



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

June 6, 2008

Re: (formerly Appeal 2002-1012); The Graduate Hospital
Pension Plan (the "Graduate Plan"); Case #: 187421

Dear

We are responding to the appeal you filed on behalf of concerning
PBGC's June 24, 2002 determination of his benefit under the Graduate Plan. As explained below, we
are denying your appeal.

PBGC's Benefit Determination and Your Appeals

PBGC determined that is entitled to a benefit of \$599.69 per month, if paid
as a lifetime annuity beginning June 1, 2008, the first of the month following his 65th birthday, or to
a lower amount if paid in a different form. appealed on July 26, 2002, stating that he
began work as Director of The Graduate Hospital Foundation on April 1, 1979, and became a full-time
employee of The Graduate Hospital on January 1, 1984. He said that his Graduate Plan benefit should
be based on a service start date of April 1, 1979, rather than the January 1, 1984 date PBGC used. We
denied his appeal in a decision dated May 9, 2003.

You submitted additional information on behalf by letters dated May 23,
2005, September 8, 2005, December 6, 2006 and April 24, 2008. You had requested that we review
this information and reopen his appeal. The Board voted to do so on February 1, 2007.

You also asked whether the *Potential Private Pension Benefit Information Notice* for
you submitted with your April 24, 2008 letter has any bearing on his appeal. These are
informational notices the Social Security Administration sends to individuals who apply for Social
Security benefits to alert them of potential entitlement to a benefit from a former employer. A *Notice*
generally provides an estimate of the benefit amount and generally assumes employment until normal
retirement age. *Notice* lists Year Reported as 1998, which coincides with Graduate

Plan's termination date. The boxes for Type of Annuity and Estimated Amount are blank. All we can infer from the *Notice* is that _____ did at some point participate in the Graduate Plan.

Benefit Calculation

As we explained in our 2003 decision, in early 1991, Graduate Hospital initiated a "standard" termination of the Graduate Plan under section 4041(b) of the Employee Retirement Income Security Act, with a proposed termination date of July 14, 1991. A standard termination can occur only if, among other things, the plan has sufficient assets to provide all benefits accrued as of the proposed termination date. As part of the standard termination process, the former Plan Administrator was required to calculate each participant's accrued benefit as of July 14, 1991 based on each participant's specific (i.e., not estimated) service, compensation, etc. The July 14, 1991 frozen accrued benefit calculated for _____ is \$599.69 per month.

Due to a subsequent rise in annuity purchase prices, Plan assets were not sufficient to provide all benefits and the standard termination did not occur. Although the Graduate Plan continued as an ongoing plan until it eventually terminated on November 10, 1998, the Plan was administered during that period as if (1) all benefit accruals were frozen as of July 14, 1991, and (2) all then-active participants were vested in their frozen accrued benefit.¹ Further, new employees could not participate in the Plan. PBGC's auditors accepted the frozen accrued benefit amounts previously calculated during the standard termination process.

Under section 6.1 of the 1989 Plan document, a participant's accrued benefit is equal to 1.5% of Applicable Compensation in effect as of the first day of each Plan Year (July 1st through June 30th) for each year of participation during which the employee had at least 1,000 hours of service. As we noted in our 2003 decision, the Plan did not retain the service and compensation data underlying the 1991 calculations. The earnings data we obtained from the Social Security Administration (copy enclosed) are on a calendar year basis and may include earnings from sources excluded from Applicable Compensation under Plan section 2.7 (e.g., bonuses and overtime) and exclude earnings that are included (e.g., earnings excluded from basic compensation under a salary reduction plan). Nevertheless, we used these earnings as a basis for attempting to replicate your 1991 accrued benefit calculation. We concluded that the former Plan Administrator, the official most familiar with Plan terms and practices, did not include the entire 1979 - 1990 period in the calculation.

Covered Employment

To analyze _____ initial appeal, we obtained, with his permission, his earnings history for the years 1978 through 1985 from the Social Security Administration (SSA). Our 2003 decision said that (1) the SSA data show that _____ worked for the Philadelphia Health Care

¹ PBGC later determined that the July 14, 1991 benefit freeze was invalid. This did not affect _____ because his employment terminated before that date.

