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

Dear [Name],

The Appeals Board reviewed the appeal you filed for [Reason] of PBGC's October 31, 2003 letter, which determined that [Reason] is not entitled to a benefit from the Plan. For the reasons stated below, the Board decided that we must deny the appeal.

**Determination and Appeal**

PBGC determined that [Reason] is not entitled to a survivor benefit under the Plan because she consented in writing to her late husband's waiver of the Plan's Joint and Survivor Annuity, the normal benefit form for married participants.

Your appeal letter claims that PBGC has "chosen to ignore the exhibits which substantiate [Reason] position on this matter, documents such as:

a. September 1, 1991, Retirement Plan Benefit Election Form signed by [Reason] and her deceased husband [Reason], designating her a 50% Joint and Survivorship Annuity


c. September 13, 1991, one has to assume TWA advised [Reason] he needed [Reason] signature so all monetary benefits would go to him and him alone. He [Reason] a folded piece of paper where it clearly stated: 'once your retirement date has occurred, your election cannot be changed', however TWA, once

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1 Although your appeal letter said you were basing your appeal on PBGC's December 15, 2003 letter, that letter was addressed to Senator Dianne Feinstein. PBGC's October 31, 2003 letter to [Reason] was in response to October 15, 2003 letter to PBGC's Executive Director. The content of PBGC's October 31, 2003 letter is essentially the same as that of PBGC's December letter to Senator Feinstein. We note that PBGC's Office of the General Counsel also responded to October 15, 2003 letter in a letter dated February 5, 2004.
again chose to ignore ERISA and accepted and processed form/request.

d. July 26, 1995, through many letters and phone calls, Jan Thompson confirms
in writing to me TWA failed to counsel her regarding her rights under ERISA.
Not only does this violate ERISA, this is one of the main reasons the [Retirement]
Equity Act, as amended, came to pass."

Your appeal letter goes on to say:

"This case is extremely clear! I am sure in your line of work most spouses simply
give up and go away or do not have any documents to substantiate their position.
Please show the respect she has earned, cease and desist from whip
sawing this case in your letters. If was never counseled she would have
no way of knowing her rights, especially when she was a 'stay at home mom.' The
documents presented speak for themselves."

Discussion

1. Annuity Election Form

Pages 1 and 2 of Enclosure 1 are copies of the front and back
of the only annuity election form we found in personal
PBGC file. Although your appeal letter (in paragraph "a") suggested that had "signed" an election form on
September 1, 1991 in which had elected the Joint and
Survivor Annuity, please note that the only place on the form for
signature is on the back of the form. On the back of
the form, she could either consent to waiver of the
Joint and Survivor Annuity form of benefit or consent to the naming
of a beneficiary other than herself. In other words, if had actively elected the Joint and Survivor Annuity on September 1,
1991, there would have been no place on the form for to
sign.

The Appeals Board notes that there may have been some
confusion caused by the layout of the election form. That is, when
TWA sent the form to for his election, the front of the
form showed listed as the "Joint Annuitant" even though
there would be no joint annuitant in the event that elected the Single Life Annuity. We regret any confusion that
TWA's layout of the front page may have caused

It is certainly true that if had not elected to
receive his benefit as a "Single Life Annuity payable for Member's
Life Only" or if had not signed the written consent to
"waiver of the Joint and Survivor Annuity," then the
benefit that would have become payable would have been the Joint
and Survivor Annuity with as the Joint Annuitant.
However, the completed form reveals that [Blank] did elect the Single Life Annuity and [Blank] did consent in writing to waiver of the Joint and Survivor Annuity.

2. The Timing of Waiver and Consent to that Waiver

Items "b" and "c" of your appeal suggest that TWA violated the provisions of the Plan and the Employee Retirement Income Security Act of 1974, as amended (ERISA) when TWA accepted [Blank] election of the Single Life Annuity on September 7, 1991 and [Blank] written consent to [Blank] waiver of the Joint and Survivor Annuity on September 13, 1991 because both events occurred after [Blank] September 1, 1991 "Retirement Date."

ERISA subsection 205(c)(3)(A) provides that: "Each plan shall provide to each participant within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of . . . (i) the terms and conditions of the qualified joint and survivor annuity, (ii) the participant's right to make, and the effect of, an election . . . to waive the joint and survivor annuity form of benefit, (iii) the rights of the participant's spouse . . ., and (iv) the right to make, and the effect of, a revocation of an election. . . ."

The Treasury regulations that were in effect when [Blank] retired provided that: "A plan must provide participants with the written explanation of the QJSA . . . no less than 30 days and no more than 90 days before the annuity starting date. Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date."

The record shows that TWA did not mail the election form to [Blank] until August 20, 1991. It appears that TWA then waited the required 30-day period before starting the payment of [Blank] retirement benefit, thereby allowing him the chance to make his election.

Both [Blank] election and [Blank] written consent to waiver of the Joint and Survivor Annuity were delivered to TWA on September 16, 1991, within that 30-day period. And TWA did not start paying [Blank] his annuity until October 10, 1991, after TWA had received both [Blank] election form and [Blank] consent to [Blank] waiver.

While some plan administrators would have required a participant to return all forms before the effective retirement
date, the Appeals Board found that TWA violated neither ERISA nor the Treasury regulations by making a retroactive payment after receiving the completed election form from

3. **The Consent to Waiver signed by**

   The last item (Item "d") of your appeal suggested that the Retirement Equity Act of 1984, as amended (REA), required that TWA provide the participant with counseling before she consented to waive of the Joint and Survivor Annuity.

   As noted above, however, ERISA, as amended by REA, requires only that a written explanation be provided to the participant. Thus, TWA was under no obligation under ERISA to provide counseling.

   All ERISA required with respect to consented in writing to election of the Single Life Annuity, that the written consent acknowledged the effect of such election, and that it was witnessed "by a plan representative or a notary public." Given that the election form that signed met all the requirements of ERISA, we find no reason in the documents we have before us to find it invalid.

   **Decision**

   Having applied the law and PBGC's rules to the facts in this case, the Appeals Board found that we must deny the appeal.

   This decision is the agency's final action regarding the appeal. has exhausted her administrative remedies with respect to this matter.

   Sincerely,

   Michel Louis
   Appeals Board Member

   Enclosure (2 pages)

   cc: