



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

May 30, 2008

Re: Case No: 197610,
Granite City Pension Plan for Chemical Workers (the
"Granite City Chemical Plan")

Dear

The Appeals Board has reviewed the appeal you filed on behalf of concerning PBGC's January 4, 2006 determination of her benefit under the Granite City Chemical Plan. For the reasons explained below, we are denying your appeal.

Benefit Determination and Appeal

PBGC's letter said that as an alternate payee of in a "shared payment" Qualified Domestic Relations Order ("QDRO"), is entitled to $\frac{1}{2}$ of the "marital portion" of his benefit under the Granite City Chemical Plan. PBGC also enclosed a benefit statement showing that is entitled to a lifetime benefit of \$249.38 per month.

In your February 7, 2006 appeal, you requested an explanation of the percentage (20.4120%) found on line 17 of benefit statement ("Percentage Payable to Alternate Payee Under Provisions of the QDRO"). You stated that 75% of accrued benefit under the Plan was earned during their marriage (1973 - 1994), and consequently, when this percentage (.75) is multiplied by the "marital portion" as specified in the QDRO ($50\% \times 253 \div 303$), is entitled to 31.31% of accrued benefit rather than 20.4120%. You did not dispute the other information on PBGC's benefit statement.

Background

The Granite City Chemical Plan terminated, effective December 6, 2002, without sufficient assets to provide all benefits PBGC guarantees under the Employee Retirement Income Security Act ("ERISA"). The terms of the Plan, the terms of the QDRO, and the provisions of ERISA and PBGC regulations and policies determine Ms. Pope's entitlement to a guaranteed benefit. Because of legal limits under ERISA, the benefits PBGC guarantees may be less than the benefits a pension plan would otherwise pay. One of these limits, the Maximum Guaranteed Benefit limit, applies to benefit.

The QDRO

A domestic relations order was issued by the Circuit Court of the Twentieth Judicial Circuit, Monroe County, Illinois on 2003 ("Order"). It assigned to 50% of the "marital portion" of the benefit accrued under the Plan from his date of hire through the date of the dissolution of the marriage, payable as early as Earliest Retirement Age. The QDRO defines the marital portion percentage as "the number of months of marriage during which . . . benefits were accumulated under the Plan prior to the 'Marital Retirement Date' [i.e., March 30, 1994], aforesaid (253 [months])" divided by "the total number of months . . . benefits were accumulated under the Plan prior to the marital retirement date . . . (300 [months])." Thus, the marital portion percentage [253 months ÷ 300 months] is 84.3333%, as shown on line 5 of benefit statement. On January 24, 2004, PBGC determined that the Order satisfied the requirements under ERISA and the Internal Revenue Code ("Code") for a Qualified Domestic Relations Order.

PBGC's files show that accrued Plan benefit from the date he was hired by Granite City (1969) through the divorce date (1994) is \$950.00 per month (line 4 of benefit statement). Pursuant to the terms of the QDRO, is entitled to ½ of the marital portion of benefit as of the divorce date as follows:

$$.50 \times 84.3333\% \times \$950.00 = \$400.59$$

This is her Plan benefit amount under the QDRO before adjustment for benefit form (see line 6 of the benefit statement). Section 4 of the the QDRO states: "Increased Benefits: Any increases in the

Husband's accrued benefits . . . caused by contributions occurring subsequent to the marital retirement date are not to be construed as part of the marital portion. Accordingly such increases shall be disbursed to and enjoyed solely by the Husband and the Wife shall not be entitled to share in any such increase."

The QDRO further provides that _____ shall be treated as a surviving spouse "to the extent of the marital portion of _____ accrued benefits for the purpose of provisions requiring joint and survivor annuities." Accordingly, _____ was required to elect a benefit form that provides a survivor annuity and to designate _____ the surviving spouse to the extent of the marital portion.

The Plan's automatic benefit form for a married participant is a Joint and 50% Survivor Annuity (50%J&S) with a free Five-Year Certain feature. Under this form, a participant's Plan benefit is not reduced to reflect the 50%J&S until the end of the five-year certain period. This is the reason why the Plan benefit is "non-level" with a higher amount payable for the first five years (see lines 6 and 8, and lines 9 and 10).¹

Maximum Guaranteed Benefit (MGB)

Section 4022(b)(3) of ERISA provides that PBGC's guarantee of a participant's plan benefit cannot exceed a specified dollar amount payable in the form of a Straight Life Annuity at age 65. For plans like Granite City Chemical with a termination date in 2002, the MGB is \$3,579.55 per month in the form of a Straight Life Annuity for a participant who is age 65 on the Plan termination date. Because _____ began receiving his benefit on June 1, 2003 at age 52.67 and his automatic Plan benefit is in the form of a 50%J&S with a Five-Year Certain feature, PBGC must adjust the \$3,579.55 amount to take into account his age and benefit form. This adjusted MGB, levelized to account for the Plan's non-level benefit structure, is \$1,207.59 per month (see line 12).

_____ equivalent level straight life Plan benefit as of his actual benefit commencement date (June 1, 2003) was \$1,771.54

1 The following sections of this letter show the specific calculations for determining _____ guaranteed benefit shown on line 18 for the five-year period following her annuity start date (June 1, 2003). The same analysis applies after the end of the five-year period (see line 19).

per month (see line 11), which is more than his MGB. Accordingly, PBGC determined that it could guarantee only 68.1661% [\\$1207.59 ÷ \\$1771.54] of his Plan benefit (see lines 14-16).

Your appeal specifically questioned the "Percentage Payable to Alternate Payee Under Provisions of the QDRO" of 20.4120% shown on line 17 of benefit statement. As noted, this percentage represents share of total accrued Plan benefit, which was computed by dividing \$400.59 (line 6) by \$1,962.50 (line 9). Please note that this section of the statement shows the amount of Plan benefit that PBGC can guarantee after applying the MGB.

In the case of a QDRO like this one which does not specify how benefit adjustments due to the PBGC guarantee limits must be allocated between the participant and the alternate payee, section 6.6-3.E.3a(1) of PBGC's policy on *Qualified Domestic Relations Orders* provides that --

If the QDRO awards a specified percentage of the participant's benefit amount or value to the alternate payee, PBGC will proportionally adjust the benefits payable to both the participant and the alternate payee to reflect PBGC's adjustments to the participant's total benefit.

To proportionally adjust benefit under this policy, PBGC applied the same guarantee ratio of 68.1661% to Plan benefit that applied to Plan benefit:

$$\begin{aligned} \text{(A) Line 6 x line 14} &= \text{line 18} \\ \$400.59 \times (\$1,207.59 \div \$1,771.54) \\ &= \$400.59 \times 0.681661 = \$273.06 \end{aligned}$$

benefit statement, however, used a different formulation to arrive at the same result. That is, PBGC multiplied guaranteed (i.e., after reducing for the MGB) benefit by the ratio of Plan benefit to Plan benefit (which is the 20.4120% you asked about in your appeal):

$$\begin{aligned} \text{(B) Line 15 x line 17} &= \text{line 18} \\ (\$1,962.50 \times 0.681661) \times (\$400.59 \div \$1,962.50) \\ &= \$1,337.76 \times 0.204120 = \$273.06 \text{ (6/1/2003 to 5/1/2008)} \end{aligned}$$

Similarly, [redacted] guaranteed benefit beginning June 1, 2008 is \$231.70 per month (line 19).

As noted above, [redacted] was required under the QDRO to elect a benefit form with a survivor annuity. PBGC's files show that he elected PBGC's optional Joint and 50% Survivor Annuity, which is a level annuity form, instead of the Plan's automatic form. PBGC converted [redacted] guaranteed benefit in the Plan's (non-level) automatic form to the PBGC Joint and 50% Survivor Annuity form elected by [redacted] and determined that she is entitled to a benefit of \$249.38 per month for life, beginning June 1, 2003 (the final item on PBGC's benefit statement).

