PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

May 14, 2010

Re: Case # 20002500, Golden Casting Corporation Hourly Plan (the "GC Plan")

Dear

We are responding to your appeal of PBGC's February 27, 2009 determination of your benefit under the GC Plan. For the reasons given below, we are denying your appeal.

**PBGC's Benefit Determination and Your Appeal**

PBGC's February 27, 2009 determination letter stated you are entitled to a monthly benefit of $211.17 based on your benefit starting on May 1, 2004 in the form of a SLA. The letter also stated that, since the estimated amount you have been receiving ($298.51) is more than the amount you are entitled to, you have been overpaid ($4,803.70 as May 1, 2009) and that PBGC would reduce the $211.17 by $21.12 per month (10.0%) until the overpayment amount has been repaid. PBGC enclosed a benefit statement that shows your benefit and the data used in the calculation.

On March 17, 2009, we received your appeal of the February 27, 2009 determination letter. Your appeal enclosed a PBGC letter dated April 1, 2005 that stated that PBGC had received your Payee Information Form and that "no further action is required at this time." You also said, in part:

> "I received your letter on 3/2/09 and was very disappointed that you think that I should be penalized for making an honest mistake…I can't understand why I was told my pension would not be cut, after I signed up. There is no way I would have signed up, if I thought there was a chance of that happening….Something I would like to bring up is that nothing is ever brought up about the 5 to 6 thousand dollars of vacation money that was never paid to me…
>
> . But, I chose to work as long as I can…The result I am seeking, I guess would be to back up from the time I signed up until I turned 58, approx. 6 mos. Then resume $298.00. As a result of my error, there are people with much less time than me getting their full retirement. . . ."

## Background

*History of the Plan Sponsor and Pension Plan*

The sponsor of the GC Plan, Golden Casting Corporation ("Golden Casting"), operated a foundry in Columbus, Indiana, that produced castings, primarily for heavy duty diesel engines. Golden Casting was a subsidiary of American Bailey, Inc., who had purchased the foundry from its previous owner, Textron Corporation ("Textron"), on September 8, 1990. The GC Plan covered Golden Casting's hourly (unionized) employees.

Prior to the foundry's sale, Textron operated the business through the Golden Operations Division ("Golden Operations"), a division of Textron's CWC Casting Division. Golden Operations hourly employees participated in the Golden Operations Hourly Pension Plan ("Golden Operations Plan"), which provided them with pension benefits based on their service with Golden Operations up to the date of the sale. Sometime after the sale, Textron merged the Golden Operations Plan with another Textron plan, and the merged plan is currently ongoing.

Also, effective October 1, 1990, Golden Casting established the GC Plan. The benefit structure of the GC Plan, which provides a benefit based on service with both companies, mirrors the structure of the Golden Operations Plan. GC Plan's benefit formula further provides for an offset (referred to as the "Textron offset") for the benefit under the Golden Operations Plan.

Golden Casting filed a Chapter 11 Bankruptcy petition on May 14, 2003. PBGC entered into an agreement with Golden Casting effective January 1, 2005 that terminated the GC Plan, appointed PBGC as its trustee, and established September 30, 2003 as the GC Plan's termination date.

*The GC Plan's Provisions*

Section 3.01 of the formal GC Plan Document,[1] titled "Normal Retirement Benefits," provides that the pension benefit payable at Normal Retirement is as follows:

> 3.01 Normal Retirement Benefits. The Monthly Retirement income of each Participant, hereunder, shall be equal to:
>
> (i) (a) $20.00 for Participants whose Severance from Service occurs prior to June 12, 1994, or
>
> *  *  *
>
> (d) $23.50 for Participants whose Severance from Service occurs after June 25, 1998; or

[1] The formal GC Plan document that applies to your benefits is the "Golden Castings Corporation Hourly Pension Plan Amended and Restated Generally Effective as of October 1, 1997" ("GC Plan Document"). In Enclosure 1, we provide a copy of the GC Plan Document's provisions that relate to your appeal.

(e) $24.00 for Participants whose Severance from Service occurs after December 14, 2002;

* * *

multiplied by

(ii) the Participant's Credited Service;

and for a Participant who was a Participant of the [Golden Operations] Plan on or before September 8, 1990, reduced and offset by the accrued benefit under said Prior Plan as of September 8, 1990.

