



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

September 25, 2008



Re: , Case 200283, Hy-Lift LLC Pension and Retirement Savings Plan (the "Hy-Lift Plan" or the "Plan")

Dear :

This Appeals Board decision responds to your appeal of PBGC's September 29, 2006 determination of your benefit from the Hy-Lift Plan. For the reasons we state below, we changed PBGC's determination by finding that you are entitled to a PBGC monthly benefit of **\$339.66** payable as a Joint and 55% Survivor Annuity.

PBGC's Determination and Your Appeal

PBGC's October 26, 2006 determination letter told you that you were entitled to a monthly benefit of **\$256.67** instead of the **\$339.66** you have been receiving.

Your December 27, 2006 letter stated, "I did not go out on the Normal Retirement. I went out on an Early Retirement under paragraph 4.2 eligibility for retirement and under paragraph 5.2." On March 5, 2007, PBGC responded to your letter, explaining that you were not eligible for an Early Retirement Benefit at the time of your break in service. The letter said that you were instead eligible for a Deferred Retirement, which is reduced from age 65.

Your March 14, 2007 appeal letter claimed that you could terminate your employment at age 53 and come back at the age of 57 to draw your retirement benefit under the early retirement provision.

Discussion

1. Background

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). If a plan sponsor is unable to support its defined-benefit pension plan, PBGC becomes trustee of the plan and pays benefits as defined in the plan, subject to the limitations and requirements set by Congress under ERISA.

Records available to the Appeals Board show that PBGC issued a Notice of Determination on June 7, 2004, finding that the Hy-Lift Plan needed to be terminated to protect the interests of the participants. PBGC became trustee of the Plan on July 8, 2004. The trusteeship agreement set April 13, 2002 as the Plan's termination date because Hy-Lift, L.L.C. ("Hy-Lift") ceased all operations on or before that date.

When PBGC becomes trustee of a terminated plan, PBGC collects participant data from the plan's former administrator and audits that data. PBGC necessarily relies on the data it receives from a former plan administrator unless (1) PBGC's audit of that data shows that it is wrong; or (2) a participant supplies PBGC with documents showing that the data is wrong. Furthermore, if a plan's provisions are ambiguous, PBGC reviews "plan practice" to determine how the plan's former administrator interpreted the ambiguous provisions. PBGC usually accepts the former administrator's interpretation of ambiguous provisions if that interpretation is consistently applied to all participants.

The data that PBGC received from Hy-Lift show that: □

- (1) you were born on [redacted] 1944;
- (2) you were hired on [redacted] 1982;
- (3) your employment ended on [redacted], 1997, at age 53 years and 4 months;
- (4) you earned 20.2 years of Credited Service;
- (5) you started receiving your retirement benefit effective June 1, 2001, at the age of 57 years and 3 months; and
- (6) you were receiving your retirement benefit in the form of a Joint and 55% Survivor Annuity ("J&55%SA") when PBGC became the Plan's trustee.

2. Pertinent Plan Provisions

The January 1, 1995 Amendment and Restatement of the Plan (the "1995 Restatement") was in effect when your Hy-Lift employment ended.

Section 2.1 of the 1995 Restatement provides the following definitions:

d. "Employee" means any person in the employ of the Company who was covered by the Plan on December 31, 1955, and thereafter any person in the employ of the Company who is in the bargaining unit as defined in the Collective Bargaining Agreement.

...

h. "Break in Service" means any Plan Year subsequent to the date on which an Employee has broken seniority under the Collective Bargaining Agreement, during which Plan Year an Employee completes 500 or fewer Hours of Service; at the end of such a Plan Year a one-year Break in Service shall be deemed to have occurred.

...

o. "Plan Year" means a calendar year which ends on each December 31..

Section 4.1, "Normal Retirement," provides,

An Employee who (i) attains his sixty-fifth (65th) birthday, (ii) attains the fifth (5th) anniversary of the date he first became an Employee hereunder, and (iii) ceases active service, shall have attained Normal Retirement Age and shall be entitled to a normal Retirement Benefit as provided in subsection 5.1 hereof.

Section 4.2 provides eligibility for Early Retirement benefits. The Plan requires that Employees must have either:

- (a) attained age 57 with 10 years of Credited Service,
- (b) attained age 55 with combined age and Credited Service equaling 85 points or greater, or
- (c) earned 30 or more years of Credited Service.

