



UNIVERSITY OF MASSACHUSETTS BOSTON

GERONTOLOGY INSTITUTE
PENSION ACTION CENTER

September 22, 2009

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Gregory L.
Massachusetts Bricklayers and Masons
Health, Pension and Annuity Funds
645 Morrissey Blvd.
Boston, MA 02122

Re: Maria
Surviving spouse of Domenico E. Soc. Sec. No. XXX-XX.

Dear Mr. Sarno:

As we have discussed, this office is in receipt of your letters dated May 21, 2009, and July 8, 2009, concerning Maria. **This letter constitutes a claim for survivor's benefits due Mrs. pursuant to the plan.**

Statement of Facts

Domenico, Maria late husband, worked in covered employment as a member of the Bricklayers & Masons Union for a number of years from the mid-1960s through the early 1980s. He died on April 25, 1988, at the age of 56, leaving Maria as his widow. Mr. did not receive any retirement benefits under the Bricklayers & Masons' Pension Plan prior to his death.

Union records show Mr. as having 9.4 vesting credits during this period of time. See copy of May 21, 2009, letter, with attached Historical Pension Statement, letter and Statement enclosed herein as Exhibit 1.

Argument

Section 11.1 of the Pension Plan in effect at the time of Mr. separation from service and subsequent death required 10 years of vesting credit in order for a participant to be entitled to a deferred vested pension. When Mr. covered employment is properly



credited based upon the evidence enclosed, he more than meets this requirement. Accordingly, [REDACTED] is entitled to survivor's benefits pursuant to the plan and federal law.

Mrs. [REDACTED] has provided, and hereby re-submits, an Itemized Statement of Earnings compiled by the Social Security Administration showing Mr. [REDACTED] earnings from 1967 through 1982. A copy is enclosed as Exhibit 2. As this evidence shows, Mr. [REDACTED] is entitled to additional credit beyond the 9.4 credits the plan's Historical Pension Statement shows.

At a minimum, Mr. [REDACTED] should be awarded additional credit for the plan year 1978, the year encompassing April 1977 through March 1978. Exhibit 2 clearly documents that, from April 1, 1977 through December 31, 1977, Mr. [REDACTED] earned \$9,145 from A & J Conti. A & J Conti was clearly a contributory employer, as Mr. [REDACTED] s other periods of employment with this employer are treated as credited service. These earnings are all clearly within the 1978 plan year, i.e. the plan year ending March 31, 1978. However, the plan's Historical Pension Statement credits Mr. [REDACTED] with only 8 hours in the 1978 plan year. This is clearly incorrect.

As previously pointed out in our letter of July 13, 2009 (copy enclosed as Exhibit 3), the earnings reported support a conclusion that Mr. [REDACTED] worked approximately 1,000 hours in covered employment in the plan year ending in March 1978. If one looks at the Earnings Statement and Historical Pension Statement together, this becomes clear. In the plan year ending March 31, 1980, for example, Mr. [REDACTED] was credited with 1,131 hours for a period in which his A & J Conti earnings were somewhere between \$10,240.41 and \$12,084.00. It would appear, then that his hourly wage in 1980 was approximately \$9.85. His wages in 1977 - 1978 were certainly no more than \$9.85 per hour, and possibly less. (We assume that the union has access to historic information as to the hourly wage.) With total earnings of \$9,145 in 1977, then, he should have been credited with at least 925 - 1,000 hours in covered employment for that year.

As the union records show Mr. [REDACTED] as having 9.4 vesting credits without any credit for the 1978 plan year, the proper crediting of this additional covered employment is enough to find him fully vested. He accrued more than the 10 years required for vesting under the plan.

The proper crediting of the wages earned during the period from April 1, 1977 through December 1, 1977, then, would be sufficient to find Mr. [REDACTED] vested. In addition, as I pointed out in my June 19th letter, it appears that he should also be credited with additional vesting credit for periods of employment with A & J Conti in 1975, 1976, and 1979. employment.

Conclusion

Domenico [REDACTED] entitlement to benefits, and his wife Maria's concomitant right to a survivor's benefit, are well-documented by the evidence submitted herein. For the reasons discussed above, we hereby request that the plan immediately calculate and pay the benefit to which Maria [REDACTED] is entitled pursuant to the plan.

Please direct your written response to me at : New England Pension Assistance Project,
Gerontology Institute, Univ. of Massachusetts Boston, 100 Morrissey Blvd. Boston, MA 02125.
Please feel free to call me at 617-287-7332 if I can provide you with any further information.
Thank you for your attention to this matter.

Sincerely,


Jeanne M. Medeiros, Esq.
Legal Coordinator

Enclosures

cc: Maria 

Massachusetts
Bricklayers and Masons
Health, Pension and Annuity Funds

JUN 03 2009

645 Morrissey Boulevard • Boston Massachusetts 02122-3569 • TEL. 617-436-5500 • FAX 617-436-7414

May 21, 2009

Certified Mail # 7007 3020 0000 4801 5599

Attorney Jeanne M. Medeiros
C/O UMASS -Boston
Gerontology Institute Pension Action Center
100 Morrissey Blvd.
Boston, MA 02125

RE: Pension Inquiry - Domenico E. [REDACTED] XXX-XX-[REDACTED]

Dear Attorney Medeiros:

Pursuant to your request for Pension Benefits on behalf of Mr. Domenico [REDACTED] please be advised that Mr. [REDACTED] did not qualify for Retirement Benefits at the time of his death, nor is his surviving spouse eligible now for any such Pension benefit, due to the fact that Mr. [REDACTED] did not accrue the minimum necessary years of Contributory Service (10 years) as a result of a Permanent Break In Service, as defined by this Massachusetts Bricklayers and Masons Pension Plan.

