

1137953



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

NOV 29 2002



Re: Appeal Republic Retirement Plan

Dear

The Appeals Board reviewed your appeal of PBGC's October 31, 1997 revised determination of your guaranteed benefit. In its review, the Board found that the lump-sum payment of \$140,794.32 you received in 1986 did not equal the full present value of your Plan benefit because LTV miscalculated the benefit that you had accrued as of December 31, 1985 when they calculated your 1.5% Pension under the January 1, 1986 "benefit freeze" amendment.

However, as we explain below, the September 1986 lump sum payment - although less than your full plan benefit - covered all the benefits that PBGC guarantees. Accordingly, the Appeals Board concluded that the additional payments totaling \$68,096.18, which you received from PBGC in 1997, were made in error.

PBGC decisions to seek repayment of overpayments are not subject to appeal. The Appeals Board notes, however, that after your appeal was filed PBGC made certain changes in its regulations and policies that govern the repayments of overpayments, and it also revised its debt collection procedures. These changes, which generally are favorable to plan participants, may apply to you. As is discussed later in this decision, we are forwarding a copy of this decision to the appropriate officials within PBGC, who will then decide whether you are entitled to any relief under the new regulations, policies, and procedures.

PBGC's Determinations and Your Appeal

PBGC's March 21, 1997 benefit determination letter ("BDL1") said that you were entitled to a guaranteed monthly benefit beginning on your Normal Retirement Date ("NRD"; December 1, 1996) of \$1,789.77 payable as a Straight Life Annuity ("SLA"), which provides a benefit for your lifetime and no survivor benefit. BDL1 noted that if you were married when you started receiving your benefit, you would receive a reduced monthly amount payable as a Joint and 50% Survivor Annuity ("J&50%SA"), under which your eligible spouse would receive one-half of your monthly amount if you died before she did. PBGC included a Benefit Statement showing

1137953

2

how it calculated your guaranteed benefit amount payable as an SLA at either your NRD, or your Earliest Retirement Date ("ERD"; December 1, 1986). You did not appeal BDL1 within the statutory 45-day appeal period, and thus, it became final on May 6, 1997.

PBGC records show that PBGC started paying you a monthly benefit on July 1, 1997, with a retroactive actual retirement date of December 1, 1993, and paid you a \$60,481.88 lump sum on October 1, 1997 to reimburse you for missed payments from December 1993 through June 1997, including interest on the missed payments. Please note that, in general, PBGC does not allow participants to elect a retroactive retirement date, but in your case, PBGC applied its Retroactive Early Retirement policy and found that because under the Plan's terms, your earliest unreduced retirement age was age 62, they could allow you to retire retroactively to December 1, 1993 even though your PBGC-guaranteed benefit was reduced on account of the Maximum Guaranteed Benefit ("MGB") limit, a limit set by Congress when it enacted the Employee Retirement Income Security Act of 1974 ("ERISA").

Based on documents (see **Enclosure 1**) received from LTV's former benefits administrator ("EDS") after PBGC began paying you a monthly benefit, PBGC sent you an October 31, 1997 revised benefit determination ("BDL2"). BDL2 said that you are not entitled to a PBGC-guaranteed benefit because the documents that PBGC received from EDS indicated that you received the present value of your deferred vested pension in the amount of \$140,794.32 as payment in full for benefits due you under the Plan.

BDL2 also said that PBGC must collect (recover) all payments made to you in error, and that the total of the erroneous payments as of October 31, 1997 was \$65,558.08. PBGC sent you a second demand letter on December 30, 1997, saying that additional payments made to you during the 45-day appeal period increased your total overpayment to \$68,096.18.

PBGC records show that you e-mailed an extension request to the Appeals Board on December 13, 1997, that the extension request was granted, and that you filed a timely appeal on February 19, 1998. Your appeal indicates that although you understood what LTV told you when you received the lump sum amount in September 1986, you later filed a claim with the bankruptcy trustee for a larger benefit, and thought that BDL1 reflected a positive change in LTV's point-of-view. You said that you provided documentation to the bankruptcy court that the date of hire used in calculating your vested accrued benefit should be November 1949 instead of the May 1958 date shown in LTV's records and on the Benefit Statement you received with BDL1.

Discussion**SCOPE OF REVIEW**

PBGC's policies provide that decisions to seek repayment of overpayments are not subject to appeal. However, the underlying determinations of benefit entitlement and the amount are subject to appeal. Thus, the Appeals Board's scope of review of your appeal of BDL2 is limited to BDL2's conclusion that you were no longer entitled to a benefit under the Plan as of the Plan's termination date, and therefore improperly received benefit payments from PBGC.

**DID YOU RECEIVE A LUMP-SUM CASH-OUT
OF YOUR ENTIRE PLAN BENEFIT AND WHEN DID YOU RECEIVE IT?**

You did not object to BDL2's statement that LTV had paid you a lump sum of \$140,794.32 in 1986. Furthermore, based on other information in PBGC's files, the Board found that you did receive a lump sum in that amount from LTV sometime in 1986.

