

# 1208518

4336BDCD-3E9-11D7-9



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

FEB 07 2003

Re: Appeal [redacted] Franklin Industries, Inc.  
Employees' Pension Plan (the "Plan")

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's August 29, 2001 determination that you are entitled to a monthly (deferred vested) benefit of \$388.60, but that you are not entitled to the monthly (disability) benefit of \$1,061.08 you are currently receiving. For the reasons stated below, the Appeals Board found that you are entitled to a Disability Retirement benefit effective October 1, 1994.

In your October 7, 2001 appeal, you asked that your monthly pension benefit be returned to the amount you were paid, \$1,159.43, when you went on disability retirement on October 1, 1994. You stated that you were diagnosed with Primary Biliary Cirrhosis ("PBC") on November 10, 1993, and that the diagnosis was confirmed on January 7, 1994. You characterized PBC as a disabling and fatal disease which only a liver transplant can remedy. You stated that your employment with the Franklin Steel Company (the "Company") terminated on March 31, 1994, when it closed, and that you were unable to find employment thereafter.

By letter dated September 5, 1994, you were notified by the Social Security Administration that they found that you became disabled under their rules on April 1, 1994, and that you were entitled to monthly disability benefits beginning September 1994. You filed an application for disability benefits under the terminated Plan, and began to receive payments of \$1,159.43 per month effective October 1, 1994. By letter dated November 1, 1997, you were notified by PBGC's authorized representative that your monthly payment was an estimated amount that was being reduced effective December 1, 1997 to \$1,061.08.

The Plan terminated on March 31, 1994, the day that the Company ceased operations. PBGC's regulation on guaranteed benefits requires that a participant satisfy a plan's conditions necessary for benefit entitlement as of the date of plan termination (29 Code of Federal Regulations "CFR" § 4022.4(a)(3)).

# 120 8518

-2-

Section 1.15 of the Plan provides that a "Disabled Participant" means a participant who because of a physical or mental condition is totally and permanently unable to engage "in any substantial gainful activity" for the Company. PBGC determined that you were not entitled to a disability retirement because you appear to have been actively employed by the Company through the date of Plan termination.

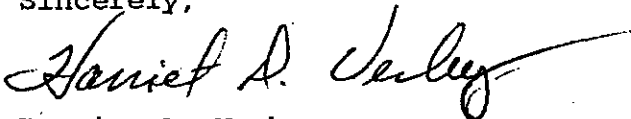
Section 1.16 of the Plan defines Disability Retirement Date as "the first day of the seventh month following the day of the month in which a Participant becomes Disabled . . . ." On October 1, 1994, the former Plan Administrator ("PA") signed a Company form indicating that you were entitled to a Disability Retirement benefit and that your Disability Retirement Date was October 1, 1994. The PA's selection of a Disability Retirement Date of October 1, 1994 means that the PA considered you to have become disabled at some time during March of 1994 (i.e., on or before March 31, 1994, the date of Plan termination). The Appeals Board noted that the PA was the official contemporaneously responsible for making the determination in question and may have had access to relevant evidence which is not part of the current administrative record. As a result, the Board found that the PA's original judgement should be upheld and that you are entitled to a Disability Retirement benefit effective October 1, 1994.

Having applied the law, Plan provisions, and PBGC's rules to the facts in this case, the Appeals Board found that you are entitled to a Disability Retirement benefit as of October 1, 1994.

This is the Agency's final action with respect to your entitlement to a Disability Retirement benefit. PBGC will issue you a new benefit determination (with a new 45-day right to appeal) regarding the amount of your disability benefit.

We appreciate your patience while we completed this review and while PBGC redetermines your benefit amount. Meanwhile, if you need other information from PBGC, please call the Customer Service Center at 1-800-400-7242.

Sincerely,



Harriet D. Verburg  
Chair, Appeals Board