According to Section 11.1 of this Pension Plan's Summary Plan Description in effect at the time of Mr. DellaPace's death (copy enclosed): "When Is A Member Eligible For A Normal Retirement Benefit?"

- (a) An **Active** Member is eligible for Normal Retirement at age 62 upon meeting both of the following requirements:
 - (1) The Active Member is vested and has accrued a minimum of 10 years of Contributory Service (Future Service) in this Pension Plan.
 - (2) The Active Member is vested, has not incurred a Break In Service either before or after becoming vested.

After review of Mr. [REDACTED] enclosed Historical Pension Record, and in order to determine Mr. [REDACTED] eligibility for Normal Retirement benefits, one must evaluate the continuity of hours worked and whether or not the participant incurred a Break(s) In Service; a disqualifying factor as mentioned above.

EXHIBIT 1

According to Section 7.1 of this Pension Plan's Summary Plan Description "What Is A Break In Service?"

"Any Active Member who fails to complete a total of at least 500 Hours of Service during a period of 3 consecutive Plan Years, for reasons other than total disability the duration of which is less than 36 consecutive months, retirement, Military Service or maternity, paternity, adoption and or child care, has incurred a Break In Service. A Break In Service is considered to have occurred on the first day of a 3 consecutive Plan Year period during which less than 500 hours have been accrued."

As you can see on the Historical Pension Statement, Mr. [REDACTED] incurred a Break In Service beginning in the Plan Year 4/1/83 – 03/31/1984. This Break In Service lasted until [REDACTED] death in April 1988. Due to the fact that Mr. [REDACTED] was not vested at the time of this Break In Service, and considering the Break has been the greater of 5 years or his previously accrued credited service (9.4 Vesting Credits) Mr. [REDACTED] incurred a Permanent Break In Service, thereby forfeiting his previously accrued credited service. Considering Mr. [REDACTED] never returned to Covered Employment, and did not accrue the 1000 hours necessary to regain the ability to accrue credited service, he was subsequently dropped from Membership.

While our records indicate Mr. [REDACTED] did not qualify for pension benefits, if Mrs. [REDACTED] can produce any documents attesting to the fact that Mr. [REDACTED] had worked the necessary hours, for a Signatory Contractor, to accrue the ten vesting credits required for benefits, I would review them upon receipt. Otherwise, there is no pension/survivor benefit available to Mrs. [REDACTED] through this MA Bricklayers and Masons Pension Fund.

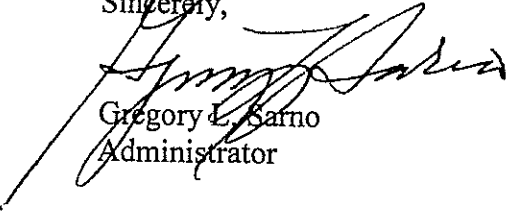
In accordance Section 7.3 of the Massachusetts Bricklayers and Masons Pension Plan, you have the right to appeal this decision to the Board of Trustees of the Pension Plan. You or your representative must make your appeal in writing to the Board of Trustees at the address listed above within sixty (60) days of the receipt of this letter. You will be notified of the date your appeal will be heard by the Board of Trustees once the appeal is received. Failure to appeal this denial will result in the loss of your right to seek further review.

At the time of the submission of your appeal, you may request a hearing in person before the Board of Trustees or before a duly authorized committee of the Board. The Trustees have the sole discretion to grant a hearing in person and will notify you of their decision. If a hearing in person is not granted, the Board of Trustees will review your appeal including all evidence relevant to your appeal and any written comments, documents and or other records and information submitted by you.

You may present written comments, documents, records and other information relating to your appeal at the time of the submission of your appeal to the Board of Trustees. You may supplement the record on appeal no later than one day prior to the date the appeal

will be considered by the Trustees. Upon request and free of charge, you may receive reasonable access to, and copies of all documents, records and other information relevant to your appeal.

Sincerely,



Gregory L. Sarno
Administrator

ACT 031-28-8372 200 003 NS # 3 PENSION FUND

LOCAL NO.

MR. DOMENICO E. [REDACTED]

SOCIAL SECURITY NO.

02154

WALTHAM, MA

APPRENTICE
DATE

JOURNEYMAN
DATE

ENTRY
DATE

BIRTH
DATE

JUN 03 2009

4/11/32

8/3/26

YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS	YEAR	TOTAL HOURS
1960		1965		1970	1169	1975	32	1980	1131	1985		1990		1995			
1961		1966	471	1971	553	1976	347 1/2	1981	945	1986		1991		1996			
1962		1967	1345	1972	509 1/2	1977	0	1982	743	1987		1992		1997			
1963		1968	653	1973	1623 1/2	1978	8	1983		1988		1993		1988			
1964		1969	1094	1974	157 1/2	1979	484	1984		1989		1994		1999			

SSA [REDACTED] ITEMIZED STATEMENT OF EARNINGS
VERSION 1984.002 * * * FOR SSN [REDACTED] * * *

JOB:

FROM: SOCIAL SECURITY ADMINISTRATION
OFFICE OF CENTRAL OPERATIONS
300 N. GREENE STREET
BALTIMORE, MARYLAND 21290-0300

MARIA [REDACTED]
[REDACTED]

NUMBER HOLDER NAME:
DOMENIC DELLAPACE

WALTHAM

MA 02492

PERIOD REQUESTED JANUARY 1967 THRU DECEMBER 1982

YEAR JAN - MARCH APRIL - JUNE JULY - SEPT OCT - DEC TOTAL

EMPLOYER NUMBER: 04-1717070
PERINI CORP
C LOWE
% PAYROLL DEPT
LOCAL
FRAMINGHAM MA 01701-0000

1967	251.43				\$	251.43
1972					\$	3,194.12
1973	3,439.17	1,601.28	6.40		\$	5,046.85
1975		3,283.13			\$	3,283.13

EMPLOYER NUMBER: 04-2219767
ROBERTO CONSTRUCTION CO INC
DEL CARMINE ST
WAKEFIELD MA 01880-0000

1967	1,635.69	135.60		\$	1,771.29
1968		1,872.48	822.80	\$	2,695.28

EMPLOYER NUMBER: 04-1436640
HEW CONSTRUCTION CO
1029 DORCHESTER AVE
DORCHESTER MA 02125-1318

1967		333.00		\$	333.00
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PAGE 001

EXHIBIT 2

SSA- [REDACTED] ITEMIZED STATEMENT OF EARNINGS
VERSION 1984.002 * * * FOR SSN [REDACTED] * * *

JOB:

YEAR JAN - MARCH APRIL - JUNE JULY - SEPT OCT - DEC TOTAL

EMPLOYER NUMBER: 04-2243257
FLETCHER CONSTRUCTION CO CORP
BOX 327
SALEM MA 01970-0000

1967 402.37 \$ 402.37

EMPLOYER NUMBER: 04-2305222
ANTONUCCI BROS INC
532 BROADWAY
MALDEN MA 02148-0000

1967 44.40 \$ 44.40

EMPLOYER NUMBER: 04-2424396
NICOLE CO INC
10 MARTIN ST
MEDFORD MA 02155-0000

1967 378.20 \$ 378.20

EMPLOYER NUMBER: 13-1401980
TURNER CONSTRUCTION CORP & SUBS
901 MAIN ST STE 4900
DALLAS TX 75202-3740

1967 1,642.80 133.20 \$ 1,776.00

EMPLOYER NUMBER: 04-2143842
VOLPE CONSTRUCTION CO INC
54 EASTERN AVE
MALDEN MA 02148-5014

1967 1,178.80 \$ 1,178.80

EMPLOYER NUMBER: 04-2170243
GRANDE BROS CORP
60 UNION AVE
SUDBURY MA 01776-0000

1967 385.25 \$ 385.25

SSA- [REDACTED]

ITEMIZED STATEMENT OF EARNINGS

JOB:

VERSION 1984.002 * * *

FOR SSN [REDACTED]

* * *

YEAR	JAN - MARCH	APRIL - JUNE	JULY - SEPT	OCT - DEC	TOTAL
1969		780.15		\$	780.15
EMPLOYER NUMBER: 04-2388660 SAMOSET CONSTRUCTION CO INC SAMOSET MASONRY INC % DORAL CORP 6 WALLNUT HILL PARK WOBURN MA 01801-0000					
1967				477.60 \$	477.60
1968	33.90			\$	33.90
EMPLOYER NUMBER: 04-1148070 CANTER CONSTRUCTION CO 2001 BEACON ST BROOKLINE MA 02146-0000					
1968		2,729.13	1,091.83	\$	3,820.96
EMPLOYER NUMBER: 04-2440832 CODICOTE MASONRY CORP 231 LA GRANGE ST WEST ROXBURY MA 02132-0000					
1968				1,858.72 \$	1,858.72
1969	1,627.32			\$	1,627.32
EMPLOYER NUMBER: 04-2074186 KIRKLAND CONSTRUCTION CO INC 180 FRANKLIN ST CAMBRIDGE MA 02139-4024					
1969		190.40		\$	190.40
EMPLOYER NUMBER: 05-0147010 GILBANE INC 7 JACKSON WALKWAY PROVIDENCE RI 02903-3623					
1969		1,358.90	625.48	\$	1,984.38

JOB:

YEAR	JAN - MARCH	APRIL - JUNE	JULY - SEPT	OCT - DEC	TOTAL
1970			348.00	\$	348.00

EMPLOYER NUMBER: 04-2261977
 LUSALON INC
 321 BILLERICA RD
 CHELMSFORD MA 01824-0000

1969			1,016.00	\$	1,016.00
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EMPLOYER NUMBER: 04-2398614
 SANTORELLI BROS INC
 58 EASTERN AVE
 WOBURN MA 01801-0000

1969			148.50	2,593.80 \$	2,742.30
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EMPLOYER NUMBER: 04-1967800
 RICHARD WHITE SONS INC
 70 ROWE ST
 AUBURNDALE MA 02466-1530

1970			340.75	\$	340.75
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EMPLOYER NUMBER: 23-1341528
 ANASTASI BROS CORP
 880 SW 12TH AVE
 POMPANO BEACH FL 33069-4530

1970			1,855.99	2,174.99 \$	4,030.98
1971	1,921.74		282.87	620.00 \$	2,824.61
1972	2,028.00		3,743.35	\$	5,771.35

EMPLOYER NUMBER: 04-2476023
 BELL CONSTRUCTION COMPANY INC
 10 BREMEN ST
 E BOSTON MA 02128-2301

1971			267.38	\$	267.38
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ITEMIZED STATEMENT OF EARNINGS
 VERSION 1984.002 * * * FOR SSN [REDACTED] * * *

JOB:

