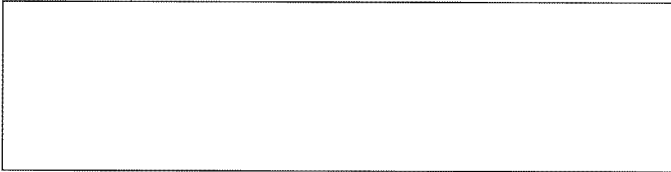


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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026



NOV 18 2005

Re: Appeal [redacted] [redacted] Case 195982
Pension for Hourly Employees of Standard Steel - Burnham
and Latrobe Plants - A Division of Freedom Forge
Corporation (the "Plan")

Dear [redacted]

The Appeals Board has reviewed your appeal of PBGC's April 14, 2003 determination that your client, [redacted] is not entitled to a disability benefit from PBGC. For the reasons stated below, we changed PBGC's determination and found that he is entitled to a disability benefit.

Benefit Determination and Appeal

In its determination letter, PBGC informed [redacted] that he must have become disabled prior to Plan termination in order to be entitled to a guaranteed disability benefit. The Plan terminated on June 27, 2002. His Social Security Administration ("SSA") Disability Award states "you became disabled under our rules on July [redacted] 2002." Therefore, PBGC concluded that [redacted] is not entitled to a guaranteed disability benefit.

In a November 26, 2003 letter, PBGC further explained its determination as follows:

You requested why you were denied a permanent incapacity retirement. To be eligible for this type of retirement from PBGC you would have to be disabled due to a physical injury or disease which prevents you from engaging in further employment with the Company or in any other gainful employment or occupation before June 27, 2002, the Date of Plan Termination.

You did not meet this requirement since you were still an active employee at the Latrobe plant until July 12, 2002.

In your March 17, 2004 appeal, you contended that [redacted] was "injured and disabled prior to June 30, 2002." In support, you presented: (1) a letter from [redacted] (2) medical records of [redacted] (3) a statement by [redacted] that he was unable to do his job after May, 2002, and (4) statements by five co-workers that, because [redacted] was unable to perform his job, they did some of his work for him. The appeal record also contains reports of medical treatment from 1997 to 2004 and the SSA Disability Award.

Plan Terms

Section 3.040 of the Plan provides that a participant shall be entitled to Permanent Incapacity Retirement under the following conditions:

- (a) Any Participant who has completed at least 15 years of Continuous Service and who shall have become ... permanently incapacitated prior to his attainment of age 65 shall be entitled to a pension upon his retirement determined in accordance with 3.040(c).
- (b) A Participant shall be deemed to be permanently incapacitated (as the term "permanently incapacitated" is used in this Agreement) and shall be retired only:
 - (1) If he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any occupation or employment; and
 - (2) After such total disability shall have continued for a period of five consecutive months and in the opinion of a qualified physician, it will be permanent and continuous during the remainder of his life.

Section 3.040, however, provides that a participant shall not be entitled to Permanent Incapacity Retirement if his incapacity results from criminal enterprise, habitual drunkenness, addiction to narcotics, or future service in the armed forces for which the participant receives a military pension.

Discussion

For PBGC to guarantee a disability benefit, a participant must have satisfied the Plan requirements - other than application for the benefit, retirement, or completion of a waiting period - on or before the Plan termination date, June 27, 2002.

The Appeals Board has considered evidence on this issue from several sources: medical evaluations, the SSA Disability Award, employment records, and your client's explanation of his employment history.

[redacted] [redacted] primary physician, summarized his medical history in a January 12, 2004 letter. He described visits concerning pulmonary complaints as early as 1997, but said that evaluations and management regarding [redacted] work status in 1999 were made by a pulmonologist, [redacted].

[redacted] wrote that he saw [redacted] on January 7, 2002, when he reported great difficulty at work because of shortness of breath. At the time, [redacted] noted that he had "some bronchospastic COPD, certainly aggravated by smoking, maybe aggravated by his work" He referred [redacted] to a pulmonologist, [redacted] and told him that work decisions would be left to Dr. [redacted].

[redacted] wrote that he saw [redacted] in early June of 2002, [redacted] again reported great difficulty carrying out his usual work duties. [redacted] stated: "I believe this to be accurate, based on my findings of expiratory rhonchi and diminished breath sounds."

[redacted] statement describes the effect of his breathing difficulties on his ability to do his job. [redacted] stated that in May, 2002, he could no longer do his job in the steel plant and that he had so much trouble breathing that he had to sit most of the time. He stated that in June and part of July, his co-workers did a great percentage of his work.

Five of his co-workers submitted statements stating that they helped with his work because his health problems did not allow him to do it himself.

In your appeal, you state that [redacted] was unable to see the lung doctor, [redacted] until July, 2002 due to [redacted] schedule. When [redacted] saw [redacted] on July 23, 2002, he wrote that pulmonary function studies indicated restrictive disease and noted his history of obstructive airways disease. He also said that [redacted] had sleep apnea, which needed treatment.

[redacted] said he had a long discussion about whether it was [redacted] work that made his symptoms worse. He said that was certainly possible. He referred [redacted] to [redacted] for further care and management.

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Examination notes from [redacted] and laboratory tests show that [redacted] did suffer from sleep apnea, which was subsequently treated.

Employment records show that [redacted] was present at work until July 12, 2002, but his statement explained that he was unable to do his job starting in June: "The only reason I was at the plant from June of 2002 to July of 2002 was because everybody else did my job." As noted, signed statements from five of his co-workers confirm that they helped him do his job because he was unable to do it himself.

By July [redacted] 2002, [redacted] was disabled under the rules of the SSA. Additionally, PBGC and the Appeals Board was provided with copious medical reports, some prepared before Plan termination and some after, that formed the basis for the SSA finding. The Appeals Board found, based on these medical records and the other information submitted to PBGC and the Board, that: (1) [redacted] medical condition and his inability to perform his job likely was substantially the same on the Plan's termination date (June 27, 2002) as on the date that SSA found that he was disabled; and (2) [redacted] had become "permanently incapacitated" within the meaning of section 3.040 of the Plan on or before the Plan's termination date. Accordingly, the Board found that [redacted] is entitled to a disability pension.

Decision

For the reasons stated above, the Board changed PBGC's determination and found that [redacted] is entitled to a guaranteed disability benefit.

PBGC will issue a new determination with a new 45-day right of appeal that will state the terms and the amount of his disability pension payable by PBGC. In the meantime, if Mr. Steeves needs other information from PBGC, he may call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles W. Vernon

Charles W. Vernon
Chair, Appeals Board

cc: [redacted]