

C-30728824-3674-4785-B

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



FEB 19 2004

Re:  Case 190028, Thorn Apply Valley-Smoked  
Meats Hourly Employees' Pension Plan (the "Plan")

Dear

The Appeals Board reviewed your appeal of PBGC's December 23, 2002 determination of your benefit under the Plan. As explained below, the Board found no basis presented in your appeal for changing PBGC's determination.

Benefit Determination and Appeal

PBGC's letter stated that you are entitled to a single lump-sum payment of \$3,126.00, plus interest from the date of Plan termination. In your March 23, 2003 appeal, you raised five issues which will be discussed below.

Discussion

(1) As your first issue, you contend that PBGC's policies on withholding federal taxes from lump-sum payments violate the rules restricting assignment and alienation of benefits set forth at 29 U.S.C.A. § 1056(d)(2) -- or, equivalently ERISA § 206(d)(2) or IRC § 401(a)(13).

PBGC is not only permitted to withhold for federal income tax, we are required to do so. With respect to your argument regarding the assignment and alienation of benefits, please note that Treas. Reg. § 1.401(a)-13(c)(2)(ii) specifically provides that withholding of federal tax from plan benefit payments is not an "assignment or alienation," as those terms are used under IRC § 401(a)(13). Instead, like every other payor of an eligible rollover distribution, PBGC is required to withhold 20% of the distribution, under IRC § 3405(c). This rule applies to all eligible rollover distributions, which are basically all lump sum payments made to the participant or their spouse (rather than to an estate or beneficiary). The only exception to this withholding requirement is when an eligible rollover

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distribution is directly rolled over to an eligible retirement plan.

(2) The second issue that you raise is "Whether PBGC erred in its calculation of participant's lump-sum pension plan distribution?" The Board found that PBGC determined your lump-sum benefit in accordance with the rules and factors set forth in the regulation which governs PBGC's valuation of benefits (29 Code of Federal Regulations, "CFR", §§ 4044.51 through 4044.57).

In this section, you also contend that "PBGC erred in its assessment and determination of participant's earliest unreduced retirement date, earliest retirement date, and adjustment factor for earliest retirement date. 29 U.S.C.A. § 1056(a)(3)" Section 3.4 of the Plan provides that your earliest unreduced retirement age is sixty; that your earliest retirement age is 55; and, that your benefit is subject to a reduction of one-half of one percent (0.5%) for each month that your early retirement date precedes your attainment of age sixty (60). PBGC followed the terms of the Plan in its determination of your earliest unreduced retirement age, earliest retirement age, and early retirement adjustment factors.

In your appeal, you do not state what you consider to be the correct early retirement ages or factors. You simply contend that PBGC's determination is wrong and then cite 29 U.S.C.A. § 1056(a)(3), which is identical to ERISA § 206(a)(3). This section of ERISA requires that a separated deferred vested participant, such as yourself, who has met a plan's service but not the plan's age requirements for an early retirement benefit, must be entitled upon reaching the plan's early retirement age to receive a benefit that is not less than the actuarial equivalent of the participant's benefit payable at normal retirement age.

Section 1.1(gg) of the Plan defines Normal Retirement Age as sixty-five (65). Section 6.5-2 of PBGC's Operating Policy Manual provides that if a Plan's early retirement factors do not meet the standards of Section 206 of ERISA, then PBGC will substitute the factors set forth at 29 CFR § 4022.23(c). These factors provide for a 55% reduction at age 55. In your case, the Plan provides for a 30% reduction at age 55. Thus, the Plan's early retirement reduction factors are significantly more favorable than those set forth at 29 CFR § 4022.23(c). Therefore, the Board found that the Plan's early retirement

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factors meet the standards set forth in Section 206(a) (3) of ERISA.

(3) The third issue that you raise, also, pertains to PBGC's determination of your earliest retirement date. You contend that your benefit should have been calculated from the earliest date that you could have elected to receive benefits. As noted, PBGC based its determination of your earliest retirement date on the terms of the Plan. The Board found no basis presented in your appeal for concluding that you could have elected to receive benefits at any age earlier than the age provided under the terms of the Plan.

(4) The fourth issue is "Participant contends that the employee benefit plan (TAV-SMHE) is liable to participant for interest on distribution amount of lump-sum payment of early retirement benefit between date for distribution (June 25, 1993) until the present date/lump-sum payment date) under terms of plan and date which distribution was actually made." You appear to be arguing that your lump-sum distribution should have been effective as of your date of termination of employment, June 25, 1993, and that interest on your lump-sum distribution should be calculated accordingly. The Plan, however, did not provide for the payment of your early retirement benefit in the form of a lump sum, nor was the Plan required to do so by law. Thus, you were not entitled to receive a lump-sum payment prior to Plan termination. After Plan termination, however, PBGC exercised its legal right to offer you the choice of a lump-sum payment rather than an annuity, because the present value of your benefit was less than or equal to \$5,000.00 as of the date of Plan termination.

(5) The fifth issue is "Whether participant's lump-sum early retirement pension benefit plan will be forfeitable should the plan terminate?". Please note that the Plan did terminate (on August 26, 1999); that you earned a nonforfeitable right to your benefit under the terms of the Plan prior to Plan termination; and, that, upon Plan termination, your full accrued benefit under the Plan became fully guaranteed by the PBGC (whether you choose to receive it in the form of a lump sum or an annuity). Accordingly, in this section of your appeal, you do not appear to be seeking a specific remedy with respect to any appealable issue.

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Decision

Having applied the law, PBGC's rules, and the Plan's provisions to the facts in your case, the Board found no basis presented in your appeal for changing PBGC's determination. This is the agency's final action regarding your appeal. You may, if you wish, seek court review of this decision. If you need other information from PBGC, please call our Customer Contact Center at 1-800-400-7242.

Sincerely,

*W.D. Ellis*

William D. Ellis  
Acting Chair, Appeals Board