

5/11/2004 10:55:35 AM

#1768221



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

APR 28 2004



Re:

McLouth Steel Pension Plan With USWA LU 2659 ("Old Plan," Case # 038976)  
McLouth Steel Products Corporation Pension Plan ("New Plan," Case # 173584)

Dear

The Appeals Board has reviewed your appeal of PBGC's March 17, 2000 determination of your New Plan benefit and its December 18, 2002 determination of your Old Plan benefit. For the reasons described below, we are denying this appeal.

Plan History

In 1982, the McLouth Steel Corporation ("Old McLouth") filed for bankruptcy and sold off its operating assets to a new company, eventually McLouth Steel Products Corporation ("New McLouth"). The Old Plan terminated, effective November 30, 1982, without sufficient assets to provide all benefits PBGC guarantees under the Employee Retirement Income Security Act (ERISA). New McLouth established the New Plan, which used credited service with both New and Old McLouth to compute a New Plan accrued benefit, which it then reduced by the benefit payable from the Old Plan based only on Old McLouth service. The New Plan terminated, effective August 13, 1996, also without sufficient assets. PBGC is trustee of both Plans.

PBGC's Determinations and Your Appeal

PBGC's September 2, 1988 determination of your Old Plan benefit, which you did not appeal, said that you are entitled to a deferred vested benefit of \$703.29 per month, if paid as a lifetime annuity with no survivor benefit beginning on your Normal Retirement Date under that Plan (i.e., December 1, 2000, the first of the month following your 62nd birthday), or to a lower amount if paid earlier and/or in a different form. PBGC included a benefit statement with the information used to calculate your benefit.

PBGC's March 17, 2000 New Plan benefit determination said that "no monthly pension payment is payable to you at this time. Your correct benefit is currently being offset by the Workers' compensation payments that you are receiving. This monthly offset will continue till

#1768221

5/16/2004 08:55:33 AM

at least you reach age 65." The letter also said that, if you thought the determination was incorrect, you had 45 days from the date of the letter to file an appeal. PBGC did not include a benefit statement with this determination.

PBGC's July 13, 2000 letter explained that your New Plan benefit is a "normal" benefit instead of a disability benefit because you received a lump-sum payment of \$9,228.16 when you retired, effective October 1, 1993. PBGC noted that the only way for a participant to receive a special payment was to retire with a normal benefit. PBGC further explained that the Plan requires the normal benefit of a participant who is receiving Workers' Compensation to be offset (reduced) by the amount of the Workers' Compensation payments.

In response to your request for a disability pension from the Old plan, PBGC issued a benefit determination on December 18, 2002 denying your request. PBGC explained that, in order for PBGC to guarantee a disability benefit, a participant must meet the Plan's requirements for the benefit before the Plan's termination date (November 30, 1982). Your Social Security Disability Award said that your disability began October 23, 1987.

In your February 16, 2004 letter addressed to the Appeals Board (among others) and in a series of earlier letters to PBGC, you raised a number of issues concerning both your Old Plan and New Plan benefit determinations:

1. You said you were misled by New Plan officials when you retired, effective September 1, 1993 at age 54 years and 9 months. You said you only learned recently that you would have qualified for a disability benefit under the New Plan. Otherwise, you would never have elected to retire under the New Plan's "30-year retirement" provisions, which gave you 3 months' pension payments and nothing else. You would instead have elected a disability pension because disability pensions are not offset by Workers' Compensation until after age 65.
2. You said you had 69+ points when the Old Plan terminated on November 30, 1982 and are, therefore, entitled to a Rule-of-65 benefit (instead of a deferred vested benefit). You also believe you qualify for a disability benefit under the Old Plan.
3. The Old Plan never coordinated pension benefits with Workers' Compensation. To support your position, you cited the *Sterner* case.