Discussion

PBGC has paid benefits to [redacted] with the same effective date of June 1, 2003. In accordance with the provisions of their shared payment QDRO, Ms. Pope's benefit is based on [redacted] accrued benefit as of [redacted] 1994, the marital dissolution date. Because [redacted] continued to participate in the Plan after the divorce, his benefit increased not only because of additional years of service but also because of higher compensation amounts and improvements in the benefit formula.

As explained above, PBGC determined [redacted] guaranteed benefit in accordance with PBGC's method for allocating MGB adjustments under a shared payment QDRO. Under this method, PBGC applies the guarantee ratio based on the participant's full Plan benefit to the alternate payee's benefit. A slightly different method is used for a "separate interest" QDRO.

The Board considered whether the methodology for a "separate interest" QDRO would be better suited to the facts of this case.²

2 Under this "separate interest" method, the guarantee ratio applicable to [redacted] benefit is based on the participant's Plan benefit calculated as of the Plan's termination date using the Plan provisions that were in effect five years before the Plan terminated (i.e., on December 6, 1997). [redacted] accrued benefit computed in this way is \$1,683.34 per month. Thus, [redacted] share of [redacted] benefit is equal to \$400.59 divided by \$1,683.34, or 23.7973%.

Substituting the 23.7973% for the 20.4120% in equation (B) on page 5 of this letter, we found that under this method, [redacted] guaranteed Plan benefit would be \$318.35 per month [$\$1,337.76 \times 23.7973\%$], payable from June 1, 2003 through May 1, 2008. From June 1, 2008 forward, her guaranteed

Because the "separate interest" methodology may have resulted in an approximately \$40.00 increase to benefit and a commensurate decrease to benefit, we notified by letter, pursuant to section 4003.57 of PBGC's regulations.³ We sent a copy of the same letter to you. We received comments from you by letter dated December 12, 2007, and comments from by letter dated December 13, 2007.

The Board considered these comments and ultimately decided to uphold PBGC's determination of benefit. First, based on the language of the QDRO, specifically paragraph #4, we found that PBGC used the proper benefit formula and years of service to calculate Plan benefit as of the date of the marital retirement (dissolution). Second, we found that PBGC properly categorized this QDRO as a "shared payment" QDRO. Third, we found that PBGC's use of the "guarantee ratio" methodology for shared payment QDROs was appropriate.

Finally, we note that PBGC policy permits QDROs to be amended by court order. When this occurs, PBGC will review the amended order as a new order and suspend benefits that would be affected only by the amended order. If PBGC qualifies the amended order, PBGC will change the participant's and the alternate payee's benefits, as appropriate, but will make the changes prospectively only. If the terms of the amended order direct PBGC to apply it retroactively (i.e., before the submission date), PBGC will not qualify the amended order.

Plan benefit would be \$270.13 per month [$\$1,135.13$ (line 16) x 23.7973%]. Converting this benefit to the PBGC Joint and 50% Survivor Annuity form elected by we found that, if this method were used, would be entitled to a level benefit of \$288.87 per month for life.

3 Section 4003.57 of the regulations provides, in pertinent part, that before the Appeals Board issues a decision, in whole or in part, that could aggrieve a third person, the Board shall make a reasonable effort to notify that third party of the pendency of the appeal and its grounds, the grounds upon which the Appeals Board is considering changing the initial determination, and, among other things, the right to submit written comments on the appeal. See 29 Code of Federal Regulations, Section 4003.57.

Decision

Having applied the law, the terms of the Plan, the terms of the QDRO, and PBGC's policies and regulations to the facts in this case, the Appeals Board upheld PBGC's January 4, 2006 determination that _____ is entitled to \$249.38 per month payable for life, effective June 1, 2003. This is the Agency's final decision with respect to that determination. _____ may, if she wishes, ask an appropriate federal district court to review this decision.

If you or _____ need other information from PBGC, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

cc: