



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

MAR 31 2006



Re:  Weirton Retirement Program, PBGC Case #197614

Dear 

The Appeals Board has reviewed your appeal of PBGC's September 20, 2005 determination of your benefit under the *Weirton Retirement Program*. For the reasons explained below, the Board found no basis presented for changing PBGC's determination. Therefore, your appeal is denied.

Background

National Steel Corporation (National) owned the Weirton Steel Division until 1984. Through an employee buyout, a new company, Weirton Steel Corporation (Weirton), purchased the operating assets of Weirton Steel Division effective January 11, 1984.

Both before and after the sale, National sponsored and maintained the Weirton Retirement Program (which we will refer to as the "National Plan"). Also, effective January 11, 1984, Weirton established a separate, new plan, the Weirton Steel Corporation Retirement Plan ("Weirton Plan"), PBGC Case #201097. As part of the sales agreement, Weirton agreed that the Weirton Plan would assume responsibility for benefits accrued by Weirton Steel Division employees after May 1, 1983.

Both the National Plan and the Weirton Plan terminated without sufficient assets to provide all benefits under Title IV of the Employee Retirement Income Security Act (ERISA). The National Plan terminated as of December 6, 2002, and the Weirton Plan terminated as of October 21, 2003. PBGC is the trustee of both Plans.

You were a participant in both of the Plans. Under the terms of the National Plan, your benefit is calculated using your years of service with both National and Weirton. The benefit provided by the National Plan is calculated using your years of service with both employers multiplied by a factor equal to your years of service as of May 1, 1983, divided by your total service with the two employers.¹ (The National Plan, however, limits “Earnings” to the amounts paid by National prior to May 1, 1983.²)

Your Weirton Plan benefit, which is calculated based on the terms of that Plan, also is calculated using your years of service earned with both employers. Additionally, the Weirton Plan provides for a reduction (offset) for the amount you are entitled to receive under the National Plan.

Please note that benefits under the Plans are paid separately. Also note that PBGC’s September 20, 2005 letter is its determination of your benefit under the *National Plan only*. You will receive a separate determination, including appeal rights, of your benefit under the Weirton Plan at a later date. (The files show that PBGC sent you an *estimate* of your Weirton Plan benefit by letter dated March 11, 2004. To understand your benefits, you should also refer to this Weirton Plan correspondence.)

PBGC's Determination, Your Appeal and Related Correspondence

PBGC’s September 20, 2005 letter said that you are entitled to a National Plan benefit of \$172.27 per month as a Straight Life Annuity if payments begin on May [REDACTED] 2020, your normal retirement date. The letter enclosed a benefit statement which shows how your National Plan benefit was calculated and the data used in the calculation, including; (1) October [REDACTED] 1973 as your Continuous Service Start Date; (2) February [REDACTED] 1974 as your Continuous Service Start Date Adjusted for Breaks in Service after May 1, 1983; (3) you had 28.83 Total Years of Credited Service (or benefit service); and (4) as of May 1, 1983, you had 9.58 Years of Credited Service with National.

In your October 11, 2005 letter of appeal, you said that the adjustment of your continuous service date is incorrect because you did not experience a break in service under the National Plan. You stated:

¹National Plan document effective January 1, 1998 (“1998 Document”), Part 1, Section I (19) (“Service and Related Terms”); Part 2, Section II (“Eligibility for Pension”); and Part 2, Section III (“Amount of Pension”).

²1998 Document, Part 1, Section I, (7) and (8).

“Under the National Plan, a break in service occurs if a layoff lasts for more than two years. The Weirton Steel Plan states that individuals who were laid off from National Steel prior to May 1, 1983, and who were laid off on the effective date of the transfer of assets from National Steel to Weirton Steel (January 11, 1984) are covered under the National Steel Plan until the earlier of two years after layoff or return to work.

I was laid off from National Steel, was on layoff on January [REDACTED] 1984, and began working for Weirton Steel on February [REDACTED] 1984. My coverage under the National Steel Plan therefore ended two years or less after the date of layoff. A break in service occurs under the National Plan if the layoff is more than two years. For this reason, my continuous service start date should not be adjusted for a break in service.”

At the request of the Appeals Board, an authorized Plan representative for PBGC’s Benefits Administration and Payment Department (BAPD) responded to your October 11, 2005 letter. BAPD’s November 16, 2005 response stated that an arbitration decision between the union and Weirton, the 1989 Consent Decree, allowed a specific group of employees to bridge their credited service and you were not in this group of employees. Therefore, your credited service will not be bridged, i.e., your adjusted continuous service date will not change. BAPD explained that in calculating your benefit under the National Plan, your service as of May 1, 1983 must first be calculated and then your service as of the earlier of the date your employment ended and the date the Plan terminated. BAPD also gave you 30 days to provide the Appeals Board with specific reasons if you still believed PBGC’s determination to be incorrect.

In your December 15, 2005 letter to the Appeals Board, you stated that the adjustment of your pension time does not involve any matters concerning the Weirton Consent Decree. You again asserted that you did not experience a break in service under the National Plan and, therefore, your continuous service start date should not have been adjusted.

Discussion

When PBGC becomes the trustee of a terminated pension plan, PBGC pays benefits to the participants according to the terms of the plan, subject to the requirements and guarantee limits of ERISA.

According to the records PBGC obtained from Weirton, you began working for the Weirton Steel Division of National on October [REDACTED] 1973; you were laid off on October [REDACTED] 1981 and returned February [REDACTED] 1984, for a period of absence of two years, four months and six days; and, you were actively employed with Weirton when the National Plan terminated on December 6, 2002.