Your February 16, 2004 letter also asked that PBGC provide you the employment records used to compute your benefit and the rules that govern the Old and New Plans. The Appeals Board forwarded your request to PBGC's Disclosure Officer, who will respond to you directly. His phone number is 1-800-400-7242 (extension 4040).

5/16/2004 09:55:25 AM

# 1768221

**Background**

The files available to the Appeals Board show that the former Plan Administrators and PBGC used the following information to calculate your Old Plan and New Plan benefits:

1.	Date of birth	
2.	Date of hire	August 31, 1957
3.	Date disabled per Social Security Administration	October 23, 1987
4.	Monthly Workers' Compensation (WC) payment	\$1,694.33/mo.
	<b><i>Old Plan Benefit</i></b>	
5.	Plan termination date	November 30, 1982
6.	Type of retirement	Deferred vested
7.	Credited service	25.25 years
8.	Normal retirement date (age 62)	December 1, 2000
9.	Age 62 benefit before WC offset	\$703.29/mo.
10.	Age 62 benefit after WC offset	\$0
	<b><i>New Plan Benefit</i></b>	
11.	Plan termination date	August 13, 1996
12.	Type of retirement	30-year
13.	Last day worked	October 23, 1987
14.	Actual retirement date (age 54.75)	September 1, 1993
15.	Credited service [line (14) - line (2)]	36.0 years
16.	Benefit before offsets	\$1,066.72/mo.
17.	Special payment in lieu of first 3 months' pension	\$9,228.16
18.	Benefit after Old Plan offset begins at age 62 [line (16) - line (9)]	\$363.43/mo.
19.	Benefit after WC offset	\$0

The files also show that the former New Plan Administrator applied the Workers' Compensation offset to your New Plan benefit, effective January 1, 1994 (when your first monthly benefit became payable). PBGC applied the Workers' Compensation offset to your Old Plan benefit, effective December 1, 2000, your normal retirement date. Thus, as you said in your letters, you never received monthly pension benefits from either the Old or the New Plan.

# 1768221

Validity of Workers' Compensation Offsets

When PBGC becomes the trustee of a terminated pension plan, PBGC pays benefits to the plan's participants according to the terms of the plan, subject to the requirements and guarantee limits of the Employee Retirement Income Security Act of 1974, *as amended* (ERISA). The Old Plan terminated on November 30, 1982, and the New Plan terminated on August 13, 1996. Your entitlement to a benefit is based on the terms of these Plans and on ERISA.

The United States Supreme Court has held that pension plan provisions that allow for the offset of workers' compensation payments against pension benefits do not violate ERISA. *Alessi v. Raybestos-Manhattan*, 451 U.S. 504 (1981). Furthermore, the Supreme Court has concluded that states may not enact laws that would disallow such offsets from pension payments. *Id.* at 522-526 (New Jersey law purporting to prohibit Workers' Compensation benefits from being used to offset pension benefits is a law which "relates to pension plans" governed by ERISA and thus is preempted). See also ERISA § 514(a), 29 U.S.C. § 1144(a) (ERISA pre-emption of state laws).

Thus, your reliance upon Michigan laws and state court decisions that address the coordination of Workers' Compensation benefits is misplaced. PBGC is not permitted to rely upon such state laws and court decisions, but rather must make benefit decisions based upon pension plan terms and ERISA. Nevertheless, we have included the following discussion of Michigan Workers' Compensation law because it might help in understanding your benefit.

Since the enactment of a 1981 statute, Michigan has allowed employers to decrease Workers' Compensation payments to those disabled employees who were eligible to receive wage-loss compensation from other employer-funded sources, including pensions. Mich.Comp.Laws. ("MCL") § 418.354. Under Workers' Compensation law, such a statutory offset is commonly referred to as "benefit coordination."