Section 1.29 of the GC Plan Document, which is titled "Normal Retirement Date," is the only provision in that document that specifically addresses benefit eligibility based on 30 years of Credited Service. Section 1.29 provides as follows:

> 1.29 "Normal Retirement Date" shall mean the Participant's 65th birthday or the Participant's 58th birthday, so long as he has completed 30 years of Credited Service, if earlier.

As is discussed further below, section 1.29 is of central importance regarding the issue raised in your appeal.

With the exception of the 30-Year benefit and the disability retirement benefit, a GC Plan participant cannot start receiving an unreduced benefit before age 65.[2] Section 3.03(a) of the GC Plan Document provides that a Participant may elect an Early Retirement Benefit if he has attained his Early Retirement Date. Section 1.14 provides that the Early Retirement Date is "the Participant's 50th birthday, provided he has completed 10 Years of Service." If the Early Retirement Benefit commences before age 65, the benefit amount is "reduced by ½ of 1% for each complete calendar month by which the Participant is under Age 65 at the date his early retirement benefit commences."[3] GC Plan Document, section 3.03(a)(2).

Similarly, if a vested participant terminates employment before qualifying for a Normal, Early or Disability retirement benefit, the participant may receive either: (1) a deferred benefit starting on his Normal Retirement Date; or (2) an immediate or deferred benefit, as the case may be, starting upon the later of employment termination or age 50, which is "reduced by ½ of 1% for each complete calendar month by which the Participant is under Age 65 at the date his vested termination benefit commences." GC Plan Document, section 3.06.

---

[2] The disability retirement benefit is available to a participant who has attained age 40, completed 15 or more years of service, is permanently and totally disabled, and terminates employment before his or her Normal Retirement Date. The disability retirement benefit is payable immediately upon termination of employment in an unreduced amount. GC Plan Document, sections 1.13 and 3.05.

[3] Section 3.03(b) of the GC Plan Document also provides that, if a participant has completed the 10-year service requirement for early retirement but separates from employment before age 50, he is entitled to a benefit upon attaining age 50 in the amount described in section 3.03(a) .

## Discussion

The GC Plan terminated without sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act ("ERISA"), and PBGC became its trustee. The terms of the plan, the provisions of ERISA, and PBGC regulations and policies determine your entitlement, if any, to a guaranteed benefit. Because of legal limits under ERISA and PBGC's regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

*1.* *The Former Plan Administrator Erred in Calculating Your Benefit*

PBGC records establish that you had more than 30 years of Credited Service and were age 56 when the GC Plan terminated on September 30, 2003, which is also the date when Golden Casting ceased business operations. Before PBGC took over responsibility for the Plan, you applied for a benefit with Golden Casting, who was the former Plan Administrator. On a GC Plan form that is dated April 7, 2004, you and your wife waived the GC Plan's Joint and Survivor Annuity benefit. Golden Casting further completed the paperwork for you to receive a monthly benefit of $298.51 starting on  2004. You have received this $298.51 monthly amount continuously since March 1, 2004.

The records PBGC obtained from Golden Casting contain a one-page document titled "Golden Castings Corporation Pension Calculation," which we are providing as Enclosure 2. This document shows that Golden Casting calculated your monthly benefit as $298.51 before the reduction for the GC Plan's Qualified Pre-Retirement Survivor Annuity ("QPSA"). The document also shows that, after the deduction for the QPSA, your monthly benefit is $277.61. It is unclear why the GC Plan paid you the $298.51 amount, rather than $277.61. The GC Plan document requires a reduction for the QPSA unless QPSA coverage is waived by the participant. We found no document indicating that you waived the QPSA.

Your GC Plan calculation form shows that your type of benefit is Early Retirement. Also, in calculating your benefit, Golden Casting used an Early Retirement factor 0.55 to take into account that you were age 57 and 6 months (rather than age 65) when you started your benefit. This early retirement factor of 0.55 is the correct reduction, as provided under section 3.03(a)(2) of the GC Plan Document, for an early retirement benefit starting at age 57 and 6 months.

