




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

MAY 12 2005




Re:  Bethlehem Steel Corporation Pension Plan, Case # 196603

Dear 

The Appeals Board has reviewed your appeal of PBGC's January 26, 2004 determination that you are not entitled to a Permanent Incapacity (disability) pension under the Bethlehem Plan. For the reasons discussed below, the Board changed PBGC's determination by finding that you are entitled to Permanent Incapacity Retirement. PBGC's Benefits Administration and Payment Department, the organization responsible for calculating and paying benefits, will send you a new determination of your benefit amount and annuity starting date, with a new 45-day appeal right.

PBGC's Determination and Your Appeal

PBGC's letter told you that, to qualify for a disability pension under the Bethlehem Plan, a participant must have completed at least 15 years of continuous service and have been deemed disabled by the Social Security Administration (SSA) on or before December 18, 2002, the date the Plan terminated. PBGC said you were not entitled to a disability benefit because, according to the information you provided, SSA denied your claim for disability. PBGC's letter also noted that you are entitled to a regular retirement benefit under the Plan.

You said in your appeal that you were in the Merchant Marine working on a ship owned by Bethlehem Steel. After you had your second heart attack on October 13, 2002, you were immediately discharged from your vessel, sought medical treatment as soon as you returned home, and had your third heart surgery on December 20, 2002. Although you planned on returning to work, you said your doctors would not authorize it and suggested you file for Social Security Disability Insurance Benefits. SSA initially denied your claim and you filed an appeal. On November 24, 2004, SSA's Office of Hearings and Appeals decided that you were disabled under their rules beginning 

Permanent Incapacity

The Bethlehem Plan terminated, effective December 18, 2002, without sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act (ERISA). The terms of the Plan, the provisions of ERISA, and PBGC regulations and policies

determine your entitlement to a guaranteed benefit. PBGC's regulations require that, to be entitled to a guaranteed benefit, a participant must satisfy the conditions of the plan necessary to establish the right to receive the benefit as of the date the plan terminated.

Under section 2.5 of the 1999 Bethlehem Plan for the Steel Division, there are two conditions that a participant must meet to be eligible for the Plan's Permanent Incapacity retirement: (1) the participant must have at least 15 years of continuous service and (2) the participant must be "permanently incapacitated." Plan section 2.5 provides that a participant is considered permanently incapacitated only if --

(a) he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type normally performed in his employee category; and

(b) such total disability shall have continued for a period of [five] consecutive months and, in the opinion of a qualified physician, will be permanent and continuous during the remainder of the Participant's life.

Please note that this definition of permanent incapacity is not the same as SSA's disability definition nor is an SSA disability award a prerequisite for the Plan's disability pension.

According to the files PBGC's auditors obtained from the prior Plan Administrator, you worked as a Wheelsman on vessels operated by Bethlehem's Great Lakes Steamship Division until October 6, 2002. The files show you were an active employee with more than 15 years of continuous service as of December 18, 2002, the date the Plan terminated.

To be eligible for the Plan's permanent incapacity retirement, your disability must be both total and of such severity that it prevented you from "engaging in any employment of the type normally performed in [your] employee category" on or before December 18, 2002. You submitted a number of documents with your appeal, including extensive medical records from the years 1993 through 2004. These records show a progressively deteriorating heart condition.

You suffered your first heart attack in 1993, which required heart surgery in 1993 and again in 1994. You returned to work after recovering from these surgeries and continued working full-time for Great Lakes until you suffered a second heart attack about October 6, 2002. Your cardiologist, [redacted] said in a October 29, 2002 letter to your primary care physician that he had advised you not to return to your job until a final decision was made "regarding angiography and/or intervention and there is stabilization of your symptoms." The record shows you underwent major heart surgery on December 20, 2002.

Your appeal included copies of three insurance application forms, dated May 27, 2003, June 14, 2003 and May 19, 2004, on which [redacted] indicated that you were totally and

permanently disabled beginning October 29, 2002. You also submitted a Bethlehem Steel *Medical Examiner's Report* prepared by [redacted] on June 25, 2003, on which he certified that the earliest date you were totally and permanently disabled was October 29, 2002.

The Appeals Board found that the medical evidence you submitted shows that, beginning October 29, 2002, you could not have performed the duties of the type normally performed in your employee category. As a result, the Board found that you met the requirements for permanent incapacity under Plan section 2.5 and are, therefore, entitled to a permanent incapacity pension.

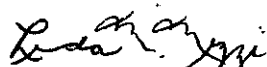
Company records also show that you began receiving Sickness and Accident benefits under Bethlehem's Social Insurance Plan (SIP), effective October 29, 2002. Please note that participants cannot receive both a permanent incapacity pension from the Bethlehem Pension Plan and a SIP benefit at the same time.

Decision

Having applied the law, the provisions of the Plan and PBGC policy to the facts in this case, the Appeals Board found that you are entitled to a Permanent Incapacity Retirement. We will forward a copy of this letter to PBGC's Benefits Administration and Payment Department, who will send you a new determination of your benefit amount and annuity starting date, with a new 45-day appeal right. They will also calculate any backpayments PBGC owes you and pay that amount in a single lump sum with interest.

Meanwhile, if you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board