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MAY 24 2003



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



MAY 24 2003

Re: Appeal Case 194024, Trans World Airlines, Inc.
(TWA) Retirement Plan for Pilots (the Plan)

Dear :

The Appeals Board reviewed your appeal of PBGC's December 31, 2002 determination of your PBGC benefit. For the reasons stated below, the Appeals Board granted your appeal in part by increasing your monthly PBGC benefit payable as a Joint and 50% Survivor Annuity with a Modified Cash Refund (MCRJ&50%SA)¹ from \$1,611.60 to \$1,631.94.

Determination and Appeal

PBGC determined that you were entitled to a PBGC benefit of \$1,611.60 per month payable as an MCRJ&50%SA. PBGC noted that that amount is less than you have been receiving. PBGC included a Benefit Statement, which shows information the former Plan administrator (TWA) used to calculate your Plan benefit. The Statement also shows that PBGC used TWA's Plan benefit amount to calculate your PBGC benefit.

Your April 9, 2003 appeal said that you feel that the final amount should be \$1,827.16 per month. You explained how you believe PBGC should adjust your benefit to reflect the reduction in your benefit due to your Qualified Domestic Relations Order (QDRO) and the application of the maximum guaranteed benefit limit. Our Discussion below addresses this issue, and explains how PBGC calculated your benefit.

Discussion

1. **Background**

After the Plan terminated on January 1, 2001, PBGC personnel

¹ Your MCRJ&50%SA provides a benefit for the rest of your life, and if you die first, your spouse will receive one-half of your benefit amount for the rest of her life. Also, because the Plan's former sponsor made special contributions on your behalf, your beneficiary will receive a benefit if you and your spouse die before you receive pension payments equal to the special contributions balance.

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conducted an audit of the procedures TWA used in administering the Plan and calculating participants' Plan-defined benefits. After calculating benefits for a sampling of participants and comparing the results with the amounts that TWA calculated and stored in TWA's pension database, PBGC auditors concluded that the benefit amounts in TWA's database were reliable. So, for most retirees, and in your case in particular, PBGC accepted TWA's accrued benefit calculations.

In your case, PBGC also accepted TWA's calculations of the benefits payable under your QDRO. PBGC then adjusted your benefit and the alternate payee's benefit to account for limitations on benefits set by Congress under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

2. TWA's calculations

TWA calculated the benefit payable to the alternate payee under the QDRO as follows:

	Step in calculation	Amount
1	Benefit payable at normal retirement date	\$3,170.16
2	Increase for delayed payment of benefit from May 1, 1995 to September 1, 1995	1.0277
3	Adjustment to reflect value of lump sum death benefit from May 1, 1995 to September 1, 1995	\$6.22
4	Total Plan-provided MCR benefit at September 1, 1995 = (Line 1 × Line 2) minus Line 3	\$3,251.75
5	Former spouse's share of Plan-provided benefit = 50% × Line 4	\$1,625.88

TWA calculated your final benefit under the QDRO as follows:

	Step in calculation	Amount
1	Accrued Benefit	\$3,170.16
2	Adjustment Factor for Late Retirement	1.46378
3	Adjustment for post-NRD Insurance	\$65.51
4	Single-life Late Retirement Benefit = (Line 1 × Line 2) minus Line 3	\$4,574.91
5	Benefit Awarded to Former Spouse under QDRO	\$1,625.88
6	Former Spouse's Adjustment Factor from her Actual Retirement Date (ARD) to your ARD	1.331949
7	Benefit Awarded to Former Spouse Adjusted to your ARD = Line 5 × Line 6	\$2,165.59
8	Net Benefit Payable to You at your ARD as a Single-life Annuity = Line 4 - Line 7	\$2,409.32
9	Adjustment for 50% Survivor Benefit	0.8293
10	Benefit Payable to You as a Joint & 50% Survivor Annuity = Line 8 × Line 9	\$1,998.05

Your appeal questioned the amount of the reduction in the late

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retirement actuarial increase to provide for the survivor benefit from your normal retirement date to your actual retirement date. Your appeal suggested that the final reduction amount should be between the adjustment amounts calculated by TWA when TWA estimated your benefits payable if you retired on either your 63rd or your 64th birthday. The insurance charges that TWA estimated for retirement at age 63 and at age 64 were \$42.21 and \$62.20 respectively.

The Appeals Board noted that although your Actual Retirement Date was November 1, 1998 and you elected the Joint and Survivor form of benefit, your benefit was paid in the form of a Single Life benefit due to the operation of Plan section 9.3(A)(1), which provides as follows:

"9.3 Automatic Qualified Joint and Survivor Annuity.

(A)(1) Subject to the provisions of subsection (B), in the case of any married Member retiring at an early, normal or deferred retirement date, or a disability retirement date, the retirement benefit payment shall be a Qualified Joint and Survivor Annuity which shall be the Actuarial Equivalent of a single life annuity benefit otherwise payable under Section 9.2, if, at the time of commencement of such benefits, the Member is married for one year. If he has been married for less than one full year at the date benefits commence, the Qualified Joint and Survivor Annuity option will become effective only after the Member has been married for one year. However, should the Member die due to accidental cause after the commencement of benefits, the Qualified Joint and Survivor Annuity option will become effective on the date of his death." (Underlining added.)

Based on the underlined portion of section 9.3 above, it appears that TWA decided that it should subtract an insurance charge for the accidental death-benefit coverage during your first year of retirement because your spouse would have received a survivor benefit if you had died due to an accidental cause between November 1, 1998 and November 1, 1999.

After reviewing Plan practice with respect to other Plan participants, the Appeals Board noted that TWA charged for death-benefit insurance only after a participant's normal retirement date and before the participant's actual retirement, the latter being the date on which the late retirement actuarial increase is determined. The Board concluded that TWA erroneously charged you for death-benefit insurance after November 1, 1998.

An appeals actuary used TWA's standard insurance charge calculation procedure and recalculated your death benefit insurance cost as of your November 1, 1998 retirement date. The result of that recalculation is an insurance cost of \$55.71. Based on this

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insurance cost, the Appeals Board recalculated your benefit payable under the QDRO using the procedure shown on page 2 of this decision and changed your benefit payable under the QDRO from \$1,998.05 to \$2,006.18.

3. PBGC's calculations

a. The Amount of Your PBGC Benefit If There Were No QDRO

Documents in PBGC files reveal that the Plan did not have sufficient assets when it terminated on January 1, 2001 to provide all benefits that PBGC guarantees under ERISA. As a result, the provisions of the Plan, ERISA, and PBGC's regulations and policies determine the amount of:

- your guaranteed benefit,
- your ERISA § 4044 benefit, and
- your ERISA § 4022(c) benefit.

PBGC determined that if there were no QDRO, your full PBGC benefit payable as a Joint & 50% Survivor Annuity with a Modified Cash Refund (MCRJ&50%SA) would have been \$3,060.17.

In reviewing PBGC's calculation, however, the Board discovered that PBGC used an overstated post-age-65 insurance cost in calculating your §§ 4044 and 4022(c) benefits. Enclosure 1 shows the Appeals Board's recalculation of the monthly amount of your PBGC benefit if there had been no QDRO. Enclosure 1 concludes that if there were no QDRO, your monthly PBGC benefit would be \$3,062.35 payable as an MCRJ&50%SA.

b. The Amount of Your PBGC Benefit Payable under the QDRO

Since your former spouse is receiving part of your benefit, PBGC must divide the PBGC benefit otherwise payable between the benefit you will receive and the benefit your former spouse will receive. The method PBGC uses for plans and QDROs like yours is to determine the percentage of the full Plan benefit that PBGC would provide in the absence of a QDRO and pay you that percentage of your final Plan benefit under the QDRO.

PBGC's Benefit Statement showed that your monthly Plan benefit, if there were no QDRO, would be \$3,793.97 (\$4,574.91 x 0.8293). However, this benefit amount is based on a post-age-60 death-benefit insurance cost of only \$65.51. If there had been no QDRO, on the other hand, the cost of post-age-60 death-benefit coverage would have been greater because no portion of the special employer contributions would have been assigned to your former

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spouse's benefit.

An appeals actuary used TWA's standard insurance charge calculation procedure and recalculated your death benefit insurance cost as of your November 1, 1998 retirement date based on your full contribution balance if no portion had been assigned to the alternate payee under the QDRO. The result of that recalculation is an insurance cost of \$100.90. Based on this insurance cost, the Appeals Board changed PBGC's calculation of your Plan benefit (if there were no QDRO) from \$3,793.97 to \$3,764.62.

So, if there were no QDRO, PBGC would pay you 81.3455% (\$3,062.35 divided by \$3,764.62) of your Plan benefit. Thus, PBGC shall pay you 81.3455% of your Plan benefit under the QDRO. As a result, your final monthly PBGC benefit payable as an MCRJ&50%SA is \$1,631.94 (81.3455% times \$2,006.18).

4. Your Calculation

Your appeal disagrees with PBGC increasing your full plan benefit (that is, before the offset for the QDRO awarded to your previous wife, [redacted]) for late retirement before limiting the benefit to the maximum benefit that PBGC can guarantee. Your appeal, in effect, suggested a different way of "splitting" your PBGC benefit between you and your former spouse.

Please note that section 3 of PBGC's QDRO policy states:

"a. Adjustments to Estimated and Termination Benefit Levels

If the order specifies how PBGC benefit adjustments are to be allocated between the participant and alternate payee, PBGC will follow the order, but only to the extent it allows PBGC to make the required benefit adjustments. If an order provides no guidance, PBGC will adjust benefits as follows:

- (1) If the QDRO awards a specified percentage of the participant's benefit amount or value to the alternate payee, PBGC will proportionally adjust the benefits payable to both the participant and the alternate payee to reflect PBGC's adjustments to the participant's total benefit.

Your QDRO is silent regarding how your PBGC benefit is to be split between you and your former spouse. Therefore, the Appeals Board found that PBGC properly followed established PBGC procedures and policy in adjusting the benefits payable to you and the alternate payee.

Please note that the Appeals Board has no authority to change PBGC policy.

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Decision

Having applied the law and PBGC's rules to the facts in this case, the Appeals Board decided to grant your appeal in part by increasing your monthly PBGC benefit payable as an MCRJ&50%Sa from \$1,611.60 to \$1,631.94.

This is the agency's final decision regarding the issues you raised in your appeal. You may, if you wish, seek court review of this decision.

If you need more information about your benefit, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

Enclosures (2)

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