Unfortunately, Golden Casting made an error, which had a substantial effect, in calculating the Textron offset to your benefit. The normal retirement amount that Golden Casting used for the Textron offset ($450.00) is close to the actual amount of your Golden Operations Plan benefit as calculated by Textron ($456.60). Golden Casting, however, used an incorrect calculation method in adjusting the $450.00 Textron amount for your early retirement date. In effect, the Textron offset decreased your benefit by only $136.12 as of your early retirement date ( , 2004). If the Textron offset had been correctly calculated, the reduction to your benefit as a result of the $450.00 Textron offset would have been $247.50.

based on your actual retirement date of 2004 and is payable in the SLA form. We decided that your appeal provides no basis to change that amount.

2. *Calculation of Your PBGC Benefit*

PBGC correctly used a benefit rate of $23.50 in calculating your guaranteed benefit. Although the GC Plan increased the benefit rate to $24.00 for participants who terminated employment after December 14, 2002, PBGC is unable to guarantee the increase to $24.00 because the increase occurred less than one year before the GC Plan terminated.[4]

The records PBGC obtained from Golden Casting show that you had 35.9 years of Credited Service based on your employment with both Golden Casting and Golden Operations. Thus, based on Section 3.01 of the GC Plan Document, your guaranteed benefit at Normal Retirement and before the Textron offset is $843.65 [$23.50 x 35.9 = $843.65]. This is the amount PBGC calculated, which the Appeals Board did not change.

In its benefit calculations, PBGC applied an offset of $456.60 for your Textron benefit. Documents the Appeals Board obtained from Textron (Enclosure 3) also show that your Textron benefit amount is $456.60.

Thus, your guaranteed GC Plan benefit after the Textron offset is $387.05 [$843.65 - $456.60 = $387.05]. Next, based on the GC Plan's terms, your $387.05 benefit amount is multiplied by 0.55 to take into account that your benefits began at age 57 and 6 months (rather than at age 65, your normal retirement date). Thus, after the early retirement adjustment, your guaranteed GS Plan benefit is $212.87 [$387.05 x 0.55 = $212.87].

Additionally, PBGC must adjust your benefit for the GC Plan's Qualified Pre-Retirement Survivor Annuity ("QPSA"). Consistent with the GC Plan's terms, your benefit amount is multiplied by 0.99 to take into account the QPSA. Thus, your guaranteed GC Plan benefit at your actual retirement date in the SLA form is $210.75 [$212.87 x 0.99 = $210.75].

Finally, as provided in section 4022(c) of ERISA, PBGC will pay a portion of your GC Plan benefits that are not guaranteed by PBGC. The amount PBGC may pay under ERISA section 4022(c) reflects PBGC's recoveries on its legal claims against pension plans sponsors. In your case, the section 4022(c) amount ($.42) increases your monthly PBGC benefit at Normal Retirement to $211.17 in the SLA form.

The Benefit Statement PBGC provided with its revised determination shows that, as of your 2004 "Actual Retirement Date," you are entitled to a benefit of $211.17 payable as a SLA. The Appeals Board found no basis to change that amount.

---

4 See 29 U.S.C. § 4022(b)(1), (7) and 29 C.F.R. § 4022.25, which describe the limitation to PBGC's guarantee that is referred to as the "Phase-in Rule."

3. *Your Contention That You Could Have Received a Much Larger Benefit at Age 58*

In your appeal, you express a belief that your benefit would have been much larger if you had waited until age 58 to start receiving payments, rather than beginning your payments at age 57 and 6 months. This is based on your apparent understanding that a participant with 30 or more years of service could start receiving a benefit at age 58 that would not be reduced for early retirement. You request that PBGC continue to pay you $298.51 because the "only mistake" you made was starting your benefits before age 58.

