



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

OCT 28 2004



Re:  Case 194025, Trans World Airlines, Inc.  
(TWA) Retirement Plan for Employees (the Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's February 27, 2004 determination of your PBGC benefit. For the reasons stated below, the Board decided we must deny your appeal.

*Determination and Appeal*

PBGC determined that you were entitled to a PBGC benefit of \$1,108.49 per month, which included:

- \$852.81 per month from the Ozark Air Lines, Inc. (Ozark) Retirement Plan for Aircraft Mechanics Fraternal Association Employees (the Ozark Plan) starting on March 1, 2014 payable as a Five-Year Certain and Continuous Annuity;
- \$55.08 per month from the TWA Retirement Plan for Mechanics and Related Employees, Dining Service Employees and Passenger Service Employees (the Mechanics Plan) starting on March 1, 2014 payable as a Straight Life Annuity (SLA); and
- \$200.60 per month from the TWA Retirement Plan for Non-Contract Employees (the Non-Contract Plan) starting on March 1, 2011) payable as an SLA.

PBGC included Benefit Statements showing data used to calculate your benefits and also showing that PBGC accepted TWA's and Ozark's calculations of your monthly accrued benefits. The Benefit Statements also indicate monthly benefit amounts that would be payable to you at your earliest retirement date.

PBGC's records show that you elected to start receiving your benefit under the Plan effective March 1, 2004 payable as a Joint and 100% Survivor Annuity, which provides a monthly benefit for your lifetime and should you die first, your eligible spouse would receive the same monthly amount for her remaining lifetime. The records show that you are receiving a total monthly benefit of

\$524.30 (\$384.35 under the Ozark Plan; \$24.00 under the Mechanics Plan, and \$115.95 under the Non-Contract Plan).

Your February 28, 2004 e-mail said that your accrued benefit amounts appeared to be correct but that you disagreed with the early retirement reduction factor of 50% that PBGC used to calculate your benefits.

PBGC responded in an April 5, 2004 letter, stating that:

"... Pursuant to Section 4022.4 of PBGC's regulations, entitlement to a benefit is based on the provisions of the plan and the participant's eligibility to receive pension benefits as of the Date of Plan Termination (DOPT).

When your plan terminated on 01/01/2001, you had attained 51 years of age. Once the plan terminates, it is inactive and participants do not earn additional benefits under the plan. This means that participants cannot grow into an unreduced benefit as they get older even if they continue to be employed by the prior plan sponsor. As stated in the preceding paragraph, the PBGC pays benefits based on a participant's eligibility to receive them when the plan terminates...."

Your April 30, 2004 e-mail appeal claimed that:

"... Nowhere in our plan or PBGC regulations do you have carte blanche to group me with employees who terminate their employment before DOPT and appropriate my early retirement benefit under Article 4.4(a). Article 4.4(a), where you calculated my benefit, specifically pertains to employees who terminate (quit, resign, end, break off, discontinue) their employment after at least five years of service under their own volition and are therefore guaranteed a deferred vested retirement. ... "

### *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.

Records available to the Appeals Board reveal that the Ozark Plan merged into the Mechanics Plan after TWA purchased Ozark Air Lines in 1986, and that the Mechanics Plan and the Non-Contract Plan merged into the TWA Retirement Plan for Employees (the Plan) in 1988. PBGC records show that the Plan terminated on January 1, 2001 and that PBGC became the Plan's trustee on January 2, 2001. The records also indicate that you were actively employed by TWA

when the Plan terminated.

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.

Section 4022(a) of ERISA provides that, subject to certain limitations, PBGC will guarantee the payment of all nonforfeitable benefits under a covered plan that terminates. ERISA § 4001(a)(8) defines a "nonforfeitable benefit" as ". . . a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of [ERISA].".

PBGC regulations make it clear that a guaranteed benefit must be nonforfeitable on the participant's employment termination date or on the plan's termination date, whichever date is earlier. Specifically, 29 Code of Federal Regulations 4022.4 provides as follows:

"§ 4022.4 Entitlement to a benefit.

- (a) **A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:**
- (1) The benefit was in pay status on the date of the termination of the plan.
  - (2) A benefit payable at normal retirement age is an optional form of payment to the benefit otherwise payable at such age and the participant elected the benefit before the termination date of the plan.
  - (3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date (or **on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die**) **the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit** prior to such date (**prior to or on such date**, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or
  - (4) Absent an election by the participant, the benefit would be payable upon retirement. . . ." (Boldface added.)

