



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

June 30, 2008

Re: Case # 199334, Retirement
Income Plan for Pilots of US Airways Inc.
(the "US Airways Plan")

Dear

We are responding to your appeal of PBGC's April 25, 2006 determination of your PBGC benefit under the US Airways Plan. For the reasons stated below, we granted your appeal and determined that PBGC shall increase your benefit to \$3,688.76 per month in the form of a Joint and 66 2/3% Survivor ("J & 66 2/3% S") annuity.

PBGC's Determinations and Your Appeal

PBGC's determination letter stated that you are entitled to a monthly benefit of \$2,080.40 payable as a J & 66 2/3% S annuity. The letter noted that this is the same amount you received from the US Airways Plan's "former Plan Administrator" and also is the same amount you currently are receiving.

Your April 28, 2006 appeal states that you "received a full disability retirement commencing on July 1996," which is based on a collective bargaining agreement that provided for Disability Retirement benefits. You claim that PBGC's determination is in error because, based on the terms of a "Confidential Settlement Agreement" ("Settlement") signed by US Airways, Inc. ("US Airways" or "Company"), you are entitled to a monthly retirement benefit of \$4,515.00 (before adjustment for the J & 66 2/3% S benefit form).

You included with your appeal a copy of the Settlement (Enclosure 1 to this decision), which was signed by you and your wife and by representatives of US Airways, Shuttle, Inc., and the Air Line Pilots Association ("ALPA") during the period between October 30 and November 9, 1998. Your letter quotes the following language in paragraph 4(b) of the Settlement:

(b) Commencing on, and retroactive to, July 1996 (hereinafter the "Disability Retirement Date),

shall be deemed to have become permanently disabled and placed on disability retirement, and shall be classified as such on the records of Shuttle. As a pilot on disability status, shall be eligible to receive monthly payments in the amount of Four Thousand Five Hundred Fifteen Dollars and No Cents (\$4,515.00), in accordance with the terms and conditions of the Shuttle, Inc. Fixed Benefit Retirement Income Plan for Pilots (hereinafter the "Disability Retirement Plan"), as such plan may be amended from time to time; provided, however, that any such disability retirement payments may be made either from the Disability Retirement Plan or from Shuttle's general assets, or from a combination of the two in the sole discretion of Shuttle; . . .

You also assert that, up to March 31, 2003, you were receiving benefit payments totaling \$3,688.76 per month from two sources: (1) \$2,080.40 from State Street Bank as the US Airways Plan's "Trustee;" and (2) \$1,608.36 from US Airways. You contend that, since US Airways has not made any payments to you after March 31, 2003, PBGC should increase your benefits with respect to the US Airways Plan to \$3,688.76. Specifically, you state:

The decision of the PBGC is erroneous because it failed to account for or even consider the option granted in the confidential agreement to allow the employer the option to provide payments from the Disability Retirement Plan or "**from Shuttle's general assets**". As a consequence, PBGC erroneously concluded that the amount of \$2,080.40 received from the "plan administrator" was the correct amount. Because Shuttle exercised the option to pay my retirement account from general assets initially an additional \$2,434.60 each month, that amount could have been paid from the Disability Retirement Plan Administrator and should have been considered by the Board in its determination of the correct amount of my retirement benefits from the Administrator.

Background

PBGC records show that you were hired as an Eastern Airlines, Inc. ("Eastern") pilot on 1971. While you were employed

by Eastern, you accrued a benefit under the Eastern Airlines Fixed Benefit Retirement Income Plan for Pilots ("Eastern Plan"). The underfunded Eastern Plan subsequently terminated as of October 5, 1990, and PBGC became its trustee. PBGC determined that your monthly accrued normal retirement benefit under the Eastern Plan (i.e., the amount before the adjustment for early benefit commencement and benefit form) is \$1,530.51.

Effective June 7, 1989, Trump Shuttle, Inc. ("Trump") purchased the Eastern Shuttle. Under the terms of the Shuttle Purchase and Sale Agreement, Trump was required to offer employment to certain Eastern Employees. You accepted employment with Trump, and, as a result, you became a participant under Trump's "Shuttle Plan," which was established effective June 7, 1989.¹

Trump in 1992 merged into a new company, known as Shuttle, Inc. ("Shuttle"). The US Airways group then purchased Shuttle from a consortium of banks in 1998, which resulted in US Airways becoming responsible for the Shuttle Plan. Also, effective February 1, 2000, the Shuttle Plan was merged into the US Airways Plan.

The US Airways Plan terminated effective March 31, 2003 without sufficient assets to provide all benefits PBGC guarantees under the Employee Retirement Income Security Act (ERISA), and PBGC became trustee. As trustee, PBGC became responsible for all benefits under the US Airways Plan, which included the benefits under the former "Shuttle, Inc. Fixed Benefit Retirement Income Plan for Pilots" that is referenced in the Settlement.²

As you state in your appeal, the Settlement provides that your Disability Retirement Date is 1996. We further note that there is no evidence in PBGC records that you returned to active employment with Shuttle, Inc. or US Airways after that date. After the Settlement became effective, US Airways paid you \$4,515.00 per

¹ The Shuttle Pilots Plan originally was known as the "Trump Shuttle, Inc. Fixed Benefit Retirement Income Plan for Pilots." Later, it was renamed as the "Shuttle, Inc. Fixed Benefit Retirement Income Plan for Pilots."

² Although the Settlement also uses the term "Disability Retirement Plan," it is clear from its section 4(b) that the term "Disability Retirement Plan" means the "Shuttle, Inc. Fixed Benefit Retirement Income Plan for Pilots."

month for the period between July 3, 1996 and November 1, 2001, with the payments made exclusively from the Company's funds.³

On October 2001, you elected to receive your retirement benefits in the form of a J & 66%%S annuity. At that time, US Airways had informed you that your total monthly amount for this form of benefit is \$3,688.76. See Enclosure 2, which are copies of certain documents that the Appeals Board obtained from US Airways. Starting in December 2001, you received monthly payments totaling \$3,688.76 divided between \$2,080.40 from the US Airways Plan and \$1,608.36 from US Airways's own funds.

As noted above, your appeal states that you continued to receive payments from these two sources until March 2003, when the US Airways Plan terminated. We note in this regard that, in June 23, 2003, US Airways's bankruptcy counsel prepared a document to inform you of US Airways' view that (based on bankruptcy law) US Airways has no continuing obligation to you under the Settlement. See Enclosure 3 (unsigned copy of bankruptcy counsel's letter).

Discussion

When it issued the determination letter, PBGC took the position that PBGC's benefit obligation to you with respect to the US Airways Plan is limited to the \$2,080.40 monthly amount that you were receiving when that Plan terminated. PBGC further viewed the remaining monthly amount of \$1,608.36 as an obligation to be satisfied solely from US Airways' corporate assets.

The Appeals Board decided, based on the Settlement and the terms of the Shuttle Plan, that the entire \$4,515.00 amount (before the reduction for the benefit form you elected) is a benefit obligation under the terminated US Airways Plan. The Board reached this conclusion for the following reasons:

- The Settlement states that [redacted] has provided to Shuttle appropriate medical documentation establishing his permanent disability" and that Shuttle agrees to not require any further proof of disability. It also says that

³ In 1999, US Airways made payments to you that were substantially above \$4,515.00 per month. To correct this error, US Airways and you agreed that benefit payments to you would be suspended until the amount of the overpayments was repaid. Since under this agreement you had repaid the 1999 overpayment amounts before the US Airways Plan terminated, the overpayments do not affect the amount of your PBGC benefits.

shall be deemed to have become permanently disabled and placed on disability retirement." Accordingly, the Settlement provides that the necessary proof of disability under the Shuttle Plan's disability retirement provisions was satisfied;

- The Settlement further provides that _____ shall be eligible to receive monthly payments in the amount of . . . \$4,515.00, in accordance with the terms and conditions of the [Shuttle Plan]." Since section 4(b) of the Settlement does not reference either a US Airways corporate obligation or the obligations of any other employee benefit plan, the Settlement's language suggests that the Shuttle Plan's benefit obligation is for the entire \$4,515.00;⁴
- Plainly read, the Settlement's provision that "disability retirement payments may be made either from the Disability Retirement Plan or from Shuttle's general assets" applies to the source of benefit payments, rather than to the amount of the obligation. Additionally, the Appeals Board never was able to determine the rationale for US Airways' decision to pay \$1,608.36 per month from its own corporate assets during the period between December 2001 and March 2003, rather than to pay the full amount under the Settlement from the US Airways Plan's funds. The Appeals Board further was unable to conclude, based on the US Airways Plan's terms, applicable law, and available information, that your monthly disability retirement payments under that Plan must be limited to less than the \$4,515.00 Settlement amount; and
- As is discussed in detail below, the Appeals Board reviewed your personal data and the provisions of the US Airways and Shuttle Plan. The Board was unable to determine, precisely, whether the \$4,515.00 amount in the Settlement is your correct disability retirement benefit amount. The Appeals Board nevertheless concluded, based on available information and the terms of the Shuttle Plan, that the settled \$4,515.00 disability retirement benefit amount was reasonable. Accordingly, the Board decided that the \$4,515.00 amount in the Settlement should not be changed.

⁴ Although the Settlement provided for adjustments to your benefits based upon your Worker's Compensation payments or if you were re-employed, neither of those qualifying conditions applied to you on or after the US Airways Plan's termination date.

