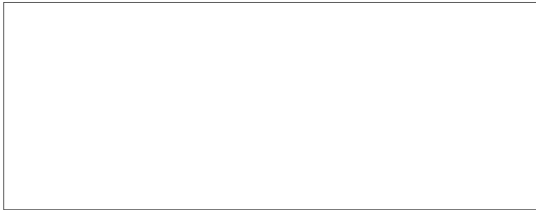




Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

May 19, 2009



Re: Appeal [redacted], Bethlehem Steel Corporation Pension Plan, Case # 196603

Dear Mr. [redacted]:

We are responding to the appeal you filed on behalf of [redacted] concerning PBGC's October 2, 2007 determination that he is not entitled to a Permanent Incapacity (disability) pension under the Bethlehem Plan. For the reasons discussed below, we changed PBGC's determination by finding that Mr. [redacted] is entitled to Permanent Incapacity Retirement. PBGC's Benefits Administration and Payment Department, the organization responsible for calculating and paying benefits, will send him a new determination of his benefit amount and annuity start date, with a new 45-day appeal right.

*PBGC's Determinations, Your Appeal and Related Correspondence*

PBGC's October 2, 2007 letter explained that, to be entitled to a Permanent Incapacity Retirement under the 1986 Steel Hourly Plan, a Participant must have at least 15 years of Continuous Service and be permanently incapacitated. The Plan defines "permanent incapacity" as being totally disabled by bodily injury or disease so as to be prevented from engaging in any employment of the type normally performed. PBGC said its records show that Mr. [redacted] had more than 15 years of service when he voluntarily terminated his employment with Bethlehem in May, 1989. PBGC further noted that the Administrative Law Judge from the Social Security Administration who presided at his 1992 hearing wrote that Mr. [redacted] was "not under a disability as defined in the Social Security Act, as amended, at any time on or before the date of this decision." Based on this information, PBGC determined that Mr. [redacted] was not permanently incapacitated before his employment with Bethlehem ended, and thus was not entitled to a Permanent Incapacity Retirement. PBGC also explained that he is entitled to a regular (non-disability) Bethlehem pension.

Your November 29, 2007 appeal said that, as of May, 1989, Mr. [redacted] had a permanent and total disability due to [redacted] with recurrent [redacted]. His medical condition was caused by a significant [redacted] sustained in a serious [redacted] accident in

August, 1980 that left him [redacted] for a period of time, required him to undergo a [redacted], and led to a four-month stay in the [redacted]. You submitted a number of medical reports and other documents when you filed your appeal and a letter supplementing your appeal on May 6, 2009.

The documents you and Mr. [redacted] submitted show that he applied to the Social Security Administration ("SSA") for disability insurance benefits on August 22, 1990. SSA denied his application on January 14, 1991, and again upon reconsideration on February 2, 1992. Mr. [redacted] reapplied for disability benefits and, after another administrative review, SSA issued a decision on September 12, 1994 awarding him a disability benefit, effective February 27, 1992. As you noted in your appeal, after SSA finds an individual entitled to disability insurance benefits, SSA rules limit how far back SSA can go to begin *paying* the benefits. SSA disability awards normally set the disability date as the first date as of which SSA benefits are payable, even if the individual's disability occurred earlier. Accordingly, SSA's September 12, 1994 decision that Mr. [redacted] became disabled on February 27, 1992 does not necessarily mean he was not disabled under SSA rules before that date.

PBGC also received a copy of SSA's response to Mr. [redacted]'s inquiry regarding the first time he was eligible for Social Security disability benefits following his accident. SSA said that "claimant was getting benefits from 02/81 to 01/84. Claimant is getting benefits since 08/92."

*Permanent Incapacity (Disability)*

The Bethlehem Plan terminated, effective December 18, 2002, without sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act (ERISA). The terms of the 1986 Steel Hourly Plan, the provisions of ERISA, and PBGC regulations and policies determine Mr. [redacted]'s entitlement to a guaranteed benefit. PBGC's regulations require that, to be entitled to a guaranteed benefit, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit as of the plan's termination date.

Under section 2.5 of the 1986 Steel Hourly Plan, there are two conditions that a participant must meet to be eligible for the Plan's Permanent Incapacity retirement: (1) the participant must have at least 15 years of continuous service (as does Mr. [redacted]) and (2) the participant must be "permanently incapacitated." Plan section 2.5 provides that a participant is considered permanently incapacitated only if --

(a) he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type normally performed in his employee category; and

(b) such total disability shall have continued for a period of five consecutive months and, in the opinion of a qualified physician, will

be permanent and continuous during the remainder of the Participant's life.

This definition of permanent incapacity is not the same as SSA's disability definition nor is an SSA disability award a prerequisite for the Plan's disability pension.

Background

The files PBGC's auditors obtained from the former Plan Administrator show that (1) Mr. [redacted] was hired at Bethlehem's Sparrows Point plant on May [redacted], 1969, (2) his last day worked was March [redacted], 1989, and (3) his employment there ended May [redacted], 1989, with 19.92 years of continuous service.

After receiving the letter PBGC sends to all participants in newly-trusted plans, Mr. [redacted] filled out PBGC's Form 701 on June 19, 2003, and asked to begin receiving a disability pension. He explained the circumstances surrounding his termination of employment and the reasons why he believes he is entitled to a disability pension in various letters to PBGC, Senator Martinez and Representatives Weldon and Feeney.