As is explained below, however, the Appeals Board decided that your benefit would be reduced for early retirement even if your payments had begun at age 58.

a. The Critical Question Concerning the Right to an Unreduced Benefit at Age 58

As stated above under "Plan Provisions," section 1.29 of the GC Plan Document states: "Normal Retirement Date" shall mean the Participant's 65th birthday or the Participant's 58th birthday, so long as he has completed 30 years of Credited Service, if earlier." As is discussed below, whether or not you would have been entitled to an unreduced benefit starting at age 58 depends upon which of the following two interpretations of the GC Plan's 30-year benefit provision is correct:

> Interpretation 1: a GC Plan participant with 30 years of Credited Service cannot start receiving an unreduced benefit before age 65 unless he or she terminates employment after attaining age 58; or
>
> Interpretation 2: a GC Plan participant with 30 years of Credited Service could terminate employment before age 58 and (after deciding to delay his benefits) apply for and receive an unreduced benefit starting at age 58.

PBGC's November 7, 2008 determination is based on Interpretation 1, while your appeal asserts you could have qualified for an unreduced benefit based on Interpretation 2.

The interpretation of the GC Plan's 30-year benefit provision is crucial to resolving this issue because, under ERISA, PBGC's guarantee is limited to benefits that are "nonforfeitable" as of the pension plan's termination date ("DOPT").[5] This means that, for PBGC to guarantee a

[5] ERISA defines a "nonforfeitable benefit" as:

> a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of . . . [ERISA] (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death).

ERISA § 4001(a)(8). See also 29 Code of Federal Regulations ("CFR") § 4001.2 (definition of "nonforfeitable benefit").

PBGC regulations further provide that a guaranteed benefit, among other conditions, must be nonforfeitable as of the plan's termination date. 29 CFR § 4022.3. Additionally, 29 CFR § 4022.4(a)(3) provides that "in the case of a particular type of benefit under a pension plan, the participant must meet the conditions for that type of benefit as of DOPT. Accordingly, if Interpretation 1 applies, PBGC cannot guarantee an unreduced benefit starting at age 58 because you did not, and could not, meet the condition at DOPT of terminating Golden Casting employment at age 58 or later.[6]

ERISA and PBGC regulations, however, permit a benefit to be guaranteed if the only condition not satisfied at DOPT is a "required waiting period." See ERISA section 4001(a)(8), which is quoted in footnote 5. Thus, under Interpretation 2, PBGC would guarantee an unreduced 30-year Benefit for you because, as of DOPT, the only condition you had not satisfied would be the requirement to wait until age 58 before starting your unreduced benefit payments.

For the reasons discussed below, the Appeals Board decided that Interpretation 1 (rather than Interpretation 2) is correct, and thus PBGC in your case cannot guarantee an unreduced 30-year benefit.

b. Analysis of the GC Plan's 30-Year Benefit Provision

Based on its experience with terminated pension plans, the Appeals Board observes that it is fairly common for a pension plan to offer an immediate, unreduced benefit to participants who have earned 30 or more years of service. In some plans, there is no age requirement, and thus an immediate benefit is paid regardless of the participant's age when he or she terminates employment with 30 or more years of service. In other plans, however, the participant must satisfy an age requirement in addition to earning 30 years service, or the participant's age and service (when added together) must exceed a certain specified amount.

Usually, when the 30-year benefit provision includes an age requirement, the participant must meet both the service and age requirement before terminating employment to qualify for an unreduced benefit. Interpretation 1 (discussed above) is an example of such a benefit provision. There is nothing to prevent a pension plan, however, from providing a 30-year benefit under which the participant need only meet the service requirement before terminating employment. The participant then could meet the age requirement and start an unreduced benefit at a later date. Interpretation 2 is an example of this second type of benefit provision.

While the second type of a 30-year benefit is not common, some pension plans have structured benefits this way. Thus, it is necessary to examine carefully the pension plan's written provisions to determine the requirements for the benefit.

As stated above, section 1.29 of the GC Plan Document states that the participant's Normal Retirement Date is "the Participant's 65th birthday or the Participant's 58th birthday, so long as he has completed 30 years of Credited Service, if earlier." This is the only provision in the GC Plan Document that addresses the entitlement to a GC Plan benefit based on 30 years of Credited Service.

---

[6] PBGC regulations (which implement the above-discussed ERISA's requirements) provide that PBGC cannot consider the service that you earned, or could have earned, after the pension plan's termination date for purposes of determining your entitlement to a guaranteed benefit. See 29 C.F.R. § 4022.3 and § 4022.4(a)(3).

the GC Plan Document that addresses the entitlement to a GC Plan benefit based on 30 years of Credited Service.