2. Your Ozark Plan Benefit

Ozark Plan section 4.3 (see page 1 of **Enclosure 1**) specifically provides:

**"Special Early Retirement: Any Member who is terminating employment with the Company after attaining his 55<sup>th</sup> birthday and fulfills the requirements of the 'Rule of 85' ...shall receive monthly retirement benefits commencing at an Early Retirement Date which shall be the first day of the month coincident with or subsequent to such Member's date of termination of employment."**  
(Boldface added.)

Because you had not yet attained age 55 as of January 1, 2001, you could not have terminated employment at that time with eligibility for Special Early Retirement under Ozark Plan section 4.3. Thus, you did not satisfy the Ozark Plan's conditions for entitlement to Special Early Retirement under Ozark Plan section 4.3 on or before the termination date. So, ERISA and PBGC regulations do not allow PBGC to guarantee a Special Early Retirement benefit under Ozark Plan section 4.3 for you.

Please note that the Appeals Board is without authority to change the provisions of the Plan, ERISA, or PBGC regulations.

Instead of being entitled to a Special Early Retirement benefit under Ozark Plan section 4.3, you are entitled to "a vested Monthly retirement benefit" under Ozark Plan section 8.1 (see **Enclosure 2**). Section 8.1 states that your "vested Monthly retirement benefit" is payable "beginning on (your) Normal Retirement Date or an Early Retirement Date, determined in accordance with Section 4.1 or 4.4." So, because you elected to start receiving your benefit on an Early Retirement Date, PBGC calculated your benefit in accordance with section 4.4.

Ozark Plan section 4.4 (see page 2 of **Enclosure 1**) states that your benefit must be "reduced by 5/12 of 1% for each month by which (your) Early Retirement Date precedes (your) Normal Retirement Date." Ozark Plan section 4.1 (see page 1 of **Enclosure 1**) defines your Normal Retirement Date as "the first day of the month coinciding with or next following (your) 65<sup>th</sup> birthday." So, because there are 120 months between your Actual Retirement Date (March 1, 2004) and your Normal Retirement Date (March 1, 2014), the Ozark Plan requires a reduction of 50% ( $120 \times 5/12 \times 1\%$ ) for early commencement. The Appeals Board is without authority to change the provisions of the Ozark Plan with respect to this required reduction.

### 3. Your Mechanics Plan Benefit

Mechanics Plan section 4.2(a) (see page 1 of **Enclosure 3**) specifically provides:

"Eligibility: A Participant shall be eligible to receive an early retirement benefit under the Plan ... upon termination of his employment because of his retirement after he has attained his fifty-fifth birthday and ... after he has at least ten Years of Service."  
(Boldface added.)

Because you had not yet attained age 55 as of January 1, 2001, you could not have terminated your employment at that time with eligibility for early retirement under Mechanics Plan section 4.2. Thus, you did not satisfy the Mechanics Plan's conditions for entitlement to early retirement from active service under Mechanics Plan section 4.2 on or before the termination date. So, ERISA and PBGC regulations do not allow PBGC to guarantee an early retirement benefit under Mechanics Plan section 4.2 for you.

Instead of being entitled to an early retirement benefit under Mechanics Plan section 4.2, you are entitled to a deferred vested benefit under Mechanics Plan section 4.4 (see **Enclosure 4**) because you had more than five years of vesting service when the Plan terminated on January 1, 2001. Section 4.4(a)(2) shows that you are entitled to start receiving your deferred vested benefit before age 65, but that the monthly amount is reduced by 5% for each year that your age at benefit commencement is less than 65.

So, because you elected to start receiving your benefit at age 55, Mechanics Plan section 4.4(a)(2) requires a reduction of 50% (10 x 5%) for early commencement. The Appeals Board is without authority to change the provisions of the Mechanics Plan with respect to this required reduction.

#### 4. Your Non-Contract Plan Benefit

Unlike the Ozark Plan and the Mechanics Plan, the Non-Contract Plan did not provide special early retirement benefits for participants who continued in active service under the Non-Contract Plan until age 55. Thus, even though Non-Contract Plan section 3.1 states that the Normal Retirement Age is the 65<sup>th</sup> birthday, Non-Contract Plan section 5.1 states that any vested Member is entitled to a benefit in accordance with the provisions of Article 4 and Article 4 provides for a benefit that is unreduced at age 62.

Non-Contract Plan section 4.3 (see **Enclosure 5**) specifically provides:

**"Retirement Income at Early or Disability Retirement Date.** A Member who retires after January 1, 1984 on an Early Retirement Date or a Disability Retirement Date **or whose Service otherwise terminates** on or after December 31, 1983 may, at his election, receive the benefit provided under subsection (a) or (b) below. . ."  
(Boldface added.)

Thus, because you were fully vested in your accrued benefit as of January 1, 2001 under Non-Contract Plan section 5.1 (see **Enclosure 6**), you are entitled to a benefit calculated in accordance with Non-Contract Plan section 4.3 after attainment of age 55. Because you chose to start receiving your benefit before age 62, PBGC reduced your Non-Contract Plan benefit by 35% ( $84 \times 5/12 \times 1\%$ ) for early commencement. Your appeal did not challenge your early commencement adjustment factor under the Non-Contract Plan.

5. Your Guaranteed Benefit versus Your Plan Benefit

A benefit of \$55.08 per month starting before age 65 is more valuable than a benefit of \$55.08 per month starting at age 65. The additional value is commonly called an early retirement subsidy. Mechanics Plan section 4.2 provides for such an early retirement subsidy, as do Ozark Plan section 4.3 and Non-Contract Plan section 4.3. As explained above, PBGC guarantees only those subsidies for which participants had satisfied the age-and-service eligibility requirements on or before the Plan's termination date.

As you noted in your appeal, the Mechanics Plan does not refer to a Plan termination date when stating the requirements for early retirement under Mechanics Plan section 4.2. Instead, Article 10 of the Mechanics Plan explains what happens upon termination of the Mechanics Plan. See **Enclosure 7**. Mechanics Plan section 10.2 states that upon "termination, the Plan assets shall be allocated in accordance with Section 4044 of ERISA and applicable regulations thereunder to provide benefits to Participants and their beneficiaries . . ."

PBGC could pay you a benefit under ERISA § 4044 or ERISA § 4022(c) in addition to your guaranteed benefit if you earned an early retirement subsidy through employment with TWA after the Plan's termination date and if the allocation of the Plan's assets or the Plan's § 4022(c) amount resulted in benefits payable by PBGC in Category 6. **Enclosure 8**, which is a standard PBGC information sheet, describes the ERISA-mandated priority categories that PBGC uses to allocate a plan's assets and § 4022(c) amount.

Our review of PBGC's actuarial valuation reveals that the Plan's assets and § 4022(c) amount were sufficient to pay for only a portion of the Plan's benefits in Category 5, and thus, there was no Plan money left over to pay for benefits in Category 6. So, regardless of whether you terminated employment while TWA was still a going concern, there is not sufficient Plan money to pay you any

portion of the subsidy you may have earned after the Plan terminated.

With respect to your suggestion that you "can grow into an unreduced (from 50% to 100% benefit) by 5% per year until age 65 (age 62 under the TWA non-contract Plan)," the difference lies in PBGC's specialized use of the words "grow into." According to PBGC usage, one can sometimes "grow into" a subsidized early retirement benefit by meeting the minimum qualification requirements for that type of benefit based on service after a plan's termination date. In your case, you could not "grow into" a subsidized early retirement benefit under the Plan mainly because there was insufficient Plan money to pay for such a subsidy. In other words, even if you did "grow into" eligibility based on post-Plan termination service with TWA past your 55<sup>th</sup> birthday, you would not receive any additional benefit from PBGC because there is no Plan money to pay for the subsidy that that eligibility would entail.

As your appeal stated, you could have waited until age 65 before receiving your benefit and your benefit would have been unreduced for early commencement. Waiting until age 65 before receiving your benefit is not the same as "growing into" an unreduced benefit because no subsidy is gained by doing so. That is, whether you elect to receive your benefit starting at age 55 or at age 65 makes little difference because the benefit payable at age 55 under Mechanics Plan section 4.4 is generally the actuarial equivalent of the benefit that would be payable if you waited until age 65 to start receiving your benefit.

#### *Decision*

Applying Plan provisions, the law and PBGC's rules to the facts in this case, the Appeals Board 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.

If you need more information about your benefit, please call PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,



Michel Louis  
Appeals Board Member

Enclosures (8)