



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

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[Redacted box]

Re: Appeal No. [Redacted] Trans World Airlines, Inc. (TWA)
Retirement Plan for Pilots (the Plan)

Dear [Redacted]

The Appeals Board reviewed your appeal of PBGC's September 13, 2002 determination of your PBGC benefit. For the reasons stated below, we must deny your appeal.

Determination and Appeal

PBGC determined that you are entitled to a PBGC benefit of \$2,533.45 per month payable as a Joint and 50% Survivor Annuity with a Modified Cash Refund (MCRJ&50%SA).¹ 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 October 15, 2002 form-letter appeal said that (1) PBGC did not provide you with sufficient information on the analysis that underlies the determination, and (2) without such information, it is difficult for you to know whether errors not apparent to you were made: Our *Discussion* below addresses those issues, and the other issues you raised.

Discussion

1. Request for Additional Information

Because your appeal requested more information about your benefit calculation, the Appeals Board sent your request to PBGC's Disclosure Officer and informed you in a letter dated November 29, 2002 that you had the option of supplementing your appeal within 30

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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days after his response. PBGC records show that the Disclosure Officer responded to your request on December 4, 2002 with copies of the documents in your personal PBGC file. One of those documents shows how TWA arrived at your Plan-defined benefit of \$2,533.45. See **Enclosure 1**. We received your December 28, 2002 letter in which you challenged the sufficiency of the Disclosure Officer's response under the Freedom of Information Act (FOIA). We forwarded your request for additional documents under FOIA to PBGC's Office of the General Counsel.

2. Cost of Insurance for Late Retirement

You questioned the cost of insurance for late retirement used in your benefit calculation. You said that (a) this charge was not justified because it was applied two years after your benefit rights vested on January 2, 2001, and you did not have any information on any insurance charges when you applied for retirement; (b) your wife did not sign the Revocation of Waiver that you signed on February 23, 1998, and you were not aware of any insurance charge that was applicable to the Joint and 50% Survivor Annuity; and (c) you should not be penalized for working past age 60.

(a) **INFORMATION ABOUT THE INSURANCE CHARGE WHEN YOU STARTED RECEIVING YOUR BENEFIT.** When PBGC takes over a plan, PBGC continues to pay retirees in pay status at an estimated guaranteed benefit level to prevent hardship to plan participants. In your case, although you applied for retirement effective April 1, 2001, PBGC started paying you an estimated benefit retroactively to the Plan's termination date (January 1, 2001) because your monthly benefit amount was frozen on that date. PBGC started to pay you the \$2,512.50 estimated benefit, with the understanding that once all the participant and Plan information was audited, PBGC would inform you of your final PBGC benefit amount. Please note that when PBGC calculated your final benefit, the amount of the charge was calculated as of January 1, 2001.

(b) **YOUR WAIVER OF COVERAGE, YOUR REVOCATION OF THAT WAIVER, AND NOTICE OF APPLICABILITY OF THE CHARGE TO YOUR BENEFIT AMOUNT.** **Enclosure 2** is a copy of the waiver that you and your spouse signed in 1986. Your spouse's signature was required on the waiver form because by signing it, she gave up her right to a survivor benefit in the event that you died before starting to receive your pension benefit. **Enclosure 3** is a copy of Revocation of Waiver form that you signed in 1998. That form did not require your spouse's signature because, by signing the form, you were electing to give her back her right to receive a benefit if you died before retirement. The right that you restored to her was an insurance right, with its accompanying cost. In fact, the Revocation of

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Waiver form explicitly states:

- (2) my retirement plan benefit, or in the event of my death before retirement, the retirement plan benefit received by my spouse, will be reduced by any applicable protection charge over the period this pre-retirement coverage is in effect.

Thus, the insurance cost is applicable to your benefit in whatever form your benefit is paid and is not related to your selection of a benefit that provides a survivor benefit. Because the Plan and your Revocation of Waiver require a reduction for this protection insurance, the Employee Retirement Income Security Act of 1974, as amended (ERISA) does not allow PBGC to calculate your benefit without applying the charge.

(c) "PENALTY" FOR WORKING PAST AGE 60. Because you quit working for TWA after age 60, PBGC adjusted your benefit to reflect your delayed retirement in two steps, following TWA's established method. First, PBGC calculated a late retirement increase factor (1.3452) using standard actuarial formulas but under the assumption that no benefit would be payable either to your estate or your spouse if you died while actively employed. Second, TWA calculated the value of the benefit that would be paid in the event you died while actively employed, and calculated the annuitized insurance cost (\$74.12 per month) of providing that death-benefit coverage while you were actively employed.

As a result of the two calculations described above, your accrued benefit payable at age 60 was increased for your delayed retirement by a total of \$932.06 (34.52% times \$2,914.77 minus \$74.12). Given that your accrued benefit was increased by \$932.06 to reflect your delayed retirement, the Appeals Board found that you were not "penalized" for working past age 60.