The definition of "Normal Retirement Date" in section 1.29 does not specifically link eligibility for an unreduced 30-year benefit to the participant's age when he or she terminates employment. On the other hand, this definition could be intended to refer to the date when a participant ordinarily would become entitled to an immediate unreduced benefit upon termination of employment.[7] Under this reading, a vested participant would not attain his Normal Retirement Date unless he terminated employment at either (1) age 65, or (2) at an age between age 58 and age 65 with at least 30 years of Credited Service. Thus, we concluded that the language in Section 1.29 does not conclusively establish whether Interpretation 1 or Interpretation 2 is correct.

Additionally, if the drafters of the GC Plan Document had intended that a participant with 30 years of Credited Service could terminate employment before age 58 and then start an unreduced benefit at age 58, we would expect that they would also provide the participant with an immediate early retirement benefit that is reduced for each month before age 58. The GC Plan, however, clearly provides that the reduction for any non-disability benefit that starts before age 58 is reduced from age 65. See GC Plan Document Sections 3.03 and 3.06. We concluded that it is unlikely that the drafters of the GC Plan Document intended to structure benefits in this way. This, in turn, leads us to question whether Interpretation 2 reflects the drafter's intent.

In an attempt to clarify the meaning of the GC Plan Document, we sought a copy of the GC Plan's Summary Plan Description ("SPD"), which possibly would contain an explanation of the 30-year benefit provision. We were unable to locate an SPD, however, from the Department of Labor or from other sources. If you (or another person) provide us with a SPD, we would consider reopening your appeal, if the SPD would provide a basis for changing our decision.

We also examined the language of the GC Plan's Collective Bargaining Agreements ("CBAs"). We obtained a copy of the 1992-1995 CBA, and another appellant provided a page from an earlier CBA.[8] Both CBAs, in Article 14 (titled "Pension Plan"), contain the following identical language:

> Employees with ten (10) years or more of credited service who are fifty (50) years of attained age may retire early (with actuarial reduction). Employees with thirty

[7] As stated above under "Background," the GC Plan Document provides a right to an immediate unreduced benefit upon employment termination in only two instances – upon the participant's attainment of his "Normal Retirement Date" or his "Disability Retirement Date." On a third date that is defined in the GC Plan Document - the "Early Retirement Date" - a participant is entitled upon employment termination to an immediate benefit reduced for early commencement. Thus, all three "dates" can be read as referring to when a participant is entitled to an immediate benefit upon termination of employment.

[8] In Enclosure 4, we provide the CBA page another appellant provided with his appeal. In Enclosure 5, we provide relevant pages from the 1992-1995 CBA.

(30) years of credited service and age fifty-eight (58) or above may retire early with full pension benefits (no actuarial reduction).

The Appeals Board concluded that this CBA provision is unclear as to whether Interpretation 1 or Interpretation 2 is correct. First, it is unclear whether the word "employees" in the CBA applies only to active employees, or whether it also applies to participants who had terminated employment with pension rights. Also, the term "retire early" is ambiguous, since it could apply either to (1) when the participant terminates employment with the right to an immediate pension benefit, or (2) to a date (possibly after termination of employment) when the participant elects to begin receiving a pension benefit. Thus, the CBA could be read as requiring a participant to retire from employment at age 58 (or above) with 30 years credited service to qualify for an unreduced benefit, which would be consistent with Interpretation 1. It also could be read as allowing a participant with 30 years of credited service to qualify for an unreduced pension starting at age 58, which would be consistent with Interpretation 2.

Finally, the Appeals Board looked at the provisions of the formal document for the Golden Operations Plan as restated effective July 14, 1989 ("GO Plan Document").[9] As discussed above, the Golden Operations Plan: (1) covers pension benefit before the 1990 sale of the foundry, and (2) has a benefit structure that basically is the same as the GC Plan. Moreover, the "Purchase and Sale Agreement" between Textron and Golden Casting required the creation of a "substantially identical" plan (*see* Enclosure 7).[10] This documents states:

> (c) Golden Hourly Plan; Adoption of an Hourly Plan. Effective from and after the Closing Date, Purchaser shall adopt a defined benefit pension plan (the "New Plan") which is substantially identical to the current Golden Operations Hourly Pension Plan (the "Old Plan"), except that Purchaser shall be the sponsor of the New Plan and that benefits due under the New Plan shall be offset by the corresponding benefits due under the Old Plan. The New Plan shall credit all service of participants under the Old Plan for all purposes under the New Plan.