The 1981 Michigan law provided that disability benefits from pension plans may be treated differently from other pension benefits with respect to the offsets. If the individual was receiving a non-disability pension benefit, the Workers' Compensation benefit generally must be reduced by the amount of the pension. MCL. § 418.354(1)(d). On the other hand, disability pension benefits do not have to be offset against Workers' Compensation payments. MCL § 418.354(14). However, this exemption from coordination of benefits is not automatic; rather, if the pension plan is silent on the subject, the disability compensation benefits are subject to coordination. *Sterner v. McLouth Steel Products*, 211 Mich.App. 354, 536 N.W.2d 225 (Mich.App. 1995), *motion to appeal denied*, 451 Mich. 893, 549 N.W.2d 577 (1996), citing *Scott v. Jones & Laughlin Steel Corp.*, 202 Mich.App. 408, 509 N.W.2d 841 (Mich.App. 1993). See also *Hempstead v. Detroit Lions, Inc.*, 2003 WL 133065 (Mich.App., Jan 03, 2003) (unpublished) ("statute requires some affirmative statement in a [pension] plan to be exempt from coordination").

# 1768221

New McLouth, in several litigated Workers' Compensation cases, took the position that disability pension benefits from the New McLouth Plan were subject to coordination. The company argued that section 3.10 of the Plan -- which provided that Workers' Compensation benefits "shall not be deducted from any such amount for permanent incapacity retirement payable prior to age 65" -- did not prohibit a reduction to Workers' Compensation payments. Thus, the company asserted that coordination of Workers' Compensation benefits is not barred by application of MCL § 418.314(14). The Michigan Court of Appeals in *Sterner* rejected New McLouth's position. However, New McLouth appears to have prevailed in later-decided cases that involve this issue. See, e.g., *Kleczewski v. McLouth Steel Products Corp.*, 635 N.W.2d 306, 465 Mich. 904 (Mich. Nov 16, 2001) (Michigan Supreme Court denial of appeal).<sup>1</sup>

### Plan Provisions

The last Pension Agreement for the Old Plan went into effect on July 31, 1980. New McLouth and the United Steelworkers of America established the New Plan through a Pension Agreement that was dated and become effective on November 15, 1982. They also adopted a second Pension Agreement dated September 15, 1995, with a November 1, 1989 effective date. In all essential respects affecting your benefit entitlements, the provisions of these plan documents are the same.

Section 2.3 of the New Plan provides that a "30-Year Retirement" benefit is available to any participant who retires on or after November 1, 1989 and who "has not attained the age of 62 years and who shall have had at least 30 years of continuous service." The 30-Year benefit consists of a "special payment" that is paid immediately after retirement and a "regular pension amount" that begins the first full calendar month following the three calendar months for which the special payment covers.

The Old Plan and the New Plan provide for a "Permanent Incapacity Retirement" for any "participant who shall have had at least 15 years of continuous service and who shall have become permanently incapacitated shall be eligible to retire . . . and shall upon his retirement (hereinafter "permanent incapacity retirement") be eligible for a pension. A participant shall be considered to be permanently incapacitated . . . only (a) if he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any employment of the type covered by the Basic Agreement, and (b) after such total disability shall have continued for a period of six consecutive months and, in the opinion of a qualified physician, it will be permanent and continuous during the remainder of his life" (section 2.5 in both Plans).

Section 2.7 of both Plans provides that a "Rule-of-65 Retirement" benefit is available to any participant who --

---

<sup>1</sup> The Michigan Supreme Court issued three other rulings on the same day that were identical to *Kleczewski*. The other cases were *Simpson v. McLouth Steel Products*, *McCarty v. McLouth Steel Products*, and *Herr v. McLouth Steel Products*.

# 1768221

- A. Has at least 20 years of continuous service, has not reached age 55 and whose combined age and service equal 65 or more but less than 80, and
- B. Whose continuous service is broken by reason of a layoff or disability and who has not been offered suitable long-term employment as defined in the Plan.

Both Plans also provide for a "Deferred Vested Pension" (Plan section 2.8). The Old Plan required 10 or more years of continuous service for this benefit; when the New Plan terminated, it required only 5 years of continuous service.