YEAR JAN - MARCH APRIL - JUNE JULY - SEPT OCT - DEC TOTAL

EMPLOYER NUMBER: 04-1093920
 E C BLANCHARD CO INC
 272 FOREST ST
 PEABODY MA 01960-3802

1971 62.00 \$ 62.00

EMPLOYER NUMBER: 04-2312639
 JACKSON CONSTRUCTION CO
 20 DAN RD
 CANTON MA 02021-2809

1971 1,246.40 \$ 1,246.40

EMPLOYER NUMBER: 04-2300451
 PORRAZZO & HURLEY CO INC
 259 WALNUT ST
 NEWTONVILLE MA 02160-0000

1972 1,102.70 473.20 \$ 1,575.90

EMPLOYER NUMBER: 04-2207828
 CEDAR HILL LANDSCAPING CORP
 2352 MAIN
 CONCORD MA 01742-0000

1973 1,220.73 \$ 1,220.73

EMPLOYER NUMBER: 04-2486042
 GEORGE E CAPPADONA & SONS INC
 635 BEAVER ST
 WALTHAM MA 02154-0000

1973				218.00 \$	218.00
1974	1,998.25	3,085.50	1,972.00	1,912.50 \$	8,968.25
1975			1,452.00	\$	1,452.00
1976	2,070.00	2,070.00	2,070.00	2,070.00 \$	8,280.00

BA-
VERSION 1984.002 * * *

ITEMIZED STATEMENT OF EARNINGS
FOR SSN [REDACTED]

JOB:

* * *

YEAR	JAN - MARCH	APRIL - JUNE	JULY - SEPT	OCT - DEC	TOTAL
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EMPLOYER NUMBER: 04-2498736
LOUCO CONSTRUCTION CO INC
PO BOX 147
MEDFORD MA 02155-0000

1973				1,330.38 \$	1,330.38
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EMPLOYER NUMBER: 04-2270441
A & J CONTI CORP
244 BODGE HILL RD
MOULTONBORO NH 03254-3410

1975			64.00	3,586.00 \$	3,650.00
1976	1,037.00	1,147.50		\$	2,184.50
1977		2,092.75	4,085.00	2,968.15 \$	9,145.90
1978	-	-	-	\$	7,025.70
1979	-	-	-	\$	12,084.00
1980	-	-	-	\$	10,240.41
1981	-	-	-	\$	745.50

EMPLOYER NUMBER: 04-2542840
L TISBERT MASONRY INC
144 GREENWOOD RD
ANDOVER MA 01810-3313

1978	-	-	-	\$	455.70
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EMPLOYER NUMBER: 04-2589593
LORAN CONSTRUCTION CO INC
30 COUNTRYSIDE LN
MILTON MA 02186-4434

1978	-	-	-	\$	4,024.71
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EMPLOYER NUMBER: 04-2349168
GRAZIANO GALANTE
GRAZIANO GALANTE GENERAL CONSTR CO
220 NORTH RD
SUDBURY MA 01776-1111

1979	-	-	-	\$	250.80
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SSA- [REDACTED] ITEMIZED STATEMENT OF EARNINGS
VERSION 1984.002 * * * FOR SSN [REDACTED] * * *

JOB:

YEAR JAN - MARCH APRIL - JUNE JULY - SEPT OCT - DEC TOTAL

EMPLOYER NUMBER: 04-2259542
GEORGE B H MACOMBER COMPANY
1 DESIGN CENTER PL STE 600
BOSTON MA 02210-2349

1981	-	-	-	-	\$	9,059.56
1982	-	-	-	-	\$	740.00

EMPLOYER NUMBER: 04-2599559
MANGANARO CORPORATION NEW ENGLAND
52 CUMMINGS PARK
WOBURN MA 01801-2123

1981	-	-	-	-	\$	648.00
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EMPLOYER NUMBER: 04-2443910
FAUSTO MELE
242 B LENDEN ST
WALTHAM MA 02154-0000

1982	-	-	-	-	\$	3,174.00
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EMPLOYER NUMBER: 04-2702092
BEERS BROTHERS INC
4001 WASHINGTON ST
MILTON MA 02186-2334

1982	-	-	-	-	\$	341.00
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THERE ARE NO OTHER EARNINGS RECORDED UNDER THIS SOCIAL SECURITY
NUMBER FOR THE PERIOD(S) REQUESTED.

EARNINGS FOR THE YEARS AFTER 2006 MAY NOT BE SHOWN, OR ONLY
PARTIALLY SHOWN, BECAUSE THEY MAY NOT YET BE ON OUR RECORDS.

PAGE 007 END



UNIVERSITY OF MASSACHUSETTS BOSTON

GERONTOLOGY INSTITUTE
PENSION ACTION CENTER

July 13, 2009

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Gregory L. Sarno
Massachusetts Bricklayers and Masons
Health, Pension and Annuity Funds
645 Morrissey Blvd.
Boston, MA 02122

Re: Maria [REDACTED],
Surviving spouse of Domenico E. [REDACTED]
Soc. Sec. No. XXX-XX-[REDACTED]

Dear Mr. Sarno:

Thank you for your response to my letter of June 19, 2009.

As I mentioned in our telephone conversation on July 9th, Mrs. [REDACTED] has provided you with the only level of detail which the Social Security Administration keeps on Detailed Earnings; it stopped providing quarterly breakdowns and moved to annual reporting in 1978. While we understand that the plan year runs from April 1 through March 31, it appears to us that there is still enough data in the Detailed Social Security records to credit Mr. [REDACTED] with the additional service needed for vesting.