2. Calculation of Your Plan-Defined Benefit and Your PBGC Benefit

After the Plan terminated on January 1, 2001, PBGC personnel 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, in most cases and in your case in particular, PBGC accepted TWA's calculations, and then adjusted them to account for limitations on benefits set by Congress under ERISA.

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

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determine the amount of:

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

Enclosure 4 shows how PBGC calculated these benefit amounts.

3. Federal Litigation

Your form-letter appeal includes claims that are being litigated against PBGC and other parties in two federal courts. The plaintiffs in the court cases allege among other things that the Plan was improperly terminated under ERISA. The form letter says that you are raising these issues in order "to ensure that all my rights with respect to the issues in contention in those litigations are fully preserved."

By way of background, Carl Icahn was the former controlling shareholder of TWA. TWA filed a bankruptcy petition in 1992 in the Bankruptcy Division of United States District Court for the District of Delaware. One of the issues involved in the bankruptcy was the status of TWA's underfunded pension plans, and the extent of Carl Icahn's liability, if any, in the event the plans terminated. Among other things, Mr. Icahn conditioned his willingness to provide TWA with a \$200 million loan (which was necessary for TWA to survive and emerge from bankruptcy) upon some provision that fixed the amount of liability that he might incur towards the pension plan. Throughout these proceedings, the interests of the retired and active pilots were represented by the Air Line Pilots Association (ALPA).

On January 5, 1993, TWA, ALPA (and other unions that represented TWA employees), and PBGC signed a "Comprehensive Settlement Agreement" (CSA) under which: (1) Carl Icahn would loan TWA \$200 million; (2) an Icahn-owned concern called Pichin took over sponsorship of the TWA Pension Plans, and agreed to become responsible for any minimum funding cost of the Plans that were not covered by a \$300 million payment guaranteed by TWA; (3) it was agreed that the Plans would terminate if certain events occurred after 1993; and (4) if the Plans were thereafter terminated by PBGC, it was agreed that Icahn would pay PBGC \$240 million dollars. The Bankruptcy Court approved the CSA, and it was later incorporated in a Plan of Reorganization approved by the Bankruptcy Court. Neither ALPA nor any other party took an appeal from that decision, which became final and binding.

The TWA Pension Plans terminated in 2001. Even though ALPA was one of the parties that negotiated and signed the CSA, it filed

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a suit to stop the termination and void the settlement agreement. Judge Ricardo Urbina of the United States District Court for the District of Columbia dismissed the case on March 29, 2002.¹ Following the merger of TWA and American Airlines, the Allied Pilots Association assumed representation of former TWA pilots and appealed Judge Urbina's ruling to the U.S. Court of Appeals for the D.C. Circuit.

On July 11, 2003, the Court of Appeals issued its decision affirming Judge Urbina's decision. The Court of Appeals held that the termination was lawful under ERISA and that the CSA was a valid exercise of PBGC's statutory settlement authority.²

Between the two decisions, on May 15, 2002, eight former TWA pilots filed another lawsuit challenging the termination, also in Washington, D.C. The judge postponed litigation in the second case until the appeal of the first case was decided. On September 8, 2003, the plaintiffs filed an amended complaint and a request for a writ of mandamus. PBGC's response is due in November 2003.

While your appeal briefly summarizes the claims in these cases, it does not identify any errors in PBGC's determination of your PBGC benefit based on (1) your personal data, (2) the Plan's provisions, or (3) ERISA provisions, given the Plan's actual status as a terminated, PBGC-trusted plan. Please note that the Appeals Board does not have the authority to decide whether the Plan's termination was proper, or to change the termination date. In any event, the Board declines to decide the claims that are in litigation.

Decision

Having applied the law and PBGC's rules to the facts in this case, the Appeals Board decided that we must deny your appeal. This decision is the agency's final action regarding your appeal. You may, if you wish, seek court review of this decision.

PLEASE NOTE that PBGC will always, even after an appeal is closed, consider any new, specific evidence that you present showing you may be entitled to a higher benefit. If you have or obtain any such evidence, please send it to PBGC, Attn: Insurance Operations Department, Trusteeship Processing Division #1, P.O. Box 151750, Alexandria, Virginia 22315-1750. If you need more information about your benefit, please call the Customer Contact

1 A copy of Judge Urbina's decision (<http://www.dcd.uscourts.gov/00-3113.pdf>) is available on the court's website (<http://www.dcd.uscourts.gov/>).

2 The Court of Appeals decision is available on the court's web site at (<http://pacer.cadc.uscourts.gov/docs/common/opinions/200307/02-5144a.pdf>).

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Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script that reads "Michel Louis". The signature is written in dark ink and is positioned below the word "Sincerely,".

Michel Louis
Appeals Board Member

Enclosures (5)