a participant to receive a benefit (like a temporary supplement) that would not otherwise be payable (i.e., that PBGC would not guarantee out of its own funds).

The first two priority categories pertain to participants in plans with voluntary or mandatory employee contributions and, as a result, are not applicable in this case. Priority Category 3 ("PC3") pertains to participants who retired (or who were eligible to retire and receive an immediate pension) three or more years prior to Plan termination. In this case, many participants became entitled to receive temporary supplements (which would not otherwise have been payable by PBGC) as a result of the allocation of the Plan's assets to PC3 benefits.

Since you did not retire on account of a total and permanent disability and since you were not entitled to a benefit under PC3, neither of the two exceptions discussed above applies to you.

Decision

Having applied Plan provisions, the law, and PBGC rules to the facts of this case, the Appeals Board found no basis presented in your appeal for changing PBGC's determination. However, because your appeal suggested that you thought you had waived all survivor benefits, the Board decided that PBGC will give you the opportunity, with your spouse's written consent, to waive the Plan's SSB.

We will send a copy of this decision to PBGC's Benefits Administration & Payment Department (BAPD), the group responsible for issuing benefit determinations and paying benefits. BAPD will contact you directly regarding what your monthly benefit would be if you choose to waive the Plan's SSB, with your spouse's written consent, and give you the opportunity to waive the SSB if you so desire.

This decision is the agency's final action regarding the issues you raised in your appeal. You may, if you wish, seek court review of this decision. If you need other information from PBGC,

please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script that reads "Michel Louis".

Michel Louis
Appeals Board Member

Enclosure