For example, from April 1, 1977 through December 31, 1977, Mr. [REDACTED] earned \$9,145 from A & J [REDACTED]. These hours are all clearly with the April 1, 1977 through March 31, 1978 plan year. However, the union record shows him as having zero hours in the 1977 plan year and 8 hours in the 1978 plan year. Regardless of which of these plan years Mr. [REDACTED] April through December wages fall under, this certainly appears incorrect.

In 1980, Mr. [REDACTED] was credited with 1,131 hours for a period in which his A & J [REDACTED] earnings were \$10,240.41. It would appear, then that his hourly wage in 1980 was approximately \$9.05. His wages in 1977 were certainly no more than \$9.05 per hour, and possibly less. (We assume that the union has access to historic information as to the hourly wage.) With total earnings of \$9,145 in 1977, then, he should have been credited with at least 1,000 hours in

EXHIBIT 3



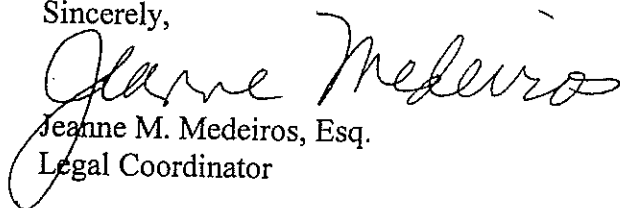
covered employment for that year. As the union records show Mr. [REDACTED] as having 9.4 vesting credits without any credit for the 1977 plan year, the proper crediting of this additional year is enough to find him fully vested.

It appears that the proper crediting of the wages earned during the period from April 1, 1977 through December 1, 1997, then, would be sufficient to find Mr. [REDACTED] vested. In addition, as I pointed out in my June 19th letter, it appears that he should also be credited with additional vesting credit for periods of employment with A & J [REDACTED] in 1975, 1976, and 1979. employment.

Please review this matter along with the union's historical data. If you agree that Mr. [REDACTED]'s records should be corrected to include the service noted above, please advise. If you do not, please advise us of the basis for that conclusion. Please provide us with the date when A & J [REDACTED] became a signatory employer, along with documentation of the same.

Please feel free to call me at 617-287-7332 if I can provide you with any further information. Thank you for your attention to this matter.

Sincerely,


Jeanne M. Medeiros, Esq.
Legal Coordinator

cc: Maria [REDACTED]

Massachusetts
Bricklayers and Masons
Health, Pension and Annuity Funds

COPY
FILED
10/22/09

645 Morrissey Boulevard • Boston Massachusetts 02122-3569 • TEL. 617-436-5500 • FAX 617-436-7414

October 22, 2009

Attorney Jeanne M. Medeiros
C/O UMASS -Boston
Gerontology Institute Pension Action Center
100 Morrissey Blvd.
Boston, MA 02125

NOV 02 2009

RE: Pension Inquiry - Domenico E. [REDACTED] XXX-XX-[REDACTED]

Dear Attorney Medeiros:

After a thorough review of your formal request for survivor benefits for the spouse of Mr. Domenico E. [REDACTED] and after interviewing, by telephone, the employer of most concern, specifically Mr. Joseph M. [REDACTED], President and CEO of A&J [REDACTED], it is still this Pension Fund's contention that Mr. [REDACTED] did not accrue the necessary credited service in Covered Employment in order to qualify for a Pension benefit.

According to Mr. Joseph M. [REDACTED], President and CEO of A&J [REDACTED] during the time in question, the Plan Years 04/01/1976 through 03/31/1977 and 04/01/1977 through March 31, 1978, Mr. [REDACTED] was employed on a number of masonry projects in the State of Maine. Herein lies the issue: while the State of Maine did have a Bricklayers and Allied Craftsmen Local Union, Maine did not have a Local Pension, Health or Annuity Fund. Signatory Employers were only contractually obligated to pay certain fringe benefit contributions for employees working in that geographical territory, and those contributions were typically made to the Bricklayers and Allied Craftsmen International Union's fringe benefits funds. As such, there were no Pension contributions made upon Mr. DellaPace's behalf because the employer was not required to make any for the time DellaPace was working in the State of Maine. Further, there have never been any Pension Plan provision(s) in this Massachusetts Bricklayers and Masons Pension Fund whereby a participating member would receive credited service for work in a territory that did not have a Local Pension Fund contribution. The Pension Plan *did* have, and continues to have, a provision whereby a participating member would not incur a Break In Service due to employment in a territory that did not require the payment of local Pension contributions. Nevertheless, Mr. [REDACTED] did not incur a Break In Service due to his out-of-state employment; he simply did not earn any credited service for the time he was away, and there simply has never been a Plan provision whereby a participating member could earn credited service when working in a BAC territory lacking a Local Pension contribution.

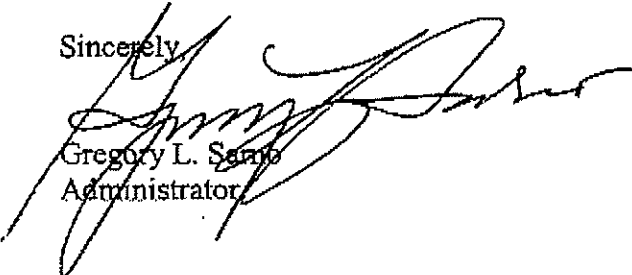
As a result of this additional information coming to light, I would request that Mrs. [REDACTED] review Mr. [REDACTED] records to determine where Domenico had worked, the time frames in which the hours were worked, and was that territory within the jurisdictional territory that required contribution be made to this Pension Fund. If she can prove to the Trustees that he worked in a territory that required such contribution, and as a result of the non-compliance of the Signatory Employer, Mr. [REDACTED] was denied benefits; we will consider the accuracy of the evidence produced. Otherwise, I suggest you compel [REDACTED] to produce records verifying his assertion that Mr. [REDACTED] worked in such capacity that did not require Pension contribution be made. I can produce his contact information upon request.

