



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

SEP 22 2004

Re: Case 194623, Pension Plan for
Bargaining Unit Employees of Erie Forge & Steel, Inc.
(the Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's September 11, 2002 determination that you are not entitled to a disability retirement benefit from the Plan. For the reasons stated below, the Board found that you are entitled to a disability retirement benefit from the Plan.

Determination and Appeal

PBGC's determination letter said that "(o)ne of the requirements for a disability pension is that you become disabled prior to the date the plan terminated, December 10, 2001. According to Social Security, you did not become disabled until January 14, 2002, which is after the plan terminated."

Your appeal states that your heart damage began well before the December 10 - January 14 period, that in April of 2000, you had open heart surgery to replace the aortic valve, and that you "knew something was not right with my heart but I kept my mouth shut because, at that time, my wife was battling lung cancer and I could not risk my job and health insurance."

Background

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, as amended (ERISA). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan subject to limitations set by Congress under ERISA.

PBGC's records state that on December 22, 2000, Erie Forge &

Steel Inc. (Erie Forge) filed for protection under Chapter 11 of the Bankruptcy Code, that on November 15, 2001, Park Corporation agreed to purchase substantially all the assets of Erie Forge but did not assume any of the liabilities associated with the Plan, and that the Order of the Bankruptcy Court approving the asset sale became final on December 10, 2001. PBGC records also show that PBGC became the Plan's trustee on March 22, 2002 and the Plan's termination date is December 10, 2001.

ERISA section 4022(a) provides that, subject to certain limitations, the PBGC shall guarantee the payment of all nonforfeitable benefits under a covered plan that terminates. ERISA § 4001(a)(8) defines a "nonforfeitable benefit" as ". . . a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of [ERISA]." See also 29 Code of Federal Regulations (CFR) § 4001.2 (definition of "nonforfeitable benefit"). PBGC regulations provide that a guaranteed benefit, among other conditions, must be nonforfeitable on the date a participant's employment ends, or if earlier, on the plan's termination date.

Section 5.4 of the Plan's governing document in effect as of the Plan's termination date states that if "a Participant who has completed at least ten (10) Years of Service becomes Totally and Permanently Disabled pursuant to Section 1.52 prior to retirement or separation from service, and such condition continues for a period of six (6) consecutive months and by reason thereof such Participant's status as an Employee ceases, then said disabled Participant shall be entitled to receive \$300.00 per month until the Participant attains age 65 and thereafter a Normal Retirement Benefit pursuant to Section 5.1 based on Years of Service accrued to the date the disability retirement commenced."

Plan section 1.52 defines "Total and Permanent Disability" as "a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders him incapable of continuing his usual and customary employment with the Employer."

Documents available to the Appeals Board indicate that although you were placed on lay-off on November 14, 2001, you were still considered an active employee when the Plan terminated on December 10, 2001.

Discussion

Because the SSA set your date of disability as January 14, 2002, which was after the Plan's termination date, the Appeals Board asked you for the documentation of your disability that the

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SSA reviewed. In response to our request, you sent us the results of the physical examinations you underwent on January 14, 2002.

Based on the records you submitted, it appears that the examinations occurred at Priority Care, a clinic in Erie, Pennsylvania that specializes in Occupational Medicine. Priority Care's January 14, 2002 Audiology Report indicates that the test was a "pre-employment" test taken at the request of WHEMCO, which is owned by Park Corporation. On your Priority Care History and Physical Form, you indicated your Employer's name as Erie Forge, which is consistent with the Audiology Report because the new Erie Forge is a division of WHEMCO. As a result, the Appeals Board concluded that the SSA probably chose January 14, 2002 as your disability date because the new Erie Forge declined to hire you for a position similar to the one you held with the old Erie Forge based on the results of your January 14, 2002 medical tests.

The written results of the January 14, 2002 tests confirm that you have had aortic valve replacement. Based on the January 14, 2002 test, the examining physician, [redacted] concluded that due to a "mixture of multiple medical problems including hypertension, an enlarged heart, a pacemaker, obesity, etc.," he "would not recommend lifting over 20 pounds on an occasional basis" and, therefore, recommended employment "with accommodation."

Given the nature of the medical problems mentioned by [redacted] in his report, the Appeals Board decided that it is likely that these same medical conditions were present on December 10, 2001 when the Plan terminated. Given that your former job as a lay-out plater involved heavy lifting, the Board concluded that you had physical and/or mental conditions resulting from bodily injury, disease, or mental disorder which rendered you incapable of continuing your usual and customary employment with the old Erie Steel before the Plan terminated.

Decision

Having applied Plan provisions, the law and PBGC rules to the facts in this case, the Appeals Board decided that you met the eligibility conditions for a disability retirement benefit under the Plan before the Plan terminated.

When the Insurance Operation Department (IOD), the PBGC department responsible for issuing benefit determinations and paying benefits, receives a copy of this decision, IOD will send you a new determination letter regarding the amount of your disability retirement benefit and its starting date. The new determination letter will include a new 45-day right to appeal. In the meantime, if you need more information about your benefit,

please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script that reads "Michel Louis". The signature is written in black ink and is positioned above the typed name.

Michel Louis
Appeals Board Member