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

APR 28 2004

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Re:  The Geneva Steel Union Employee Defined Benefit  
Plan, Case # 196606

Dear

The Appeals Board reviewed your appeal of PBGC's September 24, 2003 determination that you are not entitled to a disability (*Permanent Incapacity*) benefit under the Geneva Plan. As explained below, the Board changed PBGC's determination by finding that you had completed 15 Years of Credited Service when the Plan terminated on November 26, 2002, and thus, you are eligible for a *Permanent Incapacity Retirement* from the Plan.

PBGC determined that you are not entitled to a disability benefit because you had only 14.75 years of service as of your disability date of August, 2002, and the Plan required 15 full years of service. PBGC also included with its determination a Benefit Estimation Statement that gave an estimate of your benefit amount under the Plan's *Deferred Vested Retirement* provisions.

Your October 22, 2003 appeal said that, while you did not have the full 15 years of service as of August, 2002, you have in fact completed a full 15 years. You also asked that PBGC determine your entitlement to a disability benefit as of January, 2003.

The Geneva Plan terminated, effective November 26, 2002, without sufficient assets to provide all plan benefits and PBGC subsequently became trustee. The terms of the Plan, the provisions of the Employee Retirement Income Security Act and PBGC regulations and policies determine the benefits PBGC can guarantee. *Please note that your service for pension purposes ended when the Plan terminated.*

*Eligibility for Permanent Incapacity Retirement*

PBGC's regulations require that, for a disability benefit to be guaranteed, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit on or before the earlier of the date the participant's employment ended or the date the plan terminated (see 29 Code of Federal Regulations § 4022.3 and § 4022.4(a)(3)).

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Plan section 5(a) provides that a participant may elect a Permanent Incapacity Retirement Pension if the participant has completed 15 or more Years of Credited Service, ceases to be an Employee because of Permanent Incapacity and remains Permanently Incapacitated for at least 5 months. Under section 19(aa), Permanent Incapacity means the condition of a Participant who has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type covered by the collective bargaining agreement in effect from time to time between the United Steelworkers of America and the Company, and, as certified by a qualified physician selected by the Company, the incapacity is expected to be permanent and continuous during the remainder of the Participant's lifetime."

*A. Service*

Under Plan section 19(x)(i), a Period of Service "commences on the first date the Employee performs duties for an Affiliated Group member . . . and ends on the date the Employee quits, dies, is discharged or retires. An Employee shall not be considered to have quit . . . (A) [w]hen the Employee is absent due to lay-off, disability, sickness or approved leaves of absence for up to 24 months." Section 19(v)(A) provides that "[a]ll Periods of Service . . . shall be aggregated on the basis of whole months whether or not such Periods of Service are consecutive, except: (A) Fractional Months. If an Employee's Period of Service includes a fraction of one month, one additional month of Service shall be credited if the number of such days is 16 or more."

*B. Credited Service*

Section 19(w)(i) of the Plan provides that a Participant's Period of Credited Service shall include the Participant's Period of Service completed while he is covered by the terms of the collective bargaining agreement in effect from time to time between the United Steelworkers of America and the Company . . ." However, "a Participant's Period of Credited Service shall not include . . . for purposes of determining Years of Credited Service for *eligibility* to receive a . . . Permanent Incapacity Retirement . . . the additional month credited . . . in which a Participant's Period of Service includes a fraction of one month." [Emphasis supplied.] A Year of Credited Service (section 19(pp)) is equal to "a 12-month Period of Credited Service;" a Year of Service (section 19(qq)) is equal to "a 12-month Period of Service."

Discussion

The files PBGC's auditors obtained from the former Plan Administrator show that (1) you were hired on November 9, 1987, (2) you were laid off on November 11, 2001, (3) you continued to earn Credited Service until the Plan termination date under Plan section 19(x)(i) and (4) the Social Security Administration found you disabled under their rules on August 25, 2002. The Appeals Board found that you met the Plan's definition of Permanent Incapacity before the Plan's November 26, 2002 termination date.

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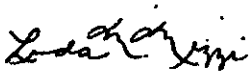
As described above, the Plan calculates Years of Credited Service for purposes of determining *eligibility* for a Permanent Incapacity Retirement in whole months by aggregating Periods of Credited Service. Under the Plan's terms, your 12-month Period of Credited Service is from November 9th to November 8th of the following year. The Board found that, based on your aggregated Periods of Credited Service from November 9, 1987 to November 26, 2002, you had 15.0 Years of Credited Service.

Decision

Having applied the law, the provisions of the Plan, and PBGC regulations and policies to the facts in this case, the Appeals Board changed PBGC's determination by finding that you have 15.0 Years of Credited Service and are, therefore, entitled to a Permanent Incapacity Retirement.

We will forward a copy of this letter to PBGC's Insurance Operations Department, the organization responsible for calculating benefits. They will send you a new determination of your Permanent Incapacity benefit amount, with a new 45-day appeal right for issues not decided in this letter. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242 and ask to speak to PBGC's authorized representative for your plan.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board