



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

Estate of [redacted]

NOV 19 2002

[redacted]

Re: Appeal [redacted] Republic Retirement Plan (the "Plan")

Dear [redacted]

The Appeals Board has reviewed your appeal of PBGC's July 23, 1998 determination of [redacted] benefit under the Plan. PBGC records show that [redacted] died on January 26, 2001, and the Board Members would like to convey our condolences. For the reasons stated below, the Board changed PBGC's determination by increasing your father's monthly benefit payable as a Straight Life Annuity ("SLA") starting on his Actual Retirement Date ("ARD") to \$777.25.

Determination and Appeal

PBGC's determination letter said that [redacted] was entitled to a monthly benefit of \$657.17 per month, payable for life with no survivor benefit, instead of the estimated \$727.65 monthly benefit he had been receiving. PBGC's files show that [redacted] benefit payment was reduced to \$591.45 (\$657.17 - \$65.72) on October 1, 1998 and that PBGC stopped payments following his death in January of 2001.

Due to the personal circumstances of [redacted] case, namely, the deaths of his mother-in-law, mother, and wife within the nine-month period before PBGC sent his determination letter, we accepted your October 2, 1998 electronic correspondence as an appeal. In your appeal, you said that you could not understand how PBGC could say that there was an overpayment 12 years after the commencement of your father's pension, and that the repayment would have caused a financial hardship.

Discussion

The Appeals Board reviewed Plan provisions under both the 1983 Plan (**Enclosure 1**) and the 1986 Plan (**Enclosure 2**), as well as [redacted] LTV record card (**Enclosure 3**). The Board also compared PBGC's calculations of [redacted] Plan-defined benefit under the

1983 Plan (Enclosure 4) and the 1986 Plan (Enclosure 5) with LTV's calculation of his 1986 Plan-defined benefit (Enclosure 6).

The Board found that the reason LTV's 1986 Plan amount was higher than PBGC's 1986 Plan amount is because LTV applied the 10% increase described in the 1986 Plan's section 4.4 to [redacted] deferred vested benefit amount. His LTV record card shows that his date of termination (June 15, 1986) was exactly 15 days after his "Last Day Worked" (May 31, 1986), and therefore, before the Plan's termination date (September 30, 1986). It appears that PBGC overlooked this information and deemed [redacted] an active employee as of the Plan's termination date when they calculated his 1986 Plan-defined benefit.

While the Appeals Board did not find the election form described in the 1986 Plan in [redacted] file (see § 4.4 on page 5 of Enclosure 2), the Board decided as we did in other appeal decisions under the Plan that LTV's calculation of his estimated benefit with the 10% increase together with the dates on his LTV record card are sufficient to show that he qualified for the 10% addition to his deferred vested pension under the 1986 Plan. The Board further concluded that PBGC should have also applied a 10% increase in calculating his 1983 Plan-defined benefit, because having qualified for the 10% increase under the 1986 Plan's "15-day" window period, [redacted] necessarily qualified for the 10% increase under the 1983 Plan's "90-day" window period. (See section 3.19(a)(1) on pages 4 and 5 of Enclosure 1.)

While continuing our review of the calculations made by PBGC and LTV under the 1986 Plan, the Appeals Board noted that, in calculating [redacted] 1986 Plan benefit, LTV did not apply the 5% addition to his 1.5 Percent pension, as prescribed in section 3.1(b)(2) on pages 1 and 2 of Enclosure 2. PBGC, on the other hand, did apply that 5% increase because PBGC's consistent reading of the language of the 1986 Plan has been to apply the addition to all "Percent" pensions calculated under the 1986 Plan. Even though PBGC's reading disagrees with LTV's consistent practice under the 1986 Plan with respect to deferred vested participants like [redacted], the Board has previously decided to accept PBGC's reading of the 1986 Plan in this regard.

The Appeals Board also found that PBGC did not apply the similar 5% addition to the Percent pension formulas under the 1983 Plan because PBGC did not realize that [redacted] terminated his employment on June 15, 1986 during the "window" period specified in the 1983 Plan document, which ended on July 31, 1986. (See § 3.3(b)(2) on page 1 of Enclosure 1.) Thus, the Board found that because [redacted] did in fact terminate his employment before the

end of that window period, the 5% addition under the 1983 Plan is applicable to his Percent formula calculations under the 1983 Plan.

As a result of the Board's decisions discussed above regarding the proper calculation of [] Plan-defined benefits, the Board increased his 1983 Plan-defined benefit to \$792.29, and increased his 1986 Plan-defined benefit to \$777.25. Please see **Enclosure 7** for the Board's recalculation of [] Plan-defined benefit under both the 1983 Plan and the 1986 Plan. As explained immediately below, [] monthly PBGC guaranteed benefit is his full Plan-defined benefit of \$777.25.

Please note that the reason PBGC calculated [] benefit under both the 1983 Plan and the 1986 Plan is due to the legal limits set by Congress when it enacted the Employee Retirement Income Security Act of 1974 ("ERISA"). One of these limits, the Five-Year Phase-In, could have affected [] guaranteed benefit amount.

Under the Five-Year Phase-In limit, PBGC may guarantee increases in benefits resulting from Plan amendments only to the extent of \$20 per month or 20% of the increase, whichever is larger, for each full year that the benefit increase was in effect before the Plan's termination date. Because the effective date of the 1986 benefit freeze amendment (January 1, 1986) was less than one full year before the Plan's termination date (September 30, 1986), any increase in [] Plan-defined benefit resulting from the benefit freeze amendment could not have been guaranteed by PBGC.

After recalculating [] benefits under the 1983 and 1986 Plans, the Appeals Board found that in [] case, the 1986 amendment to the Plan did not result in an increase in his Plan-defined benefit, and thus, the Five-Year Phase-In limit does not affect his guaranteed benefit. Please note that under ERISA, PBGC is not allowed to guarantee a benefit that is larger than the benefit payable under the terms of the terminated Plan.

Decision

Having applied the law, PBGC's rules and Plan provisions to the facts in [] case, the Appeals Board changed PBGC's determination by increasing [] monthly benefit starting on his ARD payable as an SLA to \$777.25.

When PBGC's Insurance Operations Department, the PBGC department that issues benefit determinations, receives a copy of this decision, they will calculate the total additional monthly

amounts that PBGC should have paid [] during his lifetime, and they will make a one-time payment to reimburse [] estate for those underpayments, plus interest.

We regret the delay in resolving your appeal and appreciate your patience while we completed our review. If you have additional questions, you may write to PBGC's Authorized Representative for this case, Benefit Services Unlimited, Inc., at Brandywood Plaza, 2500 Grubb Road, Suite 221, Wilmington, Delaware 19810-4711, or you may call them at 1-800-400-7242, ext. 1000.

Sincerely,



Michel Louis
Appeals Board Member

Enclosures (7)