The GO Plan Document, in contrast to GC Plan Document, clearly provides that a participant must terminate employment at age 58 or later to qualify for an unreduced benefit based on 30 or more years of Credited Service. [11] This is evident from Article IV, Section 1 of the GO Plan Document, which states:

> Normal Retirement. An Employee who attains age 65 or who completes 30 years of Credited Service and attains age 58, if earlier, while employed by the Employer shall have a non-forfeitable right to a normal Retirement Benefit.

---

9 In Enclosure 6, we provide relevant pages from the GO Plan Document.

10 The Appeals Board obtained Enclosure 7, which is the section of the "Purchase and Sale Agreement" that relates to pension obligations, from Textron.

11 The SPD for the Golden Operations Plan dated January 1, 1987 (excerpts provided in Enclosure 8) similarly is clear on this point, since it states: "Normal retirement benefits are payable if your employment with the Textron Companies ends at or after the earlier of (i) your sixty-fifth birthday or (ii) at age 58 and the completion of 30 years of Credited Service. This is your *normal retirement age* under the plan."

Furthermore, under the GO Plan Document, a vested participant who does not qualify for either an age-58 Normal Retirement benefit or a disability benefit receives either a benefit that is unreduced starting at age 65, or that is reduced by ½ of 1% per month for each month before age 65. Thus, the GO Plan Document's provisions clearly are consistent with Interpretation 1, rather than Interpretation 2.

Since the GC Plan, as required under the Purchase and Sale Agreement, mirrors the provisions of the Golden Operations Plan, the Appeals Board found it likely that the drafters of the GC Plan Document intended that the substantive requirements for the 30-year benefit would be same under GC Plan as under the Golden Operations Plan. Indeed, if a change had been intended, we would expect that there would be a document that explicitly explained the change, or that the change would be evident in plan practice. We have found no explanation of a change, nor (as discussed below) does plan practice indicate that a change had occurred. Thus, we concluded that the most likely explanation is that the drafters of GC Plan Document, in writing the provision titled "Normal Retirement Date," unintentionally modified the GO Plan Document's language in a way that created an ambiguity concerning the requirements for the 30-year benefit.

c. <u>The GC Plan's Practice</u>

When pension plan provisions are ambiguous, the Appeals Board often will examine the plan's practice, which may provide evidence of how the plan's provisions have been interpreted. The Board therefore searched PBGC's records to identify any GC Plan participant who had 30 or more years of Credited Service and who terminated employment before age 58. We found the following information concerning three individuals who had terminated employment before the GC Plan's termination date ("DOPT"):

- For one participant, who retired one month before DOPT, the former Plan administrator indicated on the GC Plan's "Pension Calculation" form that he qualified for "Early" retirement, rather than for "58-30" retirement. The former Plan administrator also had calculated and paid an early retirement benefit that was reduced from age 65;
- Another participant terminated employment five months before DOPT with more than 30 years service. He had not yet attained age 58 and was not in pay status at DOPT. Near the time he terminated employment, the GC Plan had provided him with a "Statement of Benefits" that showed: (1) his normal retirement date is at age 65; and (2) he could start benefits at a reduced amount anytime after age 50. There is nothing in his records to indicate that the former Plan administrator had considered this participant entitled to an unreduced benefit starting at age 58; and
- A third participant had terminated employment in 2000 with more than 30 years service, but at DOPT he had not yet attained age 58 and was not in pay status. Information in the records PBGC obtained from Golden Casting show that this participant is listed in the GC Plan's 2002 actuarial valuation as "LIFE DEFERRED" and that his Benefit Commencement Date is at age 65. There is nothing in the records

participant is listed in the GC Plan's 2002 actuarial valuation as "LIFE DEFERRED" and that his Benefit Commencement Date is at age 65. There is nothing in the records to indicate that the former Plan administrator had considered this participant to be entitled to an unreduced benefit starting at age 58.