As described on the first page of this letter, the New Plan benefit is first computed using total credited service with both Old and New McLouth. This benefit is then offset (reduced) by the benefit payable from the Old Plan, which is based only on Old McLouth service, so that the remaining New Plan benefit reflects only New McLouth service.

In addition, for all types of retirement except Permanent Incapacity, both the Old Plan and the New Plan offset a participant's monthly benefit for each month Workers' Compensation applies. For Permanent Incapacity Retirement, this offset does not begin until a participant reaches age 65 (section 3.10 of both Plan documents).

Discussion

According to your letters, you believe you met the conditions for Permanent Incapacity Retirement and Rule-of-65 Retirement under the Old Plan. Under ERISA and PBGC regulations, PBGC cannot guarantee a benefit unless a participant meets the plan's requirements for the benefit on or before the Plan's termination date (see 29 Code of Federal Regulations (CFR) §§ 4022.3, .4(a)(3)). While section 2.5 of the Old Plan does provide for Permanent Incapacity Retirement, PBGC cannot guarantee that type of benefit because your permanent incapacity occurred on October 23, 1987, which is *after* the Plan's November 30, 1982 termination date.

Similarly, although you met the Old Plan's age and service requirement for a Rule-of-65 Retirement (described as 2.7(A) above) before the Old Plan terminated, you did *not* meet the second requirement (described as 2.7(B) above). That is, the files available to the Appeals Board show that (1) you were actively employed on November 30, 1982, (2) your continuous service had *not* been broken before that date, and (3) the former Plan Administrator calculated your Old Plan continuous service from your date of hire through November 30, 1982.

Because you had more than 10 years of continuous service under the Old Plan, you are entitled to a benefit under that Plan's Deferred Vested Retirement provisions.

Although you met the New Plan's requirements for Permanent Incapacity Retirement before the Plan's August 13, 1996 termination date, Plan files PBGC's auditors obtained when the Plan terminated show you elected to retire under the Plan's 30-Year Retirement provisions,

# 1768221

5/18/2004/08:53:35 AM

effective September 1, 1993. On or near October 1, 1993, New McLouth issue you a check for \$9,228.16 under the "Special Payment" provision for a 30-Year Retirement. Therefore, your New Plan benefit is determined under the 30-Year Retirement provisions, rather than Permanent Incapacity Retirement provisions. Please note that, had you instead elected Permanent Incapacity Retirement, your pension benefits could have been deducted from your Workers' Compensation Payments as discussed on page 5 of this letter.

For participants like you who are entitled to benefits under both McLouth Plans as well as to Workers' Compensation, PBGC's practice is to calculate initially the benefits under both plans in the absence of any Workers' Compensation offsets. PBGC next applies the Workers' Compensation offset amount first to the Old Plan benefit (under the rules for a Deferred Vested Retirement in your case) to the extent permitted by plan provisions. PBGC then applies any remaining Workers' Compensation offset amount to the New Plan benefit, again to the extent permitted by plan provisions.

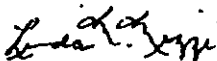
Under the relevant pension plan provisions, both your Deferred Vested Retirement benefit under the Old Plan and your 30-Year Retirement benefit under the New Plan were required to be reduced by your Workers' Compensation payments, starting with the commencement dates of your monthly benefits. In your case, monthly Workers' Compensation payments exceeded the combined amount of your monthly pension benefits from both the Old and New Plans. Thus, PBGC correctly determined that you were owed no pension payments other than the Special Payment you had received from New McLouth.

Decision

Having applied the law, the provisions of the Plan, and PBGC regulations and policies to the facts in this case, the Appeals Board found there was no basis for changing PBGC's revised benefit determinations for both the Old and New Plans. This is the Agency's final decision on the issues you raised and you may, if you wish, seek court review of this decision.

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

Sincerely,



Linda M. Mizzi  
Member, Appeals Board