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

JUL 22 2004



Re: Bethlehem Steel Corporation Pension Plan, Case # 196603

Dear

The Appeals Board has reviewed your appeal of PBGC's March 26, 2004 determination that you are not entitled to a Permanent Incapacity (disability) pension under the Bethlehem Plan. For the reasons discussed below, the Board changed PBGC's determination by finding that you are entitled to Permanent Incapacity Retirement, with payments effective May 1, 2003. PBGC's Insurance Operations Department, the organization responsible for calculating and paying benefits, will send you a new determination of your benefit amount, with a new 45-day appeal right.

PBGC's Determination and Your Appeal

PBGC's letter explained that, to qualify for a permanent incapacity pension, a participant had to have met the Plan's requirements for the pension on or before December 18, 2002, the date the Plan terminated. PBGC noted that you continued to be employed as a member of the Bargaining Unit until April, 2003, although your Social Security disability award date is August 5, 2002. PBGC determined that you were not permanently disabled as defined by the Plan before the Plan's termination date and, therefore, are not eligible for a permanent incapacity pension. PBGC's letter also noted that you are entitled to a regular retirement benefit under the Plan.

After receiving a filing extension from the Appeals Board and a separate response from PBGC's Disclosure Officer to your Freedom of Information Act request, you filed a timely appeal on June 4, 2004. Your appeal noted that your disability pension was denied because, although you became legally blind in August, 2002, you worked until February, 2003. You explained that (1) you have diffuse retinal degeneration in both eyes, (2) you were working under the Americans With Disabilities Act from August of 2000 until February 7, 2003, and (3) you began receiving Social Insurance Plan (SIP) payments from Bethlehem in March, 2003.

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Permanent Incapacity

When the Bethlehem Plan terminated, effective December 18, 2002, it did not have sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act (ERISA). The terms of the Plan, the provisions of ERISA, and PBGC regulations and policies determine your entitlement to a guaranteed benefit. PBGC's regulations require that, to be entitled to a guaranteed benefit, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit on or before the earlier of the date the participant's employment ended or the date the plan terminated (see 29 Code of Federal Regulations (CFR) §§4022.3, .4(a)(3)). In your case, the Plan's termination date, December 18, 2002, is the earlier date.

Under section 2.5 of the 1999 Bethlehem Plan for the Steel Division (Plan Number 244), there are two conditions that a participant must meet to be eligible for the Plan's Permanent Incapacity retirement: (1) the participant must have at least 15 years of continuous service and (2) the participant must be "permanently incapacitated." Plan section 2.5 provides that a participant is considered permanently incapacitated only if --

(a) he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type normally performed in his employee category; and

(b) such total disability shall have continued for a period of [five] consecutive months and, in the opinion of a qualified physician, will be permanent and continuous during the remainder of the Participant's life.

Thus, to be eligible for the Plan's permanent incapacity benefit, your disability must be both total and of such severity that it prevented you from "engaging in any employment of the type normally performed in [your] employee category" on or before December 18, 2002.

According to the files PBGC's auditors obtained from the prior Plan Administrator, you were an active employee with more than 15 years of continuous service on December 18, 2002. The files show your last day worked as March 7, 2003, although you said in your appeal that it was February 7, 2003. The files also include a copy of a November 3, 2003 Notice of Award from the Social Security Administration, which shows that you became disabled under their rules on August 5, 2002.

To support your appeal, you submitted a copy of a Memorandum signed August 21, 2000 by both a Company and a Union official that documents the accommodations made to your work assignment under the Americans With Disabilities Act. According to the Memorandum, you suffered from a medical condition that resulted in the deterioration of your vision. This condition restricted you from assignment to your incumbent position as a processor in the New Cold Mill.

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The Company and the Union agreed to transfer you to a janitorial/housekeeping assignment in the New Cold Mill for the remainder of your employment. They further agreed to schedule you during daylight hours due to your medical condition.

The Appeals Board found that the August 21, 2000 Memorandum described above, together with the Social Security Administration's determination that you were disabled under their rules as of August 5, 2002, show that you could not have performed the duties of the type normally performed in your employee category on December 18, 2002. As a result, the Board found that you met the requirements for permanent incapacity under Plan section 2.5 and are, therefore, entitled to a permanent incapacity pension.

Benefit Start Date

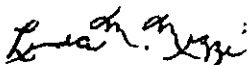
You also included with your appeal a copy of an April 28, 2003 letter from the Manager, Workers' Compensation and Disability Management, addressed to current and former Bethlehem employees. The letter said that Company records indicated that you were then receiving Long Term Disability or Sickness and Accident benefits pursuant to one of Bethlehem's [non-pension] disability programs. Please note that Sickness and Accident benefits are paid under the SIP program you mentioned in your appeal. PBGC's files show that Bethlehem ended these payments in April, 2003. Because a participant cannot receive both a permanent incapacity pension from the Bethlehem Plan and a SIP benefit at the same time, we found that your permanent incapacity pension is payable beginning May 1, 2003.

Decision

Having applied the law, the provisions of the Plan and PBGC policy to the facts in this case, the Appeals Board found that you are entitled to a Permanent Incapacity Retirement with payments beginning May 1, 2003. We will forward a copy of this letter to PBGC's Insurance Operations Department, who will send you a new determination of your benefit amount, with a new 45-day appeal right. They will also calculate the backpayments PBGC owes you and pay that amount in a single lump sum with interest.

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

Sincerely,



Linda M. Mizzi
Member, Appeals Board