Although you had already made the election for a lump-sum payout on September 3, 1986, it is not clear whether the release you signed on September 8, 1986 meant that you had (1) received the lump-sum payment on that date; or (2) would receive it sometime in the near future. An Appeals Analyst called you recently and asked you when you actually received the lump-sum cash-out payment. You told her that you did not recall, but that you would try to find any records you may have regarding the date you received that payment.

Because the Appeals Board has not received information regarding the actual payment date of your lump-sum, the Board has assumed that you received the payment on September 8, 1986.

In order to determine whether the lump-sum cash-out you received covered your full benefit under the Plan, the Appeals Board attempted to replicate LTV's calculation of the lump sum. During the replication process, the Board took note of the fact that in considering other appeals in your Plan, the Appeals Board discovered that PBGC had determined that LTV did not correctly calculate vested accrued benefits payable to deferred vested participants under the 1986 Plan's 1.5% Pension formula. That is, while LTV did not apply the Plan-specified "5% addition" in calculating a deferred vested participant's 1.5% Pension amount, PBGC found that the Plan's language required that it be so applied. Because no appellant under the Plan has claimed that PBGC's reading of the Plan was incorrect, the Appeals Board accepted it as the

1137953

proper reading of the 1986 Plan. The knowledge that LTV improperly did not apply that 5% addition was needed by the Board to successfully replicate LTV's calculation of your lump-sum benefit. After reviewing the amount of the lump-sum payment you received in 1986, the Board found that, regardless of whether you received payment on September 8, 1986, or sometime thereafter, the lump-sum payment you received did not cover the full present value of your vested accrued monthly benefit as of the payment date. Please see **Enclosure 2**, in which the Board shows how LTV calculated your lump-sum pay-out, based on a monthly 1970 Plan benefit of \$2,771.36 and a payment date of September 8, 1986.

However, as we discuss below, the amount of your lump-sum benefit covered your full PBGC-guaranteed monthly benefit.

DID THE LUMP-SUM CASH-OUT YOU RECEIVED
UNDER PLAN SECTION 4.4
COVER YOUR FULL PBGC-PAYABLE GUARANTEED MONTHLY BENEFIT?

Because your Plan terminated in 1986, the Maximum Guaranteed Benefit ("MGB") that PBGC may pay to a participant at age 65 as an SLA is \$1,789.77 per month. However, as discussed above, the Board found that the lump-sum payment you received in 1986 was the equivalent of a \$2,771.36 monthly benefit payable as an SLA. Thus, the Board concluded that the lump-sum payment you received more than fully covered your guaranteed monthly benefit.

You asserted that your date of hire should be changed from May 1958 to November 1949 because you served in the Korean War during a portion of your time away from Republic. The law regarding bridging service on account of military service, however, generally requires that a pension plan participant return to service with the plan sponsor no later than 90 days after military discharge. In your appeal letter, you suggested that rather than returning to work with LTV, you went on to complete your formal education after you were discharged. Thus, it appears that LTV was under no legal obligation to change your hire date. But even if you were entitled to an earlier hire date, an earlier hire date would not increase your PBGC-guaranteed benefit because PBGC's calculation of your MGB is not affected by your date of hire.

WHERE TO SUBMIT ANY ADDITIONAL INFORMATION

Even after issuance of an Appeals Board decision, PBGC will always consider information showing that a participant is entitled to a higher benefit, or that the amount of overpayments that PBGC seeks to collect is incorrect. If you have or can obtain

1137953

additional documentation, please send it to the Pension Benefit Guaranty Corporation, Insurance Operations Department, P.O. Box 19153, Washington, DC 20036.

PBGC also has designated a Recovery Coordinator for benefit overpayment matters. If you have any questions concerning the repayment of overpayments, you should contact the Recovery Coordinator. His name and address is: Jerome O. Smith, Recovery Coordinator, Benefit Payment Administration Branch, Pension Benefit Guaranty Corporation, 1200 K Street N.W., Washington D.C. 20005.

Decision

Having applied the law, Plan provisions, and PBGC rules to the facts in your case, the Appeals Board found that the lump-sum payment of \$140,794.32 you received in 1986 did not cover the full present value of your Plan-defined benefit because LTV miscalculated the benefit that you had accrued as of December 31, 1985 when it calculated your 1.5% Pension under the January 1, 1986 "benefit freeze" amendment.

However, the 1986 lump sum payment - although it covered less than your full Plan-defined benefit - did cover all the benefits that PBGC guarantees. Accordingly, the Appeals Board concluded that payments totaling \$68,096.18 that you received from PBGC in 1997 were made in error, and are, therefore, subject to recovery.

The Appeals Board will forward a copy of this decision to PBGC's Recovery Coordinator. PBGC will contact you concerning your obligation to repay PBGC for the overpayments, taking into consideration the fact that the lump sum you received in 1986 did not cover the full present value of your Plan-defined benefit.

This decision is the final agency action on the issues you raised in your appeal. You have exhausted your administrative remedies, and may, if you wish, seek court review of this decision. If you have additional questions, please call PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

Enclosures (4)