PBGC
Protecting America's Pensions

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

MAY 25 2007

[redacted]

Re: [redacted], Case 194025, Trans World Airlines, Inc. ("TWA") Retirement Plan for Employees – Noncontract Personnel (the "Noncontract Plan")

Dear [redacted]:

This appeal decision responds to your appeal of PBGC's June 30, 2004 determination of your benefit from the Noncontract Plan. As we explain below, we found that your appeal did not provide a sufficient reason for changing PBGC's determination and, therefore, we must deny your appeal.

PBGC's Determination and Your Appeal

PBGC's determination letter said that you are entitled to a monthly benefit of $136.36, the same amount you are currently receiving. PBGC explained that your benefit is paid in the form of a Joint and 50% Survivor Annuity ("J&50%SA"). Your J&50%SA provides you a lifetime benefit, and if you die first, your surviving beneficiary will receive 50% of your benefit amount for the remainder of her lifetime.

Your July 7, 2004 appeal letter stated as follows:

> I would like to appeal the decision of PBGC which prohibits me from changing the plan to delete the "Joint and 50% Survivor Annuity" or, alternatively, to change the registered beneficiary.
>
> Enclosed is a copy of your letter dated June 30, 2004. Upon receipt of this letter, I telephoned your Customer Contact Center and explained to them that I have been divorced for several years and that I wanted to change my plan to reflect my changed status. It makes no sense for me, in my new life status, to maintain the survivor annuity as I need as large a benefit as possible. When I was told this could not be changed, I asked that the beneficiary named be changed as I do not wish to provide any further benefits to my former wife. Again, I was told this could not be done. This is not fair!

Provisions of Your Qualified Domestic Relations Order ("QDRO")

Enclosure 1 is a complete copy of your QDRO. Two of the provisions of your QDRO that are pertinent to your appeal are the following:

D. The Alternate Payee, [redacted], shall have a right to receive fifty percent (50%) of the vested benefit, accrued as of January 31, 1998, as her separate property with respect to the account of the Participant, [redacted], in the Retirement Plan for Noncontract Personnel of Trans World Airlines, Inc. ('Pension Plan') . . .

E. With respect to the benefit from the Pension Plan herein set aside to Alternate payee, the Alternate Payee shall be deemed a surviving spouse of the Participant for purposes of ERISA §205, 29 U.S.C. §1055, and provisions of the Pension Plan pertaining to joint and survivor annuities and preretirement survivor annuities.

Discussion

PBGC is the U.S. government agency that provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). If a plan sponsor is unable to support its defined-benefit pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan and any applicable Qualified Domestic Relations Order ("QDRO"), subject to legal limitations and requirements set by Congress under ERISA.

Section E of the QDRO, as set out above, specifies that the Alternate Payee is deemed to be your surviving spouse for purposes of "ERISA §205 . . ., and provisions of the Pension Plan pertaining to joint and survivor annuities . . ." with respect to the benefit set aside to the Alternate Payee.

Based on the records that PBGC received from TWA, (1) your Plan Membership Date was July [redacted], 1973; (2) you were already married to the Alternate Payee when you signed your "Application for Membership, Payroll Deduction Authority and Beneficiary Designation" on June 13, 1973; and (3) you were still married to the Alternate Payee when your TWA employment ended on August [redacted], 1979. So, in accordance with section IV.C.3 of TWA's QDRO Procedures (on the 11th page of **Enclosure 2**), your entire accrued benefit is "set aside to" the Alternate Payee in your QDRO because she and you were married during the entire period of your participation in the Noncontract Plan.

ERISA § 205 requires pension plans covered by ERISA to provide benefits in the form of a qualified joint and survivor annuity ("QJSA"). Specifically, § 205 provides as follows:

> **(a)** **Required Contents for Applicable Plans.**— Each pension plan to which this section applies shall provide that—
> **(1)** in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, . . .
>
> **(c)** **Plans Meeting Requirements of Section.**—
> **(1)** A plan meets the requirements of this section only if—
> (A) under the plan, each participant—
> (i) may elect at any time during the applicable election period to waive

> the qualified joint and survivor annuity form of benefit . . ., and . . .
>
> (B) the plan meets the requirements of paragraphs (2), (3), and (4).
>
> **(2)** Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—
>
> (A)(i) the spouse of the participant consents in writing to the election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, . . .

In the Noncontract Plan, the QJSA form described in ERISA § 205 is the Joint and 50% Survivor Annuity ("J&50%SA") form, the form in which you are currently receiving your benefits.

When you signed your application for benefits on June 5, 2001, you chose not to receive your benefit in the J&50%SA form. However, because section E of your QDRO designates the Alternate Payee as your surviving spouse for purposes of ERISA § 205, your waiver of the J&50%SA form was invalid because the Alternate Payee did not sign the "consent to waiver of Joint-and-Survivor annuity" on page 4 of your application for benefits. For that reason, PBGC must pay your benefits in the J&50%SA form with the Alternate Payee as your beneficiary pursuant to the terms of your QDRO.

Decision

Having applied your QDRO's provisions and the law to the facts of your case, the Appeals Board decided that your appeal did not present a sufficient reason for changing PBGC's determination. Therefore, we must deny your appeal. This decision is PBGC's final action regarding the issues you raised in your appeal. If you wish, you may ask a court to review this decision.

We regret the delay in responding to your appeal and appreciate your patience while we completed our review. If you need other information about your PBGC benefit, please call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the Authorized Representative for the Plan (Case 194025).

Sincerely,

Michel Louis

Michel Louis
Appeals Board Member

Enclosures (2)