

181249-114113

41813196



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

[Redacted]

June 14, 2004

Re: [Redacted] Case 181249, Memorex Telex Employees
Pension Plan (the "Memorex Telex Plan")

Dear [Redacted]

The Appeals Board has reviewed your appeal of PBGC's July 14, 2003 revised determination that you are not entitled to a benefit under the Memorex Telex Plan. As explained below, the Board changed PBGC's revised determination by finding that you are entitled to a benefit under the Memorex Telex Plan. The Board's decision has the effect of reinstating PBGC's August 21, 2001 determination which provided that you are entitled to a monthly benefit of \$151.51, payable in the form of a 100% Joint and Survivor annuity.

Benefit Determination, Revised Determination and Appeal

On August 21, 2001, PBGC sent you a benefit determination letter which stated that you are entitled to a monthly benefit of \$151.51. On July 14, 2003, PBGC sent you a revised benefit determination letter which stated: "After further review of your benefit, and new information provided by our actuaries, we have determined that you are not entitled to a benefit from the Memorex Pension Plan. Your retirement benefit is the responsibility of Raytheon."

In your October 24, 2003 appeal (which was timely as the result of a filing extension), you stated: "Since I had fifteen years of service with Raytheon those 15 years were transferred to Telex and I was automatically vested in their pension plan . . ."

You also enclosed an October 20, 2003 letter from Evans Cheeseman, Manager, Pension Administration of Raytheon Company. In this letter, Mr. Cheeseman stated that you are not vested under the Raytheon Company Pension Plan for Salaried Employees ("Raytheon Plan"). Mr. Cheeseman explained that you did not earn vesting service during the period when you were eligible to join the pension plan by making contributions, but declined to do so.

6/18/2004/11:41:13 AM

41813196

Entitlement to a Benefit under the 1985 Amendment

The Telex Corporation adopted the Amended Pension Plan for Employees of the Company and its Subsidiaries effective January 1, 1982 (the "1982 Plan"). On January 18, 1985, Telex adopted the Second Amendment to the 1982 Plan (the "1985 Amendment"). Section 5 of the 1985 Amendment states:

"5. Paragraph 3.3 - Service shall be amended to add the following at the end thereof:

Employees hired as of August 10, 1984, or within 120 days thereafter, who immediately prior to such hire date were U.S. Employees of Raytheon Company shall have their Service period with Raytheon prior to August 10, 1984 or later date of transfer included, for purposes of eligibility, to participate in this Plan [the 1982 Plan] in accordance with 3.2 and for vesting purposes, in accordance with 3.5."

Section 3.5 of the 1982 Plan states: "For purposes of computing Vesting, all employment with the Employer shall be counted including time when no benefits accrued."

On August 20, 1984, George L. Bragg (President, Telex Computer Products, Inc.) wrote a letter to all "RDS [Raytheon Data Services] Employees Transferring to Telex." In that letter, Mr. Bragg stated: "Your service time with Raytheon will transfer with you for all benefits calculation purposes. For example, a transferring RDS employee who was employed by RDS December 6, 1978, will have a Telex employment date of December 6, 1978."

On January 10, 1994, Carol Ann Bickers (Senior Benefits Analyst, Memorex Telex Plan) sent you a letter informing you that you were entitled to a benefit under the Memorex Telex Plan. The Memorex Telex Application for Benefits lists your "Hire Date" as July 21, 1969 (which was your hire date with Raytheon), your "Join Date" as August 11, 1984, and your "Termination" as November 10, 1984. The Memorex Telex Benefit Calculation Worksheet credited you with 15.30685 years of Vesting Service (sufficient to become 100% vested under Section 3.5 of the 1982 Plan) and with 0.24932 years of Benefit Service.

Your PBGC individual participant file includes records that PBGC's auditors gathered from Memorex Telex and those records include a detailed pension worksheet prepared by Raytheon. It is evident that Memorex Telex relied on Raytheon's worksheet in calculating your benefit under the Memorex Telex Plan (because Memorex Telex accepted the precise figure that Raytheon used to

6/18/2003/11:41:13 AM

#1813196

account for the portion of your accrued benefit attributable to your Raytheon service). At the same time, the Raytheon worksheet clearly shows that Raytheon credited you with only 5.0794 years of vesting service and, that, as a result, Raytheon did not consider you vested under the Raytheon Plan. Thus, the evidence available to the Board implies that when Memorex Telex credited you with full vesting service back to your date of hire with Raytheon, it was aware that Raytheon itself would not have done so.