Trust (the "PHCT") from 1978 through 1983, and for Graduate Hospital in 1984 and 1985, and (2) there is no evidence in the files PBGC's auditors obtained from the former Plan Administrator indicating that the PHCT was an entity whose employees were covered under the Graduate Plan.

According to your May 23, 2005 letter and the copy of a 2005 Pennsylvania Appeals Court decision you attached, PHCT was originally incorporated as a Pennsylvania non-profit corporation on December 10, 1975, under the name "The Graduate Hospital Foundation." You explained that, in August of 1998, long after [redacted] ended his employment with Graduate Hospital, the Foundation changed its name to the PHCT but apparently kept the same Employer Identification Number. You believe there was a substantial "affiliation" between the Foundation and Graduate Hospital because "the Foundation was the original mechanism through which the Graduate Hospital of the University of Pennsylvania became the non-profit entity known as the Graduate Hospital." You suggested that the name change from the Foundation to PHCT may explain why PBGC concluded that service with PHCT was not covered under the Graduate Plan.

During our review of [redacted] original appeal, which cited his service from 1979 through [redacted] 1983 with the Graduate Hospital Foundation, we researched the Plan documents and available records and found no evidence that the Graduate Plan covered Foundation employees. Similarly, once we received his Social Security earnings identifying PHCT as his employer during that period, we researched PHCT and found no evidence that the Plan covered PHCT employees at that time.

Further, the October 25, 2005 response from PBGC's Disclosure Officer to your Freedom of Information Act and Privacy Act request noted that they thoroughly searched the Plan file and did not locate (1) any documents that referred to the Graduate Hospital Foundation or Foundation employees, or that made any reference to coverage of Foundation employees, or (2) any trustee minutes related to the status of Foundation employees under the Plan. The Disclosure Officer also enclosed with his letter copies of the Graduate Plan document and [redacted] entire PBGC benefit file.

The January 1, 1978 Plan document was the document in effect from 1979 through 1983, when [redacted] said he began working for the Graduate Hospital Foundation. According to Plan section 1.10, "Employer" means "The Graduate Hospital, a Pennsylvania corporation, and shall include the predecessor thereto, the Graduate Hospital division of the University of Pennsylvania." Plan section 1.9 defines "Employee" as a "person employed by The Graduate Hospital, except for employees covered by another retirement benefit program maintained by Employer or whose employment is incidental to an education program maintained by Employer."

The definitions of Employer and Employee under the 1978 Plan refer only to The Graduate Hospital. Even if the Graduate Hospital Foundation were an "affiliate" of the Graduate Hospital during the 1978 - 1983 period, the 1978 Plan does not cover employees of affiliates, subsidiaries or

other entities.² Further, [redacted] appears to have been "covered by another retirement benefit program maintained by Employer" at least from 1980 through 1986, as evidenced by the *Summary of Premiums Remitted For* [redacted] from TIAA-CREF he submitted with his appeal.

Decision

For the reasons explained above, the Appeals Board found no basis for changing PBGC's determination that [redacted] is entitled to \$599.69 per month, if paid as a lifetime annuity beginning June 1, 2008. This decision is PBGC's final action on this matter. If he wishes, [redacted] may ask an appropriate federal district court to review this decision.

If you or [redacted] need other information from PBGC, please call our Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

Enclosure

cc:

² We note that subsequent amendments to the Graduate Plan changed the definition of Employer. Section 1.23 of the Plan document that became effective July 1, 1984 defines "Employer" as --

The Graduate Hospital, a Pennsylvania non-profit corporation, and any successor or related entity thereto which adopts this Plan. The term "Employer" also includes any other entity which, with the consent of the Board of Directors, adopts this Plan.

Section 2.11 of the Plan document that became effective July 1, 1989 defines "Company or Employer" as --

The Graduate Hospital and any successor company, subsidiary or affiliated company which with the consent of the Board of Directors of the Company adopts this Plan and Trust.