Section 5.2(a) contains the provisions for calculating benefits for Early Retirement under the Plan. This section states that an Employee

retired at the option of the Employee (including, but not limited to, such retirements elected following an Employee's discharge for cause), and who is eligible for an early Retirement Benefit pursuant to the provisions of subsection 4.2a, or 4.2b, or 4.2c, with benefits payable commencing on or after January 1, 1992, shall receive a monthly Basic Retirement Benefit commencing as of the first day of any calendar month, selected by the Employee, which follows his early retirement, determined in accordance with subsection 5.1a., b., c. or d., whichever is applicable, and based upon his Credited Service at the time of early retirement, such benefit being multiplied by the percentage set forth in the table below based on such Employee's attained age at the date of the commencement of payment of his benefit.

*Early Retirement Percentages
Applicable to Basic Benefits Payable Prior to Age 65*

AGES YEARS	MONTHS											
	0	1	2	3	4	5	6	7	8	9	10	11
47	30.4	30.6	30.8	31.0	31.2	31.4	31.6	31.8	32.0	32.2	32.4	32.6
48	32.8	33.0	33.2	33.5	33.7	33.9	34.1	34.3	34.5	34.8	35.0	35.2
49	35.4	35.6	35.9	36.1	36.4	36.6	36.9	37.1	37.3	37.6	37.8	38.1
50	38.3	38.6	38.8	39.1	39.4	39.6	39.9	40.2	40.4	40.7	41.0	41.2
51	41.5	41.8	42.1	42.4	42.7	43.0	43.3	43.5	43.8	44.1	44.4	44.7
52	45.0	45.3	45.7	46.0	46.3	46.6	47.0	47.3	47.6	47.9	48.3	48.6
53	48.9	49.3	49.6	50.0	50.3	50.7	51.0	51.4	51.8	52.1	52.5	52.8
54	53.2	53.6	54.0	54.4	54.8	55.2	55.6	55.9	56.3	56.7	57.1	57.5
55	57.9	58.4	58.8	59.3	59.8	60.2	60.7	61.2	61.6	62.1	62.6	63.0
56	63.5	64.0	64.5	65.0	65.5	66.0	66.4	66.9	67.4	67.9	68.4	68.9
57	69.4	69.9	70.4	70.8	71.3	71.8	72.3	72.8	73.3	73.7	74.2	74.7
58	75.2	75.7	76.1	76.6	77.1	77.5	78.0	78.5	78.9	79.4	79.9	80.3
59	80.8	81.3	81.8	82.3	82.8	83.3	83.7	84.2	84.7	85.2	85.7	86.2
60	86.7	87.3	87.8	88.4	88.9	89.5	90.0	90.6	91.1	91.7	92.2	92.8
61	93.3	93.9	94.4	95.0	95.5	96.1	96.6	97.2	97.8	98.3	98.9	99.4
62 or Over =	100%											

Note: In computing age, only the full number of completed calendar months shall be counted.

Section 6.3 provides for "Vesting on Separation from Service Before Retirement" and states in part:

a. Any Employee *who loses accumulated Vesting Service and Credited Service under the provisions of subsection 3.3*, by incurring a Break in Service shall, if such Employee is not retired and eligible for benefits pursuant to subsection 5.1 or 5.2 or 5.3, be eligible for a deferred Retirement Benefit provided the Vesting Service of such Employee at separation is at least five years.

...

d. A former Employee who is eligible for a deferred Retirement Benefit may, at the election of such former Employee, receive either:

(1) A monthly deferred Retirement Benefit commencing at or after age 65, determined in accordance with paragraph b. or c. of this subsection 6.3, whichever paragraph is applicable, or

(2) A monthly deferred Retirement Benefit commencing after attaining the earliest age at which he could retire (based upon his Credited Service) under subsection 4.2 and prior to age 65. Such benefit shall be determined in accordance with paragraph b. or c. of this subsection 6.3, whichever paragraph is applicable, such benefit being reduced by 5/10ths of 1 percent for each complete calendar month by which such former Employee is under the age of sixty-five (65) at the date the deferred Retirement Benefit commences.

[Emphasis added.]