In the Board's view, it is possible that the 1985 Amendment means that your vesting service should be determined (1) under the provisions of the Memorex Telex Plan as if your date of hire with Raytheon were your date of hire with Telex (later Memorex Telex) or (2) under the provisions of the Raytheon Plan during your employment with Raytheon and under the Memorex Telex Plan during your employment with Telex. Since it is possible to interpret the 1985 Amendment in either way, the Board found that it should defer to the interpretation given to the 1985 Amendment by the person who was acting in the role of the Plan Administrator (Ms. Carol Bickers) at the time when your benefit determination was initially made (especially given that this determination was made prior to PBGC's termination and trusteeship of the Plan). Thus, the Board found that you are entitled to a deferred vested benefit under the Memorex Telex Plan.

Raytheon/Telex Purchase and Lease Agreement and PBGC's Revised Determination

PBGC revised your benefit determination after learning of an April 4, 1985 Supplemental Agreement under a Purchase and Lease Agreement between Raytheon Company and the Telex Corporation. A May 13, 2003 Raytheon communication quotes 1990 actuarial documents, as follows:

"Pursuant to a Supplemental Agreement dated April 4, 1985 that was a part of the Purchase and Lease Agreement between Raytheon Company and The Telex Corporation, a portion of the assets and liabilities of the Raytheon Pension Plan was transferred to the Amended Pension Plan for Employees of the Telex Corporation and Subsidiaries ("Telex Plan"). These assets and liabilities were attributable to employees of Raytheon Company (or its subsidiaries) who were hired by Telex as of August 10, 1984 or within 120 days of such date. Also pursuant to the Supplemental Agreement, assets and liabilities will be transferred back to the Raytheon Pension Plan for such employees who returned directly

to Raytheon prior to December 31, 1986. The assets and liabilities of such employees will be spun off from the Memorex Telex Employees Pension plan ("MT Plan"), formerly the Telex Plan, to the Raytheon Pension Plan effective October 15, 1990."

Based on this summary of the Purchase and Lease Agreement, the Raytheon Plan Administrator worked with PBGC officials to identify those individuals who belonged under the Raytheon Plan and those who belonged under the Memorex Telex Plan. You were identified as one of the individuals whose pension was the responsibility of the Raytheon Plan. Accordingly, PBGC's July 14, 2003 revised determination informed you that you are not entitled to a benefit from the Memorex Telex Plan, because your "retirement benefit is the responsibility of Raytheon."

In reviewing the information provided above, the Board took into consideration the following factors:

(1) Your situation appears to be distinct from that of the other individuals affected by the division of pension responsibilities pursuant to the Purchase and Lease Agreement, because Raytheon assumed responsibility for your pension but denied that you were entitled to one.

(2) PBGC does not actually have a copy of the Purchase and Lease Agreement (or of the April 4, 1985 Supplemental Agreement). Instead, PBGC only has a 2003 communication quoting 1990 actuarial summaries of the 1985 Supplemental Agreement.

(3) Under the 1985 Amendment, your entitlement to a benefit is not contingent upon the transfer of assets or liabilities to or from the Raytheon Plan.

For these reasons, the Board found that the summary of the Supplement to the Purchase and Lease Agreement taken from 1990 actuarial documents does not provide a sufficient basis to deny your entitlement to a deferred vested benefit under the Memorex Telex Plan.

Impact of the 1994 Memorex Telex Plan

The Memorex Telex Plan was amended and restated in a document which was effective January 1, 1994 and adopted December 22, 1994 (the "1994 Plan"). The 1994 Plan incorporated a Supplement D and provided that its effective date was August 10, 1984. Section 3 of Supplement D stated that a former Raytheon employee's "Period of Service shall include such Member's service prior to the

Transfer Date recognized under the Raytheon Pension Plan for purposes of eligibility and vesting."

Thus, Section 3 of Supplement D implies that you should not be given credit for vesting service during that period of your employment with Raytheon which Raytheon would not have recognized as vesting service. This interpretation would lead to the conclusion that you are not entitled to a deferred vested benefit under the Memorex Telex Plan.

Memorex Telex, however, determined that you were entitled to a benefit based on the 1985 Amendment which was adopted on January 18, 1985, whereas Supplement D was part of the 1994 Plan which was adopted on December 22, 1994. Since you were found entitled to a benefit based on a document adopted in 1985, it would be difficult to justify denying that entitlement based on a document adopted in 1994. Moreover, the Board notes that Memorex Telex continued to treat you as a participant entitled to a benefit even after the adoption of the 1994 Plan (including Supplement D). Accordingly, the Board found Supplement D to the 1994 Plan does not provide an adequate basis for overturning Memorex Telex's determination that you are entitled to a deferred vested benefit.

Decision

The Board changed PBGC's July 14, 2003 revised determination by finding that you are entitled to a benefit under the Memorex Telex Plan. The Board's decision has the effect of reinstating PBGC's August 21, 2001 determination which provided that you are entitled to a monthly benefit of \$151.51, payable in the form of a 100% Joint and Survivor annuity. If you need other information from PBGC, please call our Customer Contact Center at 1-800-400-7242.

Sincerely,



William D. Ellis
Acting Chair, Appeals Board