

REC'D - 8-12-03 - 4026-B

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

MAR 17 2004



Re: Case 017852, Washburn Wire Company New York
Hourly Pension Plan

Dear

The Appeals Board reviewed your appeal of PBGC's August 7, 2003 determination that you are not entitled to a PBGC-guaranteed benefit under the Washburn Wire Plan and found no basis for changing the determination. However, as explained below, the Board found that you may be entitled to a benefit as a result of the settlement of a class action lawsuit.

PBGC's August 7, 2003 letter said that (1) you accrued 12.25 years of vesting service under the Plan from January 1, 1963, to April 1, 1975, (2) you had a break in service of over one year which cancelled your previous service, and (3) you had an additional month of service in 1976. PBGC also said that a participant needed 15 years of Vesting Service under the 1972 Plan and 10 years of Vesting Service under the 1976 Plan to be eligible for a retirement benefit. Your September 4, 2003 appeal said that you worked for the Company from 1963 to 1976 and did not have 15 years of service because you were "let go due to job loss."

Plan Provisions

The provisions of the July 31, 1972 Plan document were in effect during 1975. Under paragraph 2.6 of the 1972 Plan, a Participant "whose continuous service is broken on or after July 31, 1972 for any reason other than discharge and who, at the time of such break in continuous service shall have had at least 15 years of continuous service and shall have attained the age of 40 years shall be eligible for a [deferred vested] pension." Although PBGC's August 7, 2003 determination referred only to the 15-year service requirement, you could not have satisfied the age-40 requirement until January 6, 1978, after your employment with Washburn ended.

Continuous service under the 1972 Plan is calculated from a participant's last hiring date or, in the case of a break in continuous service, the date of reemployment. According to paragraph 5.1(a):

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There shall no deduction for any time lost which does not constitute a break in continuous service, except that in determining length of continuous service for pension purposes that portion of any absence which continues beyond two years from commencement of absence due to a layoff or physical disability, shall not be creditable as continuous service . . .

Paragraph 5.1(b) provides, generally, that continuous service is broken by quit, discharge, termination, and an "absence which continues for more than 2 years . . ."

The Plan in effect during 1976 was the restated and amended Plan that became effective January 1, 1976 and which PBGC determined was adopted on October 29, 1976, just before the Plan's termination date. This 1976 Plan, adopted to meet the minimum requirements established by the Employee Retirement Income Security Act (ERISA), reduced the vesting requirement from 15 years and age 40 to 10 years with no age requirement. The 1976 Plan, like the 1972 Plan, provided for accrual of vesting service for two years after a layoff.

Your Employment History

After you contacted PBGC to request a benefit, PBGC examined Plan records obtained after the Plan terminated and found no records or other information to show you were a Plan participant. PBGC then sent you a *Plan Participation Information* form on which you said (1) you were born [redacted] (2) you worked as an hourly employee for Washburn Wire in Manhattan, New York, from January, 1963 to 1976; (3) you were a member of AFL-CIO Local 2063; and (4) your employment ended because of the plant's bankruptcy. You also submitted copies of eight weekly Washburn pay stubs for the seven consecutive pay periods beginning February 1, 1975 and ending March 15, 1975, and for the pay period ending May 29, 1976.

With your permission, PBGC obtained your Social Security earnings history for the years 1963 through 1976. The Social Security data (copy enclosed) show earnings from Washburn from the first quarter of 1963 through the first quarter of 1975, and again in the second quarter of 1976. PBGC used this data in making its August 7, 2003 determination that you (1) earned 12.25 years of credited service through April 1, 1975, (2) had a break in service after that date which caused you to forfeit your prior service, and (3) earned only one month of credited service after you were rehired in 1976. Because of the 1975 break in service, PBGC concluded that you had not satisfied the 15-year/age-40 requirement for vesting in effect at that time under the 1972 Plan, nor did you satisfy the 10-year vesting requirement under the 1976 Plan in effect when you were rehired.

In a February 12, 2004 telephone conversation with the analyst assigned to look into your appeal, you indicated that you were laid off in 1975 and recalled in 1976. You also said that in all your employment at Washburn you had never quit, been discharged or been terminated. You said that these events occurred almost 30 years ago and that you no longer have any documents regarding them. The Appeals Board found these statements, your Social Security earnings history

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and the payroll stubs you submitted consistent with PBGC's determination that you earned 12.25 years of credited service through the first quarter of 1975. The Board further found this information consistent with your being laid off (rather than terminated) in 1975 and recalled (rather than reemployed) for a short period in the second quarter of 1976.

Because the Appeals Board found that your absence beginning in 1975 was due to a layoff and that your 1976 recall occurred within two years of the layoff, we further found that you did not have a break in service under paragraph 5.1 of the 1972 Plan. Thus, when your employment at Washburn ended, you had more than 10 years of continuous service and satisfied the 1976 Plan's newly-established, more liberal 10-year vesting provision. However, as described in the next section, PBGC does not guarantee that vested benefit because your entitlement to it resulted from an amendment to the Plan adopted less than 12 months before the Plan's termination date.

Phase-In of PBGC's Guarantee of Benefit Increases

When the Washburn Wire Plan terminated, effective October 31, 1976, its assets were not sufficient to provide all benefits PBGC guarantees under Title IV of ERISA. For a benefit to be guaranteeable, PBGC's regulations require that a participant satisfy the conditions of the plan necessary to establish the right to receive the benefit before the earlier of the date the participant's employment ended or the date the plan terminated (29 Code of Federal Regulations (CFR) Part 4022.4(a)). Because of legal limitations under ERISA and PBGC's regulations, the benefits PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

ERISA sections 4022(b)(1) and (b)(7) phase-in PBGC's guarantee of "any increase in the amount of benefits under a plan resulting from a plan amendment" made or effective within the five years before Plan termination. This phase-in is equal to the greater of 20 percent of the benefit increase per month, or \$20.00 per month (but not more than the amount of the increase), for each full year the Plan amendment was in effect before Plan termination. Under ERISA, the time a benefit increase is in effect begins with the later of the date the increase was adopted or the date it became effective. Thus, PBGC cannot guarantee any benefit increase in effect for fewer than 12 full months before plan termination.

PBGC's regulations also provide that a benefit increase subject to phase-in includes, but is not limited to, any change in plan provisions that advances a participant's entitlement to a benefit, such as a liberalized vesting schedule (29 CFR Part 4022.2).

Decision

Having applied the law, PBGC's regulations and the provisions of the Plan to the facts in this case, the Appeals Board found no basis for changing PBGC's determination that you are not entitled to a PBGC-guaranteed benefit under the Washburn Wire Plan. Although the Board found that you are vested under the terms of the 1976 Plan, you are not entitled to a PBGC-guaranteed benefit because of the ERISA phase-in limit described above. Therefore, we are denying your

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appeal. This is the Agency's final decision concerning your entitlement to a *PBGC-guaranteed* benefit and you may, if you wish, seek court review of this issue.

Please note, however, that although you are not entitled to a guaranteed benefit from PBGC, based on the information you provided, you may be entitled to a benefit payable by PBGC as a result of the settlement of the class action lawsuit, Rettig v. PBGC. That case was brought by participants in certain pension plans with, among other things, vesting schedules that were amended to comply with ERISA's minimum vesting requirement and termination dates between January 1, 1976, and December 31, 1981.

We will send a copy of this decision to the PBGC organization responsible for implementing the settlement of the lawsuit. They will contact you directly concerning any settlement benefit that may be owed to you under Rettig v. PBGC. Meanwhile, if you need further information, please call PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

Enclosure

cc: