



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

June 20, 2011



Re: Appeal (PBGC Case No: 203332), Retirement Plan for Certain Employees of US Airways, Inc. (the "CE Plan" or the "Plan")

Dear

We are responding to your appeal of PBGC's July 9, 2010 determination advising you that, according to your Plan provisions, you cannot continue to work for US Airways and collect pension payments unless you have reached the normal retirement age. As explained below, we found no basis for changing PBGC's determination. We must, therefore, deny your appeal.

Background, PBGC's Benefit Determination and Your Appeal

On February 14, 2005, PBGC sent you a letter providing information about PBGC and the CE Plan. The letter stated, in part, that you may not receive benefits from the CE Plan if you are still working for US Airways unless you have reached the normal retirement age under the Plan. On May 11, 2005, you submitted a General Information Form stating you were currently employed by US Airways in Buffalo, New York.

On November 19, 2008, PBGC sent you a letter with a benefit estimate. PBGC's letter explained that if you are currently employed by US Airways or its subsidiaries or if you are receiving Long Term Disability benefits, you may not receive pension benefits unless you have reached the normal retirement age under the Plan.

On July 21, 2009, PBGC sent you a benefit determination letter stating that that you are entitled to a monthly benefit of \$1,035.57, paid as a Straight Life Annuity with No Survivor Benefits based on a benefit start date of 2019 (age 65). The Benefit Statement, which accompanied the determination letter, states your earliest PBGC allowable retirement date is July 1, 2009, with a reduced benefit, and 2016 (age 62) with an unreduced benefit. You did not appeal the July 21, 2009 determination.

On April 9, 2010, you and two of your colleagues wrote to PBGC stating that you believe the company that turned over your pension to the PBGC (US Airways, Inc.) no longer exists. Instead, you believe you work for a new company, "thus voiding the necessity to retire before receiving benefits."

On May 5, 2010, PBGC sent a letter to you with a Participant Application for Pension Benefits and a Benefit Statement showing how your PBGC benefit was calculated. The letter reiterated that if you are currently employed by US Airways or its subsidiaries or if you are receiving Long Term Disability benefits, you may not receive pension benefits from the Plan unless you have reached the normal retirement age under the Plan.

On May 26, 2010, you wrote to PBGC asserting that US Airways ceased to exist on January 17, 2005, the date the CE Plan terminated, and that US Airways' assets, including their name, was purchased and used by the buyer for recognition purposes. You further stated that some US Airways management employees who applied for and received benefits under the CE Plan after being terminated from employment were continuing to receive benefits after becoming re-employed by US Airways. You also note that PBGC's benefit statement shows your date of termination from US Airways as [] 2005. You assert your retirement date is [] 2005 and that you currently work for a different company that purchased US Airways' name.

On June 2, 2010, you submitted an application to start your benefit payments in May 2010. On the application, you again state you are currently employed by US Airways in Buffalo, New York. On June 4, 2010, PBGC sent a letter to you noting that your application shows you are still employed with U.S. Airways. PBGC's letter stated that according to Plan provisions you cannot work and collect pension benefits unless you have reached the normal retirement age. PBGC's letter further stated, "In order to process your request, please send us written confirmation, preferably from U.S. Airways with your date of termination of employment. If you cannot provide a document from U.S. Airways, then a signed and dated document from you stating your date of termination from U.S. Airways will be acceptable."

On July 6, 2010 (postmark date), you submitted a letter asking PBGC to either accept or deny your application so that you could appeal PBGC's determination that your current employment at US Airways prevents you from receiving benefits under the CE Plan until you either terminate your employment or reach your normal retirement age.

On July 9, 2010, PBGC sent a determination letter to you stating that you must terminate your employment with U.S. Airways or reach your normal retirement age before you can begin receiving a PBGC benefit from the CE Plan. The July 9, 2010 letter advised you that if you wish to collect a benefit from PBGC before you have reached the Normal Retirement Age of 65 you must submit a letter of termination, preferably from U.S. Airways, with your date of termination of employment. With the letter, PBGC enclosed a brochure titled "Your Right to Appeal," explaining PBGC's appeal process.

The Appeals Board accepted your July 6, 2010 letter as a timely filed appeal of PBGC's determination that you are not eligible to receive benefits under the CE Plan as long as you continue to work for U.S. Airways, Inc.

On September 20 and 26, 2010, and on January 3 and 7, 2011, you submitted additional information and documents in support of your appeal. You believe you should be allowed to receive retirement benefits while employed by US Airways. You assert that: (1) the merger between US Airways Group, Inc. and America West Holdings Corporation was actually a purchase of US Airways by America West; (2) even if the transaction was a merger, it resulted in the creation of a new and different company in place of your pre-merger employer, US Airways Inc; and (3) the merger agreement states that America West Holding Corporation will be the survivor corporation.

Discussion

PBGC is the United States government agency that insures pensions in accordance with Title IV of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 United States Code ("U.S.C.") 1301-1461. If a plan sponsor is unable to support its defined benefit pension plan, PBGC becomes the trustee of the plan and pays guaranteed pension benefits according to the plan provisions and as required by law, subject to legal limits set by Congress under ERISA.

The CE Plan terminated on January 17, 2005, without sufficient assets to provide all benefits under the Plan. When PBGC becomes trustee of a terminated plan, PBGC collects participant information and copies of the plan's governing documents from the Plan's former administrator and audits that data. PBGC necessarily relies on the data it receives from a former plan administrator unless (1) PBGC's audit of that data shows that it is wrong; or (2) a participant supplies PBGC with documents showing that the data is wrong.

The records PBGC's auditors obtained from US Airways show that you were born on [redacted] your employment with US Airways, Inc. began [redacted] 1978, and you were actively employed with US Airways, Inc. when the CE Plan terminated on January 17, 2005.

In a letter dated May 26, 2010, you note that your PBGC benefit estimate shows your date of termination of employment with US Airways, Inc. as January [redacted] 2005, the date the CE Plan terminated. When a plan terminates, service accrual for pension purposes ceases at the earlier of the date of termination of employment and the date of Plan termination. In your case, the earlier date is the date the CE Plan terminated. Unfortunately, PBGC does not always make this distinction clear in its correspondence to participants. PBGC clarified your date of termination by its entry on page 4 of your June 24, 2009 Benefit Statement showing your date of termination of employment as "Actively Employed at Date of Plan Termination." You have remained continuously employed with US Airways, Inc.

CE Plan Provisions

As noted above, when PBGC becomes the trustee of a plan, PBGC pays guaranteed pension benefits according to the plan provisions and as required by law. The Plan document that applies to you is the Third Amendment to the Retirement Plan For Certain Employees of USAIR, Inc. as amended and restated effective January 1, 1994. Enclosure 1 is a copy of relevant Plan provisions.

The possible retirement options under the CE Plan include Normal Retirement under Plan Section 4; Early and Late Retirement under Plan Section 5; and Termination of Employment and Vested Retirement Income under Plan Section 6. To qualify for a Normal, Early or Late Retirement a participant must retire from the employ of the Employer. To qualify for a Termination of Employment and Vested Retirement Income benefit under Plan Section 6 a participant must have terminated employment with the Employer.

Plan section 2.1 (M) of the Third Amendment to the CE Plan defines Employer as

US Airways, Inc., a Delaware corporation, its corporate successors, and the surviving corporation resulting from any merger or consolidation of US Airways, Inc. with any other corporation, and any other member of the controlled group of corporations.

which has adopted the Plan by appropriate written instrument executed pursuant to the authority of its board of directors.

Thus, under the terms of the CE Plan, a participant is not eligible to receive a pension benefit prior to his normal retirement date if the participant is employed by US Airways, Inc., its corporate successors or a surviving corporation resulting from any merger or consolidation of US Airways, Inc. with any other corporation. A participant's normal retirement date under the Plan is the first of the month coincident with or next following the participant's 65 birthday. You have not yet attained age 65. Thus, if the CE Plan had not terminated, you would not be eligible to begin receiving Plan benefits while employed by US Airways, Inc.

*The Merger of US Airways Group, Inc. with America West Holdings Corporation
Did Not Result in a Change of Your Employer*

You assert that following the merger of US Airways Group, Inc. and America West Holdings Corporation, your employer, US Airways, Inc. was a "new company." You further assert that as you work for a "new company" you should be eligible to receive benefits while still employed by US Airways, Inc. US Airways, Inc. underwent changes as a result of a Chapter 11 reorganization. As explained below, however, the Board finds that your employer, US Airways, Inc., did not become a new company (or a new Employer under the Plan) as a result of the merger of US Airways Group, Inc. and America West Holdings Corporation. Instead, your current employer, US Airways, Inc. is the same employer who employed you when your Plan terminated.

For purposes of this decision, the entities involved in the merger transaction are defined as follows:

- US Airways Group, Inc.: ("US Airways Group") the parent company of US Airways, Inc.
- US Airways, Inc.: ("US Airways") a certificated air carrier and US Airways Group's principal operating subsidiary.
- Barbell Acquisition Corporation: ("Barbell") a subsidiary holding group created by US Airways Group to effectuate a merger with America West Holdings Corporation.
- America West Holdings Corporation: ("America West Holdings") the parent company of America West Airlines, Inc.
- America West Airlines, Inc: ("AWA") a certificated air carrier and America West Holdings Corporation's principal operating subsidiary.

On September 12, 2004, US Airways Group and its domestic subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code. As part of the reorganization, US Airways Group reduced labor, pension and benefit costs and other operating expenses of US Airways. US Airways Group also entered into agreements with new equity investors for contributions totaling approximately \$500 million to the reorganized US Airways Group and announced a planned merger between US Airways Group and America West Holdings.

On May 19, 2005, US Airways Group entered into an agreement and plan of merger with America West Holdings.¹ To accomplish the merger, US Airways Group created a wholly-owned subsidiary, Barbell Acquisition Corporation. US Airways Group then merged Barbell into America West Holdings by exchanging all of the shares of Barbell (which were shares of US Airways Group) for all of the shares of America West Holdings. The stock of America West Holdings was then cancelled, and any holder of that stock before the transaction received a pro rata amount of US Airways Group stock. To complete the transaction, Barbell's corporate identity was extinguished and America West Holdings became a wholly-owned subsidiary of US Airways Group.² The merger transaction cannot be characterized as an asset purchase by America West Holdings. Charts of the pre-merger and post-merger corporate structures are at Enclosure 3.

US Airways, the company that employed you, was a wholly-owned subsidiary of US Air Group before and after the merger. Following the merger, US Airways continued to exist as a separate corporate entity and remained a certificated air carrier and subsidiary of US Airways Group. AWA was a wholly owned subsidiary of America West Holdings before and after the merger. US Airways and AWA both continued operating after the merger of their respective parent companies. You correctly note that the merger agreement filed with the SEC states that after Barbell Acquisition Corporation and America West Holdings merged, Barbell's corporate existence ceased and America West Holding will be the survivor corporation. This fact does not impact the corporate identity of your employer, US Airways Inc.

For a period of time after the merger, US Airways and AWA each operated as a certificated air carrier. On September 25, 2007, AWA surrendered its Federal Aviation Administration ("FAA") operating certificate and all mainline airline operations were subsequently conducted under US Airways' FAA operating certificate.³ AWA transferred substantially all of its assets and liabilities to US Airways. US Airways Group contributed 100% of its equity interest in America West Holdings to US Airways. As a result of the transfer, America West Holdings and AWA became wholly-owned subsidiaries of US Airways. You remained employed with US Airways throughout these transactions. The transactions did not result in your being employed by a different employer.

In the supplemental material you submitted you assert the transaction between US Airways and America West should be characterized as an asset purchase. As already discussed, the Board disagrees with your assertion. As established by the SEC filings, including the Agreement and Plan of Merger, the transaction between US Airways Group and America West Holdings was a merger. America West Holdings was treated as the acquiring company in the merger for accounting purposes only.⁴ The Board concludes that based on all of the evidence presented, you have remained employed with US Airways, Inc., the Employer as defined by the Plan.

¹ A copy of Articles I and II of the "Agreement and Plan of Merger among US Airways Group, Inc., America West Holdings Corporation and Barbell Acquisition Corp. Dated as of May 19, 2005" is at Enclosure 2.

² US Airways Group, Inc, American West Airlines, Inc and US Airways, Inc. Form 10-K for the fiscal year ended December 31, 2006.

³ US Airways Group, Inc and US Airways, Inc. Form 10-K for the fiscal year ended December 31, 2007, relevant portions of which are at Enclosure 4.

⁴ US Airways Group, Inc. Prospectus dated September 27, 2005.

*You are Not Currently Eligible for PBGC Benefits Under the CE Plan
While Maintaining Your Employment with U.S. Airways*

In your appeal you assert you are eligible for PBGC benefits under the CE Plan based upon PBGC's policy on working retirement. PBGC's policy "5.2-2 Working Retirement" distinguishes between Normal Retirement Benefits and Early Retirement Benefits.⁵ Under Section 5.2-2 (C), "Eligibility for Normal Retirement Benefits," PBGC will pay normal retirement benefits to a participant who continues to work for the DoPT employer with benefits becoming payable beginning on or after the participant's normal retirement date as defined by plan provisions and in accordance with PBGC policy on annuity starting dates. In addition, PBGC will not suspend benefit payments to a retiree who is reemployed by the DoPT employer on or after his or her normal retirement date. Thus, under PBGC policy, you will become eligible for benefits on or after your normal retirement date as defined by CE Plan provisions.

As previously noted, under the CE Plan, a participant's normal retirement date is the first of the month coincident with or next following the participant's 65th birthday. You will reach age 65 on [redacted] 2019. You will, therefore, become eligible for Plan benefits under section 5.2 -2 (C) on or after [redacted] 2019, even if you are still employed by US Airways.

Under Section 5.2-2 (D), Eligibility for Early Retirement Benefits, PBGC will pay early retirement benefits to a participant only if the participant permanently leaves the employment of the DoPT employer before his or her annuity starting date, except as otherwise provided in policy 5.2-2 Working Retirement.⁶

PBGC's policy 5.2-2 Working Retirement provides that certain business transactions may affect whether an entity employing plan participants is considered the DoPT employer. These transactions may include asset sales, stock sales, mergers or other corporate transactions. Policy 5.2-2 provides that PBGC "will make a facts and circumstances determination regarding payment of early retirement benefits as a result of the above and other transactions (e.g., mergers, formation of joint ventures or limited partnerships, etc.) in which it may not be obvious whether the entity for which participants work continues to be the DoPT employer."

The transaction between US Airways Group and America West Holdings was a merger, not an asset sale. PBGC determined that, under the facts and circumstances presented, you may not begin receiving PBGC payment of early retirement benefits under the CE Plan while employed with US Airways. PBGC further determined you may begin receiving benefits under the Plan if you terminate your employment with US Airways or when you reach your normal retirement age. The Board finds that PBGC's determination is correct.

In your appeal you referred to other participants who retired under the CE Plan before the Plan terminated and who you believe continue to receive PBGC benefits although re-employed by US Airways. Under the Privacy Act, we are not able to comment on benefits paid to or received by other individual participants. Based on our review of the CE Plan, however, PBGC has consistently

⁵ A copy of relevant portions of PBGC's policy "5.2-2 Working Retirement" is at Enclosure 5.

⁶ The DoPT employer is the employer that sponsored the pension plan as of the Date of Plan Termination, including any member of the plan sponsor's controlled group, as determined by PBGC.

determined that CE Plan participants who remained continuously employed with US Airways cannot continue to work for US Airways and collect pension payments unless the participant has reached the normal retirement date under the Plan. PBGC's determinations in the CE Plan are consistent with PBGC's determinations in the US Airways IAM Plan and the Pilots Plan. In both the IAM and Pilots plans, PBGC determined that the merger did not cause employees of US Airways to experience a termination of service with their DoPT employer. Accordingly, plan participants are not entitled to collect their pensions simply as a result of the merger.

Decision

Applying the law, PBGC's regulations, and the CE Plan provisions to the facts in your case, we found no basis for changing PBGC's July 9, 2010 determination that you cannot continue to work for US Airways and collect pension payments unless you have reached the Plan's normal retirement age. Thus, we are denying your appeal. This decision is PBGC's final action regarding your appeal. You may, if you wish, seek review of this decision in an appropriate Federal District Court.

If you have other questions about your PBGC benefit, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the CE Plan.

Sincerely,



Virginia Robinson
Appeals Board Member