For individuals, like yourself, who worked as an hourly employee for National, eligibility for benefits and pension benefit amounts under the National Plan are determined based on your “Continuous Service.”³ The National Plan defines Continuous Service to include periods of employment both with National prior to the asset sale and with Weirton after the sale.⁴

The National Plan document also provides that absences from work for periods longer than two years normally constitute a break in Continuous Service. Although the National Plan and applicable collective bargaining agreements allow such a break to be removed if the employee later returns to work, the National Plan also specifically treats absences of more than two year duration as follows:

- (1) There shall be no deduction for any time lost which does not constitute a break in Continuous Service, *except that in determining the length of Continuous Service for purposes of this Program:*
 - (i) that portion of any absence which continues beyond two years from commencement of absence due to a layoff, physical disability or leave of absence *shall not be creditable as Continuous Service*
...⁵

Thus, while a layoff longer than two-years’ duration does not constitute a break in Continuous Service if an employee returns to work, only the first two years of such a layoff counts in determining a participant’s total length of Continuous Service. We further note that, with respect to layoffs of more than two years, the National Plan does not distinguish between periods of layoff with National, with Weirton, or which straddle an individual’s employment with both companies.

In your case, you were absent from work for a period of two years, four months, and six days. Although your break in Continuous Service was removed when you returned to work on February [REDACTED] 1984, the National Plan (as discussed above) did not allow you to receive Continuous Service credit for your entire period of layoff. Rather, the Plan provided that only your first two years of your layoff period (i.e., from October [REDACTED] 1981 through October [REDACTED] 1983) would count.⁶

³1998 Document, Part 1, Section I (19)(d).

⁴1998 Document, Part 1, Section I (13) (definitions of “National,” “Weirton, and “Company”; Section I (19)(d) (definition of “Continuous Service”).

⁵1998 Document, Part 1, Section I, (19)(d)(1) [emphasis added].

⁶1998 Document, Part 1, Section I, (19)(d)(1).

Please note that it was the National Plan's practice to adjust the employee's date of hire in situations involving breaks in service, rather than to account for such breaks separately. Therefore, for you, the National Plan's administrators used a February [REDACTED] 1974 adjusted date of hire, which is four months and six days after your actual date of hire (October [REDACTED] 1973). Thus, the adjusted date of hire that the National Plan's administrators and PBGC used in your case for calculation of your Continuous Service was consistent with the National Plan's terms.

Under ERISA and PBGC regulations, participants do not receive pension credit for service after a plan's termination date, even if they continue to work for their employer after the plan terminated (ERISA Section 4022(a); Code of Federal Regulation (CFR) Part 4022.4(a)). Therefore, for purposes of your PBGC benefits with respect to the National Plan, your Continuous Service is calculated from your adjusted Date of Hire (February [REDACTED] 1974) to the date the National Plan terminated (December 6, 2002). As PBGC determined, this is equal to 28 years and 10 months, or 28.83 years.

As PBGC's Benefit Statement shows, the National Plan provided several benefit formulas, with the Minimum Pension Formula providing you with the largest benefit amount. The National Plan, however, provides that this benefit amount (shown as \$525.27 per month in the Benefit Statement) must be reduced by fraction, which is referred to in the Benefit Statement as the "Pro-Ration Factor." The numerator of this Pro-Ration Factor is the number of years (and fractions calculated to the nearest month) of Benefit Service with National to May 1, 1983, and the denominator is the number of years (and fractions) of Benefit Service with National and Weirton.⁷

As previously noted, you did not experience a break in Continuous Service until October [REDACTED] 1983, which was two years after your layoff date. As a result, in determining your service with National up to May 1, 1983, there was no need to adjust your date of hire. Thus, as shown on the Benefit Statement, you receive full credit for the entire nine years and seven months, or 9.58 years, from October [REDACTED] 1973 through April [REDACTED] 1983, which is the numerator of the Pro-Ration factor.

For individuals who had worked for National as hourly employees, "Benefit Service" has the same meaning as "Continuous Service."⁸ In determining your benefit, the denominator of the Pro-Ration Factor is 28 years and 10 months, or 28.83 years (see discussion above). The Pro-Ration Factor, therefore, is equal to 9.58 years divided by 28.83 years, or 0.332293, which is what PBGC calculated.

⁷1998 Document, Part 2, Section VI ("Adjustments in Pension or Benefit Amounts"). Please note that the reference to "Effective Date" in this Section is defined in Part 1, Section I (8)(a) as "May 1, 1983."

⁸1998 Document, Part 1, Section I (19)(b).

Your appeal states that PBGC should not adjust your Continuous Service because your "coverage under the National Steel Plan ended two years or less after the date of my layoff." However, as discussed above, the National Plan documents provided that you continued to be covered under that Plan's benefit provisions even after you became an employee of Weirton. Furthermore, your National Plan benefit is based on your Continuous Service with both employers, with the benefit then reduced using the Pro-Ration Factor. Thus, since the National Plan clearly provided that periods of layoff in excess of two years were excluded (even if it occurred after you started working for Weirton), the Appeals Board found no basis to change how PBGC determined your service under the National Plan.

As noted earlier, PBGC will send you a separate determination of your benefit under the Weirton Plan. You will also have appeal rights with respect to that determination. Please keep in mind that, in accordance with the terms of the Plans, your Weirton Plan benefit is offset (reduced) by your benefit amount under the National Plan.

Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC regulations to the facts in this case, the Appeals Board found no basis presented for changing PBGC's September 20, 2005 determination. This is the Agency's final decision on the issues your appeal raised and you may, if you wish, seek court review of this decision.

If you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script that reads "Sherline M. Brickus". The signature is written in black ink and is positioned above the typed name and title.

Sherline M. Brickus
Member, Appeals Board