Section 4.3 of the Shuttle Plan document provides that a disabled pilot is entitled to the greatest benefit payable under the five benefit formulas that are referenced in that section. In your case, the greatest benefit is under the formula in section 4.3(a)(v), which provides in pertinent part that the benefit equals "thirty percent times the Disability Benefit Earnings Base of such Participant, plus two and one-half percent times the Disability Benefit Earnings Base of such Participant times the number of Active Service of such Participant that exceeds two years of Active Service."⁵ Section 1.12 of the Shuttle Plan defines "Disability Benefit Earnings Base" as the amount of the twelve consecutive months of highest compensation of a Participant during the last 36 months of Active Service.

As is shown in Enclosure 2, US Airways determined that your monthly Disability Benefit Earnings Base is \$11,958.72 and your Active Service as a Shuttle employee is 7.00556 years. Thus, under section 4.3(a)(v), your monthly benefit (before any offsets) using those US Airways-determined amounts is \$5,084.12 [(30% x \$11,958.72 Disability Earnings Base) + (.025 x 5.00556 Active Service greater than 2 years x \$11,958.72) = \$5,084.12].⁶

The \$4,515.00 monthly amount stated in the Settlement thus is \$569.12 less than the amount calculated above. The difference between the two amounts appears to reflect the deduction for "pension offsets" that is set forth in Section 4.7 of the Shuttle Plan. That section provides that the benefit calculated under section 4.3(a)(v) is offset for other pension amounts, which include the annuity value of your account balance under the Shuttle, Inc. Self-Directed Pension Plan for Pilots ("Self-Directed Plan").

⁵ Section 4.3(a)(v) also limits the benefit payable to 50% of the participant's Disability Benefit Earnings Base. In your case, your benefit amount was less than this 50% cap.

⁶ Your Active Service as a Shuttle pilot is based on the service you earned between the June 7, 1989 sale date of the Eastern Shuttle and your 1996 employment termination date. The full elapsed time between those dates, in completed months, is 7 years and one month (i.e., 7.0833 years), rather than the 7.00556 years shown in Enclosure 2. If the 7.0833 Active Service amount is used, your monthly amount under Plan section 4.3(a)(v) is \$5,107.36.

The Appeals Board was unable to locate any record of your balance under the Self-Directed Plan, nor did you provide such information with your appeal. We examined, however, the US Airways benefit calculations for other disabled Shuttle pilots and concluded that an offset of \$569.12 per month based on your Self-Directed Plan balance would be comparable to the benefit offset amounts for these other pilots.⁷

Because of legal limits under ERISA and PBGC's regulations, the benefits PBGC guarantees may be less than the benefits a pension plan would otherwise pay. In your case, however, PBGC is able to pay you the full amount of your US Airways Plan benefit based upon ERISA's requirements for the allocation of pension plan assets under ERISA section 4044. That section establishes a six-tier asset allocation scheme under which the first two priority categories involve benefits based on employee contributions. Priority is next assigned to benefits that were "in pay status" (i.e., were being paid) three or more years before the plan's termination date, or that would have been in pay status three years before termination if the participant had retired ("PC3 Benefits").⁸

Since the benefit amount established under the Settlement is based on a Disability Retirement Date of 1996 (which is more than three years before the US Airways Plan's termination date), the full amount provided under the Settlement is a PC3 Benefit. Additionally, since the US Airways Plan's assets at its termination date covered 100% of PC3 Benefits, you are entitled to receive the entire amount.

⁷ In the case of these other disabled Shuttle pilots, the only pension amount that is deducted from the benefit calculation under Plan section 4.3(a)(v) is for the Self-Directed Plan balance.

⁸ The PC3 benefit further is limited to the amount "based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least." This 5-year limit, however, does not affect the amount of your PC3 benefit.

Decision

For the reasons stated above, we granted your appeal and determined that PBGC shall increase your benefit to \$3,688.76 per month in the form of a Joint and 66 2/3% Survivor annuity.⁹ Since this increase applies to PBGC benefits that were payable to you following the March 31, 2003 plan termination date, you are also entitled to a backpayment from PBGC that includes interest.

Your determination was in-part based on information contained the confidential settlement agreement you provided to PBGC. We have limited access to that information while finalizing your determination and want to assure you that access to your information in the possession of the PBGC is restricted by both the provisions of the Privacy Act of 1974 (as amended) and PBGC's implementing regulations.

This is the Agency's final decision on this matter. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles W. Vernon

Charles W. Vernon
Appeals Board Chair

Enclosures (3)

⁹ The \$3,688.76 amount is based on your representation that US Airways in March 2003 stopped all payments to you under paragraph 4(b) of your 1998 Settlement and the assumption that US Airways will not resume monthly payments on a future date. If you had or will receive such payments from US Airways, PBGC may reduce your benefit payments so that your total benefits do not exceed \$3,688.76 per month.