Additionally, PBGC records contain several benefit calculation worksheets completed by the former Plan administrator for participants who were actively employed at DOPT. These forms are similar to the one for the first participant discussed above. On those forms, participants with 30 or more years Credited Service and who were under age 58 had benefits calculated as "Early" retirees, rather than as "58-30" retirees. You are one of the participants with such a form, which is the document in Enclosure 2.

The Appeals Board did not accord great weight to the above-described plan practice, which occurred over a limited time period that was long after the applicable GC Plan provisions were drafted. Nevertheless, we concluded that this practice is consistent with Interpretation 1, rather than Interpretation 2.

Based on our analysis of relevant pension plan documents and of the GC Plan's practice, the Appeals Board therefore decided that Interpretation 1 (rather than Interpretation 2) applies to the GC Plan's participants. Accordingly, even if PBGC were to allow you to change your benefit start date to age 58, your guaranteed benefit amount still would contain a reduction for early retirement.

*4.* *Other Matters Raised in Your Appeal*

Your appeal points out that PBGC, after receiving your "Payee Information Form," informed you in April 2005 that "no further action is required at this time." You consider it unfair that PBGC did not notify you until 2009 that your benefits would be reduced.

As with all other trusteed plans, PBGC had to collect and audit the data and records it needed to determine for *all* Plan participants the benefits it can legally pay under the Plan. This is often a complex and time-consuming task. To minimize hardship on participants, PBGC continued to pay you, and other retirees of the Plan, benefit amounts on an *estimated* basis until PBGC could complete its review and determine the benefits payable under ERISA and PBGC regulations.

It is unfortunate that the former Plan administrator had put you into pay status with an incorrectly-calculated benefit amount. It also is regrettable that PBGC was unable to notify you of the correct amount of your PBGC benefits until 2009. There is nothing in PBGC's regulations or policies, however, that allows for relief in your situation, which involves PBGC's revision of an estimated benefit amount after PBGC discovers an error by the former Plan administrator.

You also expressed concern about how a reduction in your monthly amount would cause hardship. You detailed how your battles with cancer have impaired your health. While the Appeals Board is sympathetic to your situation, financial hardship is not a basis upon which the Board may grant relief.

5. *Recoupment of Overpayments*

PBGC's determination included a statement showing that you were overpaid $4,803.70 as of May 1, 2009. The $4,803.70 amount does not include the additional amounts you have been overpaid while your appeal has been pending with the Appeals Board. Even though the $4,803.70 overpayment amount has increased, PBGC will limit the monthly benefit reduction for the repayment of your overpayments to 10% of the correct benefit amount.

Under law and regulation, PBGC must "recoup" benefit overpayments by reducing participants' future guaranteed benefit payments.[12] While PBGC cannot pay you more than his guaranteed benefit amount, PBGC's method of recoupment is advantageous because:

- PBGC is recouping only by reducing future benefit payments and is not demanding immediate repayment.
- PBGC generally limits its reductions to 10% for recoupment, and is doing so here.
- PBGC is not charging interest on overpayment balances.
- PBGC will not seek to collect any remaining overpayment balance from your estate.

## Decision

Having applied the law, regulations, and Plan provisions to the facts of your case, the Appeals Board has denied your appeal. This is PBGC's final action in your case and you may, if you wish, seek court review of this decision. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles W Vernon

Charles W. Vernon
Chair, Appeals Board

(8) Enclosures

1) Excerpts from the 10/1/1997 Golden Casting Corporation Hourly Pension Plan ( 16 pages)
2) Golden Casting Plan benefit calculation by the former Plan administrator (1 page)
3) Golden Operations Participant information obtained from Textron (3 pages)
4) Excerpt from the Golden Casting Collective Bargaining Agreement (CBA) another appellant provided in his appeal (1 page)
5) Excerpts from the 1992-1995 Golden Casting CBA (5 pages)
6) Excerpts from the 1989 Golden Operations Hourly Pension Plan (7 pages)
7) Excerpts from the Purchase and Sale Agreement (4 pages)
8) Excerpts from Golden Operations Plan SPD dated 1/1/87 (4 pages)

[12] *See* 29 C.F.R. sections 4022.81 and 4022.82(a)(2)(i).