



Western States Pension Assistance Project
California Senior Legal Hotline
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July 1, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Charles Korb
Manager, Processing & Technical Assistance Branch
Standard Termination Compliance Division
Pension Benefit Guaranty Corporation
1220 K Street, N.W., Suite 930
Washington, D.C. 20005-4026

Re: (Client)

[REDACTED]

[REDACTED]

Dear Mr. Korb:

I am writing on behalf of (Client) (authorization enclosed), who contacted the Western States Pension Assistance Project for assistance related to the payment of pension benefits due him under the G-P/L-P and LPIW Pension Trust (the Trust). This letter is a claim for guaranteed benefits due him under the Trust.

Statement of Facts

Mr. (Client) is a member of the Trust and currently receiving a pension, but his benefit was incorrectly calculated. His monthly pension benefit, which commenced December 1, 1988, is paid by Aetna Life Insurance Company under contract with Louisiana-Pacific Corporation (L-P) (Exhibit 1).

Mr. (Client) began working for the Hammond Lumber Company on August 14, 1948. In 1956, the Hammond Lumber Company was purchased by Georgia-Pacific Corporation (G-P), and on June 1, 1960, the G-P/L-P & LPIW Pension Trust went into effect. (Prior to this time, the company had not had a pension plan.) Mr. (Client) worked for G-P through June 9, 1960, when he voluntarily

resigned and went to work for another lumber company. He returned to work for G-P just under four years later, on May 25, 1964, at the Samoa Sawmill. L-P confirmed Mr. (Client)'s employment history in a letter dated January 16, 1989. (Exhibit 2).

L-P was founded in 1973 as part of a court-ordered breakup of Georgia-Pacific Corp. After this occurred, Mr. (Client) continued to work for L-P, retiring on December 1, 1988. Unfortunately, his retirement benefit was incorrectly calculated because it only accounted for his service from the time he returned to work for G-P in 1964 until his retirement, giving him a total of 24 years' service credit instead of the 36 years' service credit he actually earned.

Argument

Mr. (Client) should have received approximately 12 years of past service credit when the Trust went into effect on June 1, 1960, bringing his total years of work to 36.

Eligibility for credited past service

Under the terms of the Trust, G-P employees became members of the Trust when it went into effect on June 1, 1960, and as members they were eligible to receive credit for past service. Because Mr. (Client) worked for the company continuously from 1948 until the Trust went into effect, he was eligible to receive approximately 12 years of past service credit.

On page 3, the Trust's summary plan document (Exhibit 3) states:

"A participant is eligible to receive credited past service only if he satisfies one of the following requirements:

- A. He was an employee of an employer contributing to the Plan and was eligible to participate in the Plan in accordance with its terms June 1, 1960, or the date thereafter on which his employer first came under the Plan."

On page 4, the summary plan document goes on to say:

"If eligible as explained above, a participant will receive past service credit, up to a maximum of 15 years for the number of continuous years of unbroken service rendered while he has been a member of the Union, [or] been employed by his current employer...."

Mr. (Client) was an employee of a contributing employer on June 1, 1960, and as of that date he had provided approximately 12 continuous years of unbroken service.

Breaks in service

From the time Mr. (Client) began working for the company in 1948 until he retired in 1988, he never suffered a permanent break in service. While he did leave the company from June 9, 1960 until May 25, 1964, that period did not constitute a break in service under the terms outlined in the Trust documents (Exhibit 3).

On page 6, the Trust's summary plan description states:

"Any accrued benefit forfeited as a result of a Break in Service will be reinstated if the participant resumes employment covered by the Trust, provided the continuous period of his cessation of employment with an employer does not equal or exceed the number of Years of Service the participant had immediately before such Break in Service occurred."

According to L-P, Mr. (Client) worked for the company from August 14, 1948 until June 9, 1960, giving him approximately 12 years of service credit. He left G-P's employ on June 9, 1960 and returned just under four years later, on May 25, 1964. Therefore, Mr. (Client)'s continuous period of cessation of employment did not equal or exceed his number of years of service. Under the terms of the Trust, his past service should have been reinstated when he returned to G-P.

No five-year requirement

The L-P Retirement Committee was in error when it stated in its January 16, 1989 letter to Mr. (Client) (Exhibit 2) that he had to participate in the plan for five years without a break in order to be eligible for past service credit. The Trust documents do not include this provision. It is possible the Retirement Committee confused service credit with vesting credit. On page 7, the summary plan description states:

"A participant will have a fully vested nonforfeitable interest in the amount of his earned retirement benefit following: ...D. Completion of 15 years of past service and current service (at least five of which are current service)...."

The fact that employees could receive up to 15 years of past service credit when the Trust went into effect in 1960 may have further confused the issue. Under the terms of the Trust, however, participants were not required to complete five years of current service in order to be credited for past service.

Correcting the mistake

Even though the mistake that resulted in Mr. (Client) receiving an incorrect pension occurred more than 20 years ago, he has the right to have this mistake

corrected. Under ERISA, the Pension Benefit Guaranty Corporation is ultimately responsible for determining whether Mr. (Client) is receiving the pension he earned.

ERISA Section 4041 outlines the procedure for the standard termination of a single employer Trust. The PBGC's certification of a final distribution of assets does not affect PBGC's obligation under Section 4022 to guarantee the payment of all nonforfeitable benefits.

In Advisory Opinion 91-1, the General Counsel concludes that under ERISA Section 4041(b)(4), "(PGGC remains obligated to insure the payment of guaranteed benefits only if the Trust administrator has not made a proper distribution, i.e., if a participant is overlooked or paid an incorrect amount and if the Trust administrator does not promptly correct the error in distribution)."

Therefore, the PBGC is responsible for correcting Mr. (Client)'s incorrectly calculated pension benefit.

Conclusion

As the evidence outlined above shows, Mr. (Client)'s pension benefit was miscalculated. He was entitled to receive approximately 12 years of past service credit when the Trust went into effect June 1, 1960. Because he left B-P for just under four years, a period that did not equal or exceed his number of years of service, Mr. (Client)'s 12 years of past service credit should have been reinstated and included in his final pension calculation. As these benefits are guaranteed by the PBGC pursuant to ERISA, we request that the PBGC pay the benefit to which Mr. (Client) is clearly entitled.

Please feel free to call me at 916-930-4929 or email me at elevey@lsnc.net if you need any further information. Please direct any written response to: Ellen Levy, Western States Pension Assistance Project, 444 North 3rd Street, #312, Sacramento, CA 95811-0228.

Sincerely,

Ellen Levy
Staff Paralegal

Enclosures

cc: (Client)