



Pension Benefit Guaranty Corporation

U.S. GOVERNMENT AGENCY 1200 K Street, N.W., Washington, D.C. 20005-4026

November 18, 2002

Re: Appeal [redacted]
Pan American World Airways, Inc. ("Pan Am")
Cooperative Retirement Income Plan (the "Plan")

Dear [redacted]

The Appeals Board has reviewed your July 30, 1999 letter which submits new evidence and asks that the Appeals Board to re-open your appeal. Your letter was in response to my June 30, 1999 letter which closed your appeal but stated that PBGC will always consider any new, specific evidence that you present showing that you may be entitled to a different benefit.

As explained below, the Appeals Board affirms PBGC's determination that your Plan benefit is \$264.90, payable monthly as a Straight Life Annuity. In particular, the Board finds that: (1) the earnings data that you submitted does not show that you are entitled to a larger benefit under the Plan, and (2) PBGC and Pan Am correctly based your benefit on your service and Compensation determined as of CRIP's December 31, 1983 freeze date.

1. Your Request for Plan Documents and a Copy of Your Benefit File

You state in Schedule A to your July 30 letter, "PBGC has denied me access to documents and records" you requested in your initial appeal letter. In my June 30 letter, however, I included all the data that PBGC used to calculate your benefit. In addition, on August 18, 1999, PBGC's Disclosure Officer sent you the following materials: (1) the records in your benefits file; (2) the CRIP plan documents in effect when CRIP was terminated on July 31, 1991; and (3) the most current Summary Plan Description prepared by Pan Am for flight attendant employees. You have not identified, nor has the Board been able to locate, any information in any of those materials that indicates your benefit was calculated incorrectly. But, as stated in my June 30 letter, if you locate any specific information in those documents or elsewhere that shows that you are entitled to a different benefit, PBGC will consider that evidence even though your appeal has been decided.

2. The Alleged Conflict Between PBGC's Roles as Statutory Trustee and Guarantor

You also assert that my June 30 letter is based on "fallacious reasoning and self-serving decisions made with inherent Conflicts of Interest with its role as Trustee of the Plan." The Appeals Board has previously addressed that issue, and a summary of its

decision on that and other issues is included as Enclosure 2 to my June 30 letter.¹ As the Board describes in that Enclosure 2 (at pg. 1-2), the issue whether PBGC's two roles as statutory trustee of CRIP and as government guarantor of the CRIP benefits create an inherent and improper conflict of interest has been raised in the *Pineiro v. PBGC* lawsuit. In its November 1997 opinion in that case, the Court ruled that PBGC's dual role cannot be inherently fatal. Relying upon the Court's decision, the Appeals Board has previously concluded that there is no conflict of interest when it decided CRIP participants' appeals.

While the Court's decision should resolve the "inherent conflict" issue, the *Pineiro* lawsuit remains pending. PBGC has repeatedly stated that if a final decision is issued in that case that results in an increase in benefits for any CRIP participant, PBGC will apply the decision to all similarly-situated participants, including participants like yourself for whom the appeals process has been completed.

3. Freezing of CRIP Benefits and Accruals

You also state that PBGC "improperly and incorrectly" decided that Pan Am had validly adopted an amendment freezing CRIP benefits and accruals as of December 31, 1983. The Appeals Board has looked carefully at this issue, and a summary of the Board's decision is included in at pg. 2-3 of Enclosure 2 to my June 30, 1999 letter. In short, the Board has decided that Pan Am followed all necessary legal steps in adopting the amendment freezing CRIP. Your statement to the contrary does not provide any specific information that would cause the Board to reconsider that decision. We are enclosing a copy of CRIP's freeze amendment. See Enclosure 6. If you need copies of any additional documents please contact, PBGC's Disclosure Officer at 1200 K Street, N.W., Washington, DC 20005. You may also contact the Disclosure Officer at (800) 400-7242 extension 4040.

4. Your Earnings Data

In your July 30 letter you state that PBGC used the wrong data to determine your benefit, and you enclosed a report of the earnings reported for you to the Social Security Administration (your "Social Security Earnings") for the years 1967 through 1991. However, your 1984-1991 Social Security Earnings do not provide grounds for changing your benefit because, as explained above, Compensation under the Plan was frozen effective on December 31, 1983. I explain in the following two paragraphs why your Social

¹ A copy of my entire June 30, 1999 letter and its enclosures is included as Enclosure 1 to this letter.

Security data for the remaining years, 1967 through 1983, also do not provide grounds for changing PBGC's determination.

