

123456789-101112-1314151617181920

* 1139394



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

DEC 04 2002

[Redacted box]

Re: Appeal [Redacted] Peter J. Schmitt Employees Retirement Plan (the "Plan")

Dear [Redacted]

The Appeals Board reviewed your appeal of PBGC's July 30, 2001 determination (remailed November 13, 2001) that you were not entitled to a benefit under the Plan because you had less than five years of service under the Plan. As explained below, the Appeals Board changed PBGC's determination and found that you are vested in a Plan benefit.

Your November 27, 2001 appeal stated that you started working for Golden Dawn Foods ("Golden") in 1978, that employees of Golden were admitted to participation in the Plan effective April 1, 1986, and that you continued to work for Peter J. Schmitt ("PJS") until it closed in 1992. You questioned the assertion in PBGC's determination letter that your date of hire was June 17, 1990.

After you filed your appeal, you agreed to let PBGC review your Social Security earnings record.

Discussion

The Appeals Board first reviewed documents that PBGC received from PJS when PBGC became trustee of the Plan.

One of the PJS documents (see **Enclosure 1**), is document that was produced on January 1, 1990 listing (based on data as of December 24, 1989). This document calls itself "Alphabet Employee List - Corporate" and shows your date of hire as August 21, 1978 and no date of termination of employment.

A second PJS document (see **Enclosure 2**) is a listing of annual accrued benefits on which PJS listed your date of hire as June 17, 1990, and your date of entry into participation as January 1, 1991. The listing also indicates that your employment ended on May 29, 1992.

A third document that PBGC received from PJS (see **Enclosure 3**) is a 1994 listing of non-vested participants, which says that your

4215BPGC-0000-1107-0

1139394

date of hire was June 17, 1990. The listing also indicates that your employment ended on May 29, 1992, and that you were not vested in a \$53.39 monthly accrued benefit.

The Appeals Board also reviewed your earnings report (Enclosure 4) from the Social Security Administration ("SSA") for the years 1978 through 1992.

Based on Enclosures 1 and 2, it appears that you might have quit working for PJS at the end of 1989 or in early 1990, and then were rehired sometime in 1990. Your SSA earnings report lends support to termination and rehire in 1990 because your SSA-reported earnings for 1990 were lower than your earnings in both 1989 and 1991. The Board found, however, that even if you did have a break in your employment with PJS during that period, the break was so short that your employment with PJS and related employers before the break (but not before April 1, 1986) would count as vesting service under the Plan and be added to your post-break service to determine your total vesting service under the Plan.

After reviewing Plan provisions, the Appeals Board found that regardless of whether you had a break in your continuous employment with PJS in late 1989 or early 1990, you more than satisfied the Plan's five-years-of-vesting-service requirement, and are entitled to a vested benefit under the Plan.

Decision

Having applied the law and Plan provisions to the facts in this case, the Appeals Board found that you are entitled to receive a vested pension benefit under the Plan.

PBGC's Insurance Operations Department will send you a new benefit determination to reflect the change in your vested status and inform you of the amount of your pension benefit. Your new determination will contain a 45-day right to appeal.

Meanwhile, if you have any additional questions, please contact PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

Enclosures (4)