



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

April 20, 2011



Re: Appeal 2010-0110 (Case No. 199720), Brooklyn Hospital Center Retirement Income Plan (the "BHC Plan")

Dear 

The Appeals Board has reviewed your appeal of PBGC's September 23, 2009 determination of your benefit under the BHC Plan. As explained below, we changed PBGC's determination by finding that your 1996 Earnings are \$150,000, instead of \$112,500. As a result, you are entitled to a benefit of \$3,567.83 per month if paid as a Straight Life Annuity beginning March 1, 2011 (age 65).

PBGC's Benefit Determination and Your Appeal

PBGC's determination said that you are entitled to a benefit of \$3,520.96 per month, if paid as a Straight Life Annuity starting March 1, 2011, the first of the month following your 65th birthday. PBGC explained that your monthly benefit will be higher if you choose to retire after March 1, 2011, and that you may elect a different benefit form. PBGC also enclosed a benefit statement that summarized your benefit calculation.

On October 27, 2009, you wrote to the Appeals Board to request an extension of time in which to file an appeal, a more detailed explanation of your benefit calculation, and the salary data PBGC used. The Board granted you a filing extension of 45 days from the date you received the information you requested. On November 23, 2009, PBGC's Benefits Administration and Payment Department sent you the salary data and a more detailed benefit statement.

You filed a timely appeal on January 4, 2010, stating that the \$112,500 in earnings both the former Plan administrator and PBGC used for 1996 is incorrect. You explained that your Medicare wages were \$188,673.00, as shown on your 1996 W-2 form. You said it appears that (1) your salary for 1996 (your last year of employment) was limited to \$150,000, in accordance with the section 401(a)(17) compensation limits of the Internal Revenue Code ("IRC"), and (2) the \$150,000 cap was prorated to \$112,500 because you completed less than a full year of employment in 1996. You believe your 1996 salary should be the full \$150,000 IRC cap, which would increase your benefit to \$3,567.83 per month.

You included the following documents in support of your appeal: (1) your 1996 W-2 form, (2) a letter dated [redacted] 1996 from the Executive Vice President, BHC, which said your employment was terminated effective [redacted] 1996, and you would be paid three months salary in-lieu-of-notice, and (3) a retirement package from the BHC Plan Administrator dated March of 2006. This package included a *Calculation of Accrued Benefit* worksheet that listed your salary history for the years 1993-1996 with the notation that "earnings are capped at the IRS-mandated compensation limit in effect for the applicable plan year."

Background

The BHC Plan terminated, effective March 31, 2006, without sufficient assets to provide all benefits PBGC guarantees under the Employee Retirement Income Security Act ("ERISA"), and PBGC became the trustee on September 17, 2007. Consequently, the terms of the Plan, the provisions of ERISA, and PBGC and Internal Revenue Service ("IRS") regulations determine the benefits PBGC can pay.

The files available to the Appeals Board show that (1) you were born on [redacted] (2) you were hired by BHC on [redacted] 1978, and (3) your employment there terminated, effective [redacted] 1996. Your appeal did not dispute the benefit formula or underlying data (other than the 1996 prorated salary amount) used to calculate your BHC benefit.

IRC Compensation Limits

Section 401(a)(17) of the IRC provides, generally, that a trust which is part of a pension plan shall not constitute a qualified trust unless the annual compensation of each employee taken into account under the plan for any year does not exceed a specified amount (the "compensation limit"). Section 1.401(a)(17)-1(b)(3) of the IRS implementing regulation sets forth the rules for applying the compensation limit to a plan year. In general, ". . . the annual compensation limit is applied to the compensation for the plan year on which allocations or benefit accruals for that plan year are based." Subparagraph 1.401(a)(17)-1(b)(3)(iii) explains how the compensation limit applies to certain periods of fewer than 12 calendar months.

(A) Compensation for a period of less than 12-months -- Proration required. If compensation for a period of less than 12 months is used for a plan year, then the otherwise applicable annual compensation limit is reduced in the same proportion as the reduction in the 12-month period. For example, if a defined benefit plan provides that the accrual for each month in a plan year is separately determined based on the compensation for that month and the plan year accrual is the sum of the accrual for all months, then the annual compensation limit for each month is 1/12th of the annual compensation limit for the plan year. In addition, if the period for determining compensation used in calculating an employee's allocation or accrual for a plan year is a short plan year (i.e., shorter than 12 months), the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit

multiplied by the fraction, the numerator of which is the number of months in the short plan year, and the denominator of which is 12.

(B) No proration required for participation for less than a full plan year. Notwithstanding paragraph (b)(3)(iii)(A) of this section, a plan is not treated as limiting the compensation used in determining an employee's allocations or benefit accruals to a specified portion of the employee's annual compensation merely because the plan formula provides that the allocation or accrual for each employee is based on compensation for the portion of the plan year during which the employee is a participant in the plan. In addition, *no proration is required merely because an employee is covered under a plan for less than a full plan year*, provided that allocations or benefit accruals are otherwise determined using compensation for a period of at least 12 months. (Italics added for emphasis.)

Thus, the regulation requires a Plan to prorate the compensation limit for a particular Plan year for all participants with compensation in that year whenever the Plan year is a short Plan year of fewer than 12 months. The IRS does not require the limit to be prorated with respect to an individual employee "merely because an employee is covered under a plan for less than a full plan year, provided that allocations or benefit accruals are otherwise determined using compensation for a period of a least 12 months." (See 26 *Code of Federal Regulations* § 1.401(a)(17)-1(b)(3)(iii)(B).)

As shown below, the BHC Plan incorporated the IRC section 401(a)(17) compensation limits into the Plan's formal definition of Earnings. The files PBGC's auditors obtained when the Plan terminated did not contain a copy of the Plan document in effect when your employment terminated in 1996. To analyze your appeal, we reviewed the earliest available document, which is the Plan that took effect January 1, 2001 ("the 2001 Plan"). The definition of "Earnings" under section 1.1 of the 2001 Plan provides in part that:

This Plan shall not take into consideration a Participant's earnings to the extent such Earnings exceed \$200,000 during a Plan [calendar] Year. This \$200,000 limitation shall be indexed by the [cost of living] Adjustment Factor [prescribed by the Secretary of the Treasury under Section 415(d) of the IRC] for years beginning after December 31, 1987]. If there are less than twelve (12) months in the Plan Year, this \$200,000 limitation (as adjusted) shall be prorated by multiplying such limitation by a fraction, the numerator of which is the number of months in the Plan Year and the denominator of which is twelve (12).

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual Earnings of each Employee taken into account under the Plan shall not exceed the

OBRA '93¹ annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the [IRC]. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Earnings are determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under Section 401(a)(17) of the IRC shall mean the OBRA '93 annual compensation limit set forth in this provision.

If Earnings for any prior determination period are taken into account in determining an Employee's benefits accruing in the current Plan Year, the Earnings for that prior determination period are subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

Discussion

Your employment with BHC ended on [] 1996. As you noted in your appeal, both the Plan and PBGC prorated the \$150,000 compensation limit for 1996 to account for the fact that your employment terminated before the end of the 1996 Plan Year. Although the IRS does not require this proration, the issue here is whether section 1.1 of the BHC Plan requires proration in this instance.

Section 1.1 describes the rules for applying the annual IRC compensation limits to BHC Plan Years. This section also adds a definition of "determination period" as "any period, not exceeding 12 months, over which Earnings are determined" beginning in such calendar year. Section 1.1 further requires proration of IRS limits with respect to a Plan Year or a determination period with fewer than 12 months.² However, in the context of section 1.1, the Appeals Board concluded that Plan years and determination periods apply Plan-wide and uniformly to the periods over which Earnings are determined for all Plan participants under the benefit formulas described in Plan section 4.1. Said another way, we found that section 1.1 does not apply on a participant-by-participant basis. Otherwise,

¹ Omnibus Budget Reconciliation Act of 1993

² The Plan years at issue in your case were full calendar years.

contrary to Plan terms, a different "determination period" would apply separately to each participant whose employment ended before the end of a full or partial Plan year.

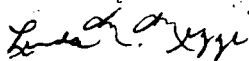
Accordingly, the IRC limit without proration applies in determining your 1996 Earnings. Because your actual earnings for 1996 as shown on your W-2 form exceeded the IRC compensation limit for that year (\$150,000), your Earnings under Plan section 1.1 for 1996 is limited to \$150,000. Using the correct 1996 Earnings, your Plan benefit as a Straight Life Annuity beginning at age 65 is \$3,567.83 per month, which is the same amount you cited in your appeal.

Decision

Having applied the law, the terms of the Plan and PBGC and IRS regulations to the facts in your case, the Appeals Board found that your 1996 Earnings under Plan section 1.1 are \$150,000, instead of the \$112,500 PBGC used. As a result, the Board further found that you are entitled to \$3,567.83 per month if paid as a Straight Life Annuity beginning March 1, 2011 (age 65), instead of the \$3,520.96 per month PBGC determined.

This is the Agency's final decision on the matter and you may, if you wish, seek court review. If you have any questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board