Your Social Security Earnings 1979 through 1983

Pan Am's record of your Compensation (also called "Actual Compensation") and your Annualized Compensation, which are for the years 1979 through 1983 only, and the Social Security Earnings you submitted for those years are shown in the table below.

Calendar Year	Your Social Security Earnings	Pan Am's Data for You	
		Actual Compensation	Annualized Compensation
1983	\$27,744.00	\$21,684.11	\$21,714.25
1982	\$29,336.00	\$24,933.61	\$23,622.66
1981	\$23,892.00	\$20,326.85	\$21,637.80
1980	\$20,103.00	\$17,723.77	\$19,128.58
1979	\$22,457.00	\$18,963.42	\$17,537.92

Your Social Security Earnings are not directly comparable to Actual or Annualized Compensation in years after 1978 because:

Social Security Earnings include overtime and bonuses, while the Plan's definition of Compensation for participants in the IUFA Workforce does not include overtime or bonuses in years after 1978. (See page 8 of my June 30, 1999 letter.)

Furthermore, the Appeals Board has reconciled the Compensation data in the table above that PBGC and Pan Am used to determine your benefit with all available sources, including your Social Security Earnings, and a detailed hourly wage rate history contained in computerized Pan Am databases. See the Appendix and Enclosures 2 and 3 to this letter). The Board concluded that your 1979-1983 Social Security Earnings are consistent with the Plan's records of your pension earnings and provide no basis for changing PBGC's determination.

Your Social Security Earnings for 1967 through 1978

Earnings in years before 1979 could affect your benefit under either of CRIP's two earnings-based benefit calculation formulas applicable to your job class: the Monthly Updated Benefit and the Monthly Basic Benefit. (See pages 8 and 9 of my June 30 letter.) Also, Pan Am records do not contain earnings figures for you for years before 1979. The Appeals Board staff have therefore used the Social Security Earnings data that you provided to recalculate your benefit under the Monthly Updated and Basic Benefit formulas. The Appendix and Enclosures 5a and 5b to this letter show that your benefit is not improved using the new data from the Social Security

Administration that you provided. The Appeals Board therefore finds no basis for changing PBGC's determination.

5. Request for Delay in Deciding Your Appeal

You enclosed with your July 30, 1999 letter a request that the Appeals Board delay consideration of your appeal until 45 days from the date that you obtain your salary and earnings records from the Social Security Administration and the Internal Revenue Service. As noted above, you have already provided, and the Appeals Board has reviewed, your Social Security Earnings for all relevant years. The Appeals Board concludes it is inappropriate to delay PBGC's final determination of your benefit because, as explained in the Appendix to this letter, **it is highly unlikely that any information exists that would change PBGC's determination of your CRIP benefit.**

Furthermore, you will not be harmed by the Board deciding your appeal now because the PBGC will always - even after an appeal is closed - consider any new, specific evidence that you present showing that you may be entitled to a different benefit. Please send any such information to:

PBGC Authorized Plan Representative
1175 Peachtree Street, N.E.
100 Colony Square, Suite 500
Atlanta, GA 30361

You may also contact PBGC's Authorized Plan Representative at 1-800-400-7242 extension 2000.

Decision

Having applied the law, the regulations, and the provisions of the Plan to the facts in this case, the Appeals Board finds no basis for changing the PBGC's initial determination and affirms that your pension benefit under CRIP is \$264.90, payable monthly as a Straight Life Annuity. This letter concludes your administrative remedies. You may, if you wish, seek court review of this decision. We appreciate your patience during this careful review of your appeal.

Sincerely,

William D. Ellis

William D. Ellis
Appeals Board Member

Appendix: Analysis of your Compensation data

Enclosures:

- 1) Copy of my letter to you dated March 31, 1999 (13 pages plus 15 pages of enclosures)
- 2) Wage data taken from Pan Am's "Historical File" database for you
- 3a) Worksheet reconciling your wage history (Enclosure 2) with Pan Am's & PBGC's records of your Compensation and Annualized Compensation
- 3b) Overview of the calculations in Enclosure 3a (2 pages)
- 4) Excerpts from a Pan Am Administrative Manual titled "Pension Administration Data Base" 12 pages)
- 5a) Worksheet calculating your Monthly Basic "Career Average" Benefit using the Social Security Earnings you provided the Appeals Board
- 5b) Worksheet calculating your Monthly Updated Benefit using the Social Security Earnings you provided the Appeals Board
- 6) Copy of CRIP's 1984-1 amendment, signed August 10, 1984 (6 pages)

cc: