

Pension Benefit Guaranty Corporation

77-136

March 29, 1977

REFERENCE:

[*1] 4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
29 CFR 2605. Guaranteed Benefits

OPINION:

This is in response to your request for advice on the eligibility of two disabled participants for guaranteed benefits under the terminated * * * (the "Plan"). You indicate that both of the participants were disabled well before the Plan terminated on * * * but that they did not apply for benefits until after that date.

As you know, the Pension Benefit Guaranty Corporation (the "PBGC") has published at 20 CFR Part 2605, a regulation (the "Regulation") describing the benefits that are guaranteed under § 4022 of the Employee Retirement Income Security Act of 1974 (the "Act"). Section 2605.3 of the Regulation states that a benefit is guaranteed, to the extent it does not exceed specified limitations, if:

- (a) The benefit is nonforfeitable under § 2605.6;
- (b) The benefit qualifies as a pension benefit as defined in § 2605.2; and * * *
- (c) The participant is entitled to the benefit under § 2605.5.

Article VII of the Plan provides a disability annuity to participants who have ten or more years of credited service and who become permanently and totally disabled.

It appears that before the date [*2] of Plan termination both of the participants had satisfied the conditions of the Plan necessary to establish the right to receive the benefit before that date, other than applying for the benefit and obtaining approval from * * * ("Joint Board"). Provided each participant met the Plan's standards for disability, the Plan gives the Joint Board no discretion to deny the applications. Accordingly, under §§ 2605.5 and 2605.6 of the Regulation, each of the participants has a nonforfeitable benefit to which he is entitled within the meaning of § 2605.3(a) and (c). Therefore, the disability benefits would be guaranteed.

I hope this is of assistance to you. Should you have any further questions, please do not hesitate to call * * *

Henry Rose
General Counsel