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

[Redacted]

MAR 05 2004

Re: [Redacted] Case 190225, Atlas Corporation 1978 Retirement Plan (the Plan)

Dear [Redacted]

The Appeals Board reviewed your appeal of PBGC's November 6, 2002, determination that you are not entitled to a PBGC benefit from the Plan. For the reasons presented below, the Appeals Board changed the determination. The Board found that you are 100 percent vested in your benefit accruals, and are entitled to a benefit under the Plan whose payment is guaranteed by the PBGC.

Benefit Determination and Appeal

PBGC's determination letter informed you that when you terminated employment, the Plan required 10 years of service to qualify for a vested pension benefit, and you had only 7.667 years of service. Your November 19, 2002 appeal states that you received statements from the Atlas Corporation (Atlas) showing how much money you would receive at retirement, which you interpret as meaning you are fully vested in the Plan.

PBGC further explained in a March 14, 2003 letter that a participant in the Plan also could be fully vested if he or she had been a member on September 30, 1978, in either of two predecessor plans (the Atlas Corporation 1963 Retirement Plan or the Atlas Corporation Employees' Retirement Plan). The letter advised you that information received from Atlas Corporation identified participants who were 100 percent vested in the Plan as a result of their participation in one of the predecessor plans, and that you were not one of those listed. PBGC asked you to forward any documents showing you were a participant in either of the predecessor plans on September 30, 1978. You supplemented your appeal by e-mail sent March 20, 2003, in which you stated that you were employed with the Brockton Sole & Plastics Division of Atlas from 1976 through 1984. You added that you were looking for letters from Atlas showing the amount you would receive, and that you do not understand why you are not entitled to a benefit.

The Record

The record shows that you were born on [Redacted] You started to work for Atlas on November 11, 1976, and became a participant in the Plan on October 1, 1978, the date it became effective. Your employment ended on June 15, 1984.

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Plan Provisions

The governing document of the Plan in effect when your employment ended was the Plan as amended effective January 1, 1983. Section 4.15 provided that

“(a) a Member who completed 10 or more Years of Service has a fully vested interest in his Plan benefits. A Member’s Accrued Benefit becomes nonforfeitable on his Normal Retirement Date regardless of length of service. A Member who has not completed 10 Years of Service and has not attained his Normal Retirement Date has no vested interest in Plan benefits.

(b) Notwithstanding subsection (a) above, any Employee who was a Member of the 1963 Retirement Plan or the Atlas Corporation Employees’ Retirement Plan on September 30, 1978, and who became a Member of this Plan on October 1, 1978, shall be deemed to have a 100% vested interest in Plan benefits notwithstanding the number of Years of Service such Employee actually has credited to him.”

Under Section 3.5, “Years of Service” were based on the total period of time during which an employment relationship existed with Atlas. For every 12 months, an employee was credited with a Year of Service. Partial years were credited on the basis of 1/12 of a year for each calendar month.

Section 3.1 of the Plan provided that an employee who was a member of a predecessor plan on September 30, 1978, became a member of the Plan on October 1, 1978. And, Section 3.2 provided that an employee who was not a member of a predecessor plan on September 30, 1978, became a member of the Plan on June 30 or December 31, whichever came first, following the attainment of age 25 and the completion of one Year of Service.

Discussion

The record of the Plan’s termination includes a listing prepared by Atlas of inactive vested participants updated through May 1999 on which you are listed with a monthly benefit of \$143.09 in the form of a life annuity commencing on your age 65 normal retirement date of February 1, 2013. In a table prepared by the PBGC from Plan records, you are identified as a separated vested participant with a date of hire of November 1, 1976; a date of participation in the Plan of October 1, 1978; and a date of termination of employment of June 15, 1984. According to the table, the Plan’s former administrator determined you had an accrued monthly benefit on February 28, 1997, of \$143.09.

As a result of a telephone conversation with an appeals analyst, you forwarded copies of three communications you received bearing on your entitlement to a benefit. Two are letters dated June 4, 1999, and August 24, 1999, from James R. Jensen, CFO, Secretary/Treasurer of Atlas, addressed to “Participant” providing notification, as required by law, regarding termination of the Plan. The third is an

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undated handwritten note addressed to you from [redacted] advising you that "As the . . . Plan is in termination, we are unable at this time to quote you benefits. Future letters will notify you of your benefits." The record does not show in what capacity [redacted] served.

From the above, it appears that after your employment ended, you were still considered to be a participant in the Plan entitled to a benefit. The Appeals Board concluded that you were a member on September 30, 1978, of either the 1963 Retirement Plan or the Atlas Corporation Employees' Retirement Plan. Consequently, when you became a participant in the Plan on October 1, 1978, you had a 100% vested interest in Plan benefits without regard to the Years of Service credited to you.

Decision

Applying provisions of the Plan to the facts in this case, the Appeals Board changed PBGC's determination. The Appeals Board found that you are 100 percent vested in your benefit accruals, and are entitled to a benefit under the Plan.

You will receive a new determination based on this decision from PBGC's Insurance Operations Department, the office responsible for issuing benefit determinations. The new determination will set forth the type, amount and form of your PBGC benefit. The new determination will contain a new 45-day right to appeal. If you need other information from PBGC, please call our Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis  
Acting Chair, Appeals Board