To summarize, Mr. [redacted] said he received a [redacted] [redacted] in a serious accident in August of 1980. He suffered [redacted] after the accident and the Plant Physician declared him "disabled to return to work." He applied for and was awarded Social Security disability benefits in 1981. Mr. [redacted] said he "didn't want to stay on S.S. disability" and had to file and win a grievance before Bethlehem would reinstate him. He was eventually cleared for light duty, gave up his Social Security disability benefits and returned to the plant as a [redacted] [redacted] on [redacted], 1984, "hiding the fact [he] was occasionally having [redacted]"

Before his accident, Mr. [redacted] was a [redacted] at Bethlehem's Sparrows Point plant. After he won the right to return to work, he was reassigned to light duty [redacted] [redacted] equipment. Mr. [redacted] said he was able to do this job, which included [redacted] [redacted], until the [redacted] started getting worse in the late 1980's. He specifically mentioned [redacted]

[redacted] -- a point he said the Company doctor had made to him previously. He also noted these his [redacted] at work were well-documented and PBGC could obtain information about them directly from his employee files.

Mr. [redacted] returned to the plant on May [redacted], 1989 and voluntarily quit work. He said that local union officials were not around when he quit because they were in Pittsburgh negotiating a

contract.<sup>1</sup> Mr. [ ] did not ask the Bethlehem employees who processed his termination about a disability pension because he thought only disabilities caused by on-the-job injuries would qualify. He said he only learned he was eligible during a conversation with a former co-worker in Maryland after the Plan terminated. Mr. [ ] did not work again after May [ ], 1989.

Discussion

To be entitled to a disability benefit under the Bethlehem Plan, Mr. [ ] had to have satisfied the Plan's definition of permanent incapacity as of May [ ], 1989, the date his employment terminated. The medical reports you submitted with your appeal were written between February, 1990 and November, 1993 by various doctors who treated Mr. [ ]. Taken together, these reports document that (1) Mr. [ ] resulting from a serious [ ] accident in August, 1980, with [ ], and (2) he was totally and permanently disabled as of the date of the report. Referring to Mr. [ ]'s past medical history, Dr. [ ] noted on [ ], 1990 that Mr. [ ] had [ ] in 1989 that left him [ ] and [ ] and that the [ ] prompted him to quit work at Bethlehem Steel as a [ ] worker. Dr. [ ] further noted that the medication he was taking in 1989 was not the optimal drug in this case and that Mr. [ ] was not to operate dangerous machinery, climb to excessive heights, or be involved in physical or mental activities that require sustained concentration. Other medical reports also referenced Mr. [ ]'s history of [ ]

The Social Security Act defines disability as the inability to engage in *any* (emphasis added) substantial gainful activity due to physical or mental impairment(s) which can be expected to either result in death or last for a continuous period of not less than 12 months. On August 22, 1990, Mr. [ ] applied for Social Security disability insurance benefits and was denied, both initially and upon reconsideration. On July 2, 1991, he submitted a timely request to the SSA for a hearing before an Administrative Law Judge. Mr. [ ] said on his request form that he disagreed with the determination made on his claim because "I continue to be totally disabled from gainful employment and have been disabled since May, 1989."

The Administrative Law Judge who presided at Mr. [ ]'s January [ ], 1992 hearing found that Mr. [ ] was not under a disability as defined in the Social Security Act and denied his claim for Social Security disability benefits. However, before determining whether Mr. [ ] could engage in any substantial gainful activity under the Social Security definition of disability, the Administrative Law Judge was required first to determine whether Mr. [ ] retained "the residual

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<sup>1</sup> As part of our research on Mr. [ ]'s appeal, we contacted a former Plan official who confirmed that local union officials from the different Bethlehem plants were in Pittsburgh for contract negotiations on May [ ], 1989. He also told us that International Steel Group, which purchased the assets of Bethlehem Steel on May 6, 2003, had destroyed any remaining Bethlehem employee records at Sparrows Point.

functional capacity to engage in his past relevant work." The Judge's February 2, 1992 decision cited Mr. [ ]'s May, 1989 "alleged onset date of disability" and found that --

The claimant is precluded from engaging in his past relevant work as [ ] worker.

The Appeals Board concluded that SSA's finding that Mr. [ ]'s condition precluded him from engaging in his past relevant work as of May, 1989, meant that he was "prevented thereby from engaging in any employment of the type normally performed in his employee category."

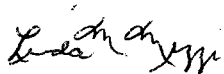
After reviewing all the evidence submitted and, in particular, the SSA's February 2, 1992 decision quoted above, the Appeals Board found that Mr. [ ] satisfied the Plan's definition of Permanent Incapacity because his [ ] resulted in a disability that was both total and of such severity that it prevented him from engaging in any employment of the type normally performed in his employee category on or before May [ ], 1989. We further found that, as of August 30, 1989 at the latest, the disability had continued for more than five consecutive months.

Decision

Having applied the law, the provisions of the Plan and PBGC policy to the facts in this case, the Appeals Board found that Mr. [ ] is entitled to a Permanent Incapacity Retirement. We will forward a copy of this letter to PBGC's Benefits Administration and Payment Department, who will send him a new determination of his benefit amount and annuity start date, with a new 45-day appeal right for matters not decided herein. BAPD will also calculate any backpayments PBGC may owe him and pay that amount in a single lump sum with interest.

Meanwhile, if you or Mr. [ ] have questions about his benefit, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board

cc: [ ]