Section 3.3 of the 1995 Amendments is entitled "Loss of Vesting Service and Credited Service" and states in part:

After January 1, 1986, an Employee will lose all Vesting Service and Credited Service for the purposes of the Plan if he incurs *five consecutive one-year Breaks in Service*.

[Emphasis added.]

3. Calculation of Your Monthly Benefit

The only difference between PBGC's calculation of your benefit and Hy-Lift's calculation of your benefit is the early commencement reduction factor. Hy-Lift used the factor for age 57 and 3 months from the table in section 5.2 of the 1995 Restatement, namely, **70.8%**.

PBGC's actuaries, on the other hand, calculated an early commencement factor based on the formula found in section 6.3(d)(2) of the 1995 Restatement. As there are 92 complete months between June 1, 2001 and your 65th birthday (February 26, 2009), PBGC intended to calculate your early commencement adjustment factor to be **54%** [= 100% minus (0.5% × 92)].

PBGC determined that the factors in section 6.3(d)(2) instead of the factors in section 5.2 of the 1995 Restatement applied to the calculation of your benefit because you had not met the age requirement (age 57) for Early Retirement under section 4.2 at the time your employment ended on July 23, 1997.

Based on our review of Hy-Lift Plan practice, we have concluded that Hy-Lift determined that the factors in 6.3(d) of the 1995 Restatement did not apply to the calculation of your deferred vested benefit because the first sentence of section 6.3 indicates that section 6.3 applies only to an "Employee who loses accumulated Vesting Service and Credited Service under the provisions of subsection 3.3, by incurring a Break in Service." We note, in this regard, that an Employee "loses accumulated Vesting Service and Credited Service under the provisions of subsection 3.3" only if the employee "incurs five consecutive one-year Breaks in Service" and you had not yet incurred five consecutive one-year Breaks in Service at the time you started receiving your pension benefit on June 1, 2001.

Regardless of whether section 5.2(a) or section 6.3(d) applies to the calculation of your early commencement factor, it is clear that you were entitled to start receiving your pension benefit on the first day of any month coincident with or following your 57th birthday because ERISA requires plans to allow a deferred vested participant like you, who has met the service requirement (in this case 10 years of Credited Service) for an early retirement benefit, to start receiving a pension benefit once he or she meets the age requirement. We note, however, that ERISA does not require plans to use the same early commencement reduction factors for deferred vested participants as the plan uses for participants who met both the age and service requirement for early retirement at the time they ended their employment.

We note that while ERISA does not require plans to use the *same* early commencement reduction factors for deferred vested participants as the plan uses for participants who met both the age and service requirement for early retirement at the time they ended their employment, ERISA does not require plans to use a *different* set. Based on our review of Hy-Lift Plan practice, we have concluded that Hy-Lift decided to use the regular early commencement factors (in section 5.2) for some deferred vested participants and the early commencement factors described in section 6.3(d) for other deferred vested participants.

Based on the above and our review of Hy-Lift Plan practice, we have concluded that (1) the early commencement factors in section 5.2 apply to the calculation of benefits for deferred vested participants who earned at least 10 years of Credited Service and had attained at least age 52 when their employment with Hy-Lift ended; and (2) the early commencement factors in section 6.3(d) apply to the calculation of benefits payable to deferred vested participants who earned at least 10 years of Credited Service but had not yet attained age 52 when their employment with Hy-Lift ended.

As you had already attained age 53 and had earned more than 10 years of

Credited Service when your Hy-Lift employment ended, we have concluded that Hy-Lift properly used the early commencement adjustment factor table in section 5.2 of the 1995 Restatement when it calculated your pension benefit.

Decision

Having applied Hy-Lift Plan provisions to the facts of your case, we changed PBGC's determination by finding that you are entitled to a PBGC monthly benefit of **\$339.66** payable as a Joint and 55% Survivor Annuity.

This decision is PBGC's final action regarding the issues your appeal raised. If you wish, you may ask a court to review this decision.

We regret the delay in responding to your appeal and appreciate your patience while we completed our review. If you need other information about your PBGC benefit, please call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the Hy-Lift Plan (Case 200283).

Sincerely,

A handwritten signature in cursive script that reads "Michel Louis".

Michel Louis
Appeals Board Member