In accordance Section 7.3 of the Massachusetts Bricklayers and Masons Pension Plan, you have the right to appeal this decision to the Board of Trustees of the Pension Plan. You or your representative must make your appeal in writing to the Board of Trustees at the address listed above within sixty (60) days of the receipt of this letter. You will be notified of the date your appeal will be heard by the Board of Trustees once the appeal is received. Failure to appeal this denial will result in the loss of your right to seek further review.

At the time of the submission of your appeal, you may request a hearing in person before the Board of Trustees or before a duly authorized committee of the Board. The Trustees have the sole discretion to grant a hearing in person and will notify you of their decision. If a hearing in person is not granted, the Board of Trustees will review your appeal including all evidence relevant to your appeal and any written comments, documents and or other records and information submitted by you.

You may present written comments, documents, records and other information relating to your appeal at the time of the submission of your appeal to the Board of Trustees. You may supplement the record on appeal no later than one day prior to the date the appeal will be considered by the Trustees. Upon request and free of charge, you may receive reasonable access to, and copies of all documents, records and other information relevant to your appeal.

Sincerely,



Gregory L. Sarno
Administrator



UNIVERSITY OF MASSACHUSETTS BOSTON

GERONTOLOGY INSTITUTE
PENSION ACTION CENTER

November 17, 2009

Joseph [REDACTED]
4432 Loma Diamante Dr.
El Paso, TX 79934

Re: Maria [REDACTED]
Surviving spouse of Domenico E. DellaPace

Dear Mr. [REDACTED]:

This office is assisting Maria [REDACTED] with an inquiry into her possible entitlement to a survivor's pension benefit from the Massachusetts Bricklayers and Masons Pension Fund. Her late husband, Domenico, worked for A & J [REDACTED] Corporation from some time in 1975 through some time in 1981, according to his Detailed Earnings Record as compiled by the Social Security Administration. I am enclosing a copy of that information.

A question has arisen as to whether Mr. [REDACTED] may have worked for A & J [REDACTED] in Maine at some point during that time. As Mrs. [REDACTED] has no recollection as to her husband working in the state of Maine, we are asking for your assistance in this matter.

Please provide me with any information or documentation in your possession about the locations, in Maine or elsewhere, where Mr. [REDACTED] worked during those years. Please send any such information to me at: New England Pension Assistance Project, Gerontology Institute, Univ. of Mass. Boston, 100 Morrissey Blvd. Boston, MA 02125.

I am enclosing a brochure about the New England Pension Assistance Project for your information.

Thank you for your assistance in this matter.

Sincerely,

Jeanne M. Medeiros
Jeanne M. Medeiros, Esq.
Legal Coordinator

U.S. Postal Service™ Delivery Confirmation™ Receipt

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Article Sent To: (to be completed by mailer)

J. [REDACTED] 4432 Loma Diamante Dr.
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El [REDACTED], TX 79934

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UNIVERSITY OF MASSACHUSETTS BOSTON

GERONTOLOGY INSTITUTE
PENSION ACTION CENTER

November 6, 2009

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Gregory L. Sarno
Massachusetts Bricklayers and Masons
Health, Pension and Annuity Funds
645 Morrissey Blvd.
Boston, MA 02122

Re: Maria [REDACTED]
Surviving spouse of Domenico E. DellaPace,
Soc. Sec. No. XXX-XX-[REDACTED]

Dear Mr. Sarno:

This is to confirm our telephone conversation. As I told you, we received your letter dated October 22, 2009 responding to Mrs. [REDACTED]'s claim, by fax on November 2, 2009.

As the 60-day appeal period runs from our receipt of the claim denial, I want to clarify that the 60th day following our receipt would be January 1, 2010. As that date is a holiday, the appeal period should therefore be extended until January 4, 2010.

If you disagree with my calculation of the appeal period, please let me know immediately in writing.

As you know, I can be reached at 617-287-7332. Thank you for your attention to this matter.

Sincerely,

Jeanne M. Medeiros
Jeanne M. Medeiros, Esq.
Legal Coordinator

cc: [REDACTED]



11/6/09 TIC to Greg Sarno - 617-436-5500
x725

Confirmed that I had just
rec'd his letter on 11/2
by fax.

∴ 60 days should run from
that date

- discussed issue of [REDACTED] "rememberin'
that Mr. [REDACTED] was working
in Maine 1978 - 1978 -
was this based on any records?
→ how did he remember that?

- Sarno says he questioned this, too,
but Conti didn't give him
any back-up

- he will e-mail me [REDACTED] present
address in Texas

- [REDACTED]



UNIVERSITY OF MASSACHUSETTS BOSTON

GERONTOLOGY INSTITUTE
PENSION ACTION CENTER

December 11, 2009

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Board of Trustees
Massachusetts Bricklayers and Masons
Health, Pension and Annuity Funds
645 Morrissey Blvd.
Boston, MA 02122

Re: Maria [REDACTED]
Surviving spouse of Domenico E. [REDACTED]
Soc. Sec. No. XXX-XX [REDACTED]

Dear Board of Trustees:

As you are aware, Maria [REDACTED] has requested the assistance of the New England Pension Assistance Project with respect to the issue of denial of survivor's benefits under the Massachusetts Bricklayers and Masons Union Pension Plan. Mrs. [REDACTED] received a letter denying her survivor's benefits on November 2, 2009. The appeal period deadline was determined to be January 4, 2010, by agreement of the parties. **This letter is an appeal of the plan's decision denying Maria [REDACTED] survivor's benefits due her pursuant to the plan and ERISA.**

Statement of Facts

Mrs. [REDACTED] hereby re-asserts the facts and arguments in her claim letter, dated September 22, 2009. A copy of that letter, along with all supporting evidence submitted with the claim letter, is attached hereto as Exhibit 1. Mrs. [REDACTED] claim for survivor's benefits is premised upon her late husband, Domenico [REDACTED], having satisfied the pension plan's 10-year vesting requirement. It is undisputed that Mr. [REDACTED] had accrued 9.4 years of vesting credit according to the union's own records. The issue is whether Mr. [REDACTED] accrued additional credit due to his documented employment with A & J [REDACTED], a signatory employer, in the plan year ending in March 1978, as well as additional periods in 1975, 1976, and 1979.

As previously argued in the claim letter, Mr. [REDACTED] earned and should be credited with **at least 925 – 1,000 additional hours in covered employment for the plan year ending in March 1978.** His employment with A & J [REDACTED] during this period is documented by a Detailed Earnings Statement from the Social Security Administration ("Earning Statement"), previously submitted and attached hereto as part of Exhibit 1.



By letter dated October 22, 2009, and received in this office on November 2, 2009, the plan administrator denied Mrs. [REDACTED] request for survivor's benefits. The plan based its denial upon verbal information furnished to it by Joseph M. [REDACTED], the president of A & J [REDACTED]. Mr. [REDACTED] apparently stated that during the periods in question, Mr. [REDACTED] was working on a number of projects in the State of Maine, outside the jurisdiction of the Massachusetts fund. Although he made this allegation verbally, he has apparently not provided any documents which support this assertion to the plan administrator. This office has asked him to provide the records upon which this assertion is based, but he has not provided any such information to us either. Please see our letter dated November 17, 2009 to Joseph [REDACTED] (copy enclosed as Exhibit 2) along with delivery confirmation of that letter's receipt, (copy enclosed as Exhibit 3). Mr. [REDACTED] has not replied to the letter, either verbally or in writing.

Argument

Maria [REDACTED] asserts that her late husband Domenico satisfied the union's 10-year requirement for vesting. Her argument is two-fold. First, she asserts that Domenico [REDACTED] worked within the union's jurisdiction at the time in question and should be credited with at least an additional year of pension and vesting credit based upon his employment with A & J [REDACTED] during the plan year ending in March 1978. Secondly, she asserts that, should the Board of Trustees find that Mr. [REDACTED] was actually employed during this period in the State of Maine, Mr. [REDACTED] should still be credited with vesting credit for this period of "contiguous noncovered service".

Argument 1 - Actual employment

Section 11.1 of the Pension Plan requires participants to accrue 10 years of credited service in order to qualify for a deferred vested pension. The plan claims that Mr. [REDACTED] is 0.6 credits short of this requirement having accrued only 9.4 vesting year credits. However, the evidence enclosed proves that when Mr. [REDACTED] covered employment is properly credited, he more than meets this requirement. Accordingly, Maria [REDACTED] is entitled to the survivor's benefits pursuant to the plan and federal law.

According to the Historical Pension Statement, Mr. [REDACTED] accrued only 8 hours in the 1978 plan year, which spans from April 1, 1977 to March 31, 1978. However, a careful review of the Historical Pension Statement in conjunction with the Earning Statement establishes that this 8 hour figure is grossly inaccurate. The Earning Statement provides that from April 1, 1977 through December 31, 1977, Mr. [REDACTED] earned \$9,145.90 from A&J [REDACTED]. These earnings were clearly within the 1978 plan year, but Mr. [REDACTED] was credited with only 8 hours. Since it is highly unlikely that A & J [REDACTED] was paying Mr. [REDACTED] over \$1,100 per hour to work as a mason in 1977-1978, these two documents suggest that Mr. [REDACTED] actual hours of work from April 1, 1977 to December 31, 1978 were not properly credited.

A&J [REDACTED] was clearly a contributory employer since the Historical Pension Statement treated Mr. [REDACTED] employment with this employer as credited service in other plan years.

For example, in the plan year ending March 31, 1980, Mr. [REDACTED] was credited with 1,131 hours for a period in which his A & J [REDACTED] earnings were somewhere between \$10,240.01 and \$12,084.00. Thus, it would appear that Mr. [REDACTED] hourly wage in 1980 was approximately \$9.85. Mr. [REDACTED] hourly wage in 1977-1978 could not have exceeded \$9.85 and may have even been less. (We assume that the union has access to historic information regarding Mr. [REDACTED] hourly wage). Consequently, with total earnings of \$9,145.90 in 1977 and an hourly compensation rate at approximately \$9.85, Mr. [REDACTED] should have been credited with at least 925-1000 hours in covered employment for the 1978 plan year, not 8 hours.

The plan's response to this blatant discrepancy is that Mr. [REDACTED] was working in the State of Maine during his employment with A & J Conti in the 1977 and 1978 plan years. The plan further asserts that since Maine did not have a Local pension fund, it was not obligated to treat Mr. [REDACTED] work in Maine as credited service. However, the plan's evidence that Mr. [REDACTED] was working in Maine during the 1978 plan year is based entirely on a conversation that it claims it had with Mr. Joseph [REDACTED] the former President and CEO of A & J [REDACTED]. This office has mailed a letter via delivery confirmation mail to Joseph [REDACTED] asking him to provide written records that support the claim that Mr. [REDACTED] was working in Maine during the 1977 and 1978 plan years. However, Mr. [REDACTED] has not responded to this office's letter, either verbally or in writing. Consequently, A & J Conti's assertion that Mr. [REDACTED] was working in Maine during the 1978 plan year is not supported by any documentary evidence. Moreover, the assertion that Mr. [REDACTED] was working in Maine during the time in question must be seen as self-serving because it relieves Mr. [REDACTED] of making contributions to the union's pension fund. Since Mr. [REDACTED] claim that Mr. [REDACTED] was working in Maine during the time in question is self-serving and not supported by any documentary or other objective evidence, the Board should properly credit Mr. [REDACTED] with at least 925-1,000 hours in covered employment for the 1978 plan year.

Mrs. [REDACTED] has provided an Affidavit addressing the issue of whether her husband was working in Maine during the 1978 plan year. It is enclosed herein as Exhibit 4. In her affidavit, Mrs. [REDACTED] states that she and her husband lived in Waltham, Massachusetts during the years in question. To her knowledge, her husband did not work in Maine during the time in question. In fact, she states that her husband returned home every night after work, and was never away from their Waltham home overnight due to his job. Furthermore, she states that she and her husband filed income tax returns with the federal government and the Commonwealth of Massachusetts, and that they never filed a tax return with the State of Maine.

In sum, Mr. [REDACTED] Earning Statement from the Social Security Administration shows that Mr. [REDACTED] should have been credited anywhere between 925 and 1,000 hours during the 1978 plan year. Mr. [REDACTED] assertion that Mr. [REDACTED] was working in Maine during the 1978 plan year is inherently unreliable, as it is self-serving and not corroborated by any evidence. Lastly, Mrs. [REDACTED] affidavit establishes that Mr. [REDACTED] never worked in Maine during the time in question. According to Mrs. [REDACTED] affidavit, Mr. [REDACTED] never stayed away from their home in Waltham overnight due to work and he never filed a tax return with the state of Maine. Therefore, when the plan properly credits Mr. [REDACTED]

earnings during the period from April 1, 1977 through December 31, 1977, it should conclude that Mr. [REDACTED] accrued enough additional credits to put him beyond the 10 year minimum vesting requirement. In addition, as I pointed out in my June 19th letter, it appears that Mr. [REDACTED] should also be credited with additional vesting credit for periods of employment with A & J [REDACTED] in 1975, 1976, and 1979. However, a proper crediting of wages earned during April 1, 1977 through December 31, 1977 should be sufficient to find that Mr. [REDACTED] pension benefits have vested.

Argument 2 – Contiguous noncovered service

As mentioned above, the plan's conclusion that Mr. [REDACTED] worked on several projects in Maine during the 1978 plan year is based upon evidence which is inherently unreliable and unsupported by any documentary or other reliable evidence. However, should the Board find that Mr. [REDACTED] was working in Maine during the 1978 plan year, he should still be credited with **vesting credit** for the 1978 plan year as it constituted "contiguous noncovered service" as defined by the regulations promulgated by the U. S. Department of Labor.

Pursuant to these regulations, non-covered service is required to be counted toward vesting if it is "contiguous" to covered service under the plan. See 29 C.F.R. §2530.210(c)(1), which reads, in pertinent part:

If an employee moves from contiguous non-covered service to covered service....with the same employer, the plan is required to credit all hours of service with such employer for purposes of eligibility to participate and vesting.

The regulations further define this "contiguous non-covered service" as a period of non-covered service which must "precede or follow" covered service under the plan without any intervening "quit, discharge, or retirement". See 29 C.F.R. §2530.210(c)(3)(iv)(A). In other words, to receive vesting credit for a period of non-covered service, the employee must move seamlessly from the non-covered to covered status without being discharged or quitting in between the two periods of employment.

Here, the plan has refused to credit Mr. [REDACTED] with vesting credit for the 1978 plan year for employment with A & J [REDACTED] a signatory employer, because "Mr. [REDACTED] was employed on a number of masonry projects in the State of Maine." Even if we assume *arguendo* that this is true, the plan must at least credit Mr. [REDACTED] with vesting credit for this period in light of the federal regulation regarding contiguous noncovered service. Under this regulation, Mr. [REDACTED] employment with A & J [REDACTED] in Maine from April 1, 1977 to December 31, 1977 would constitute a period of contiguous non-covered service because this period precedes a period of covered employment. He clearly worked for A & J [REDACTED] in the 1979 plan year and this period was treated as covered employment in the union's records (although we re-assert the claim here that he should have received more credit hours than he was awarded for that period (see Exhibit 5). Thus, assuming for the sake of argument that Mr. [REDACTED] did work in Maine during the 1978 plan year, he must still be credited with vesting credit for that period of time. He would have gone from a period of non-covered employment in Maine with A & J [REDACTED] directly

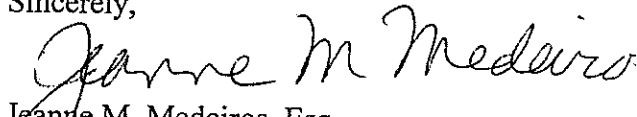
into covered employment with the same employer without any intervening quit, discharge or retirement.. Pursuant to 29 C.F.R. § 2530.210(c), this period of contiguous noncovered service must be counted towards vesting.

When Mr. [REDACTED] contiguous noncovered service is properly credited for vesting purposes, it is clear that he satisfied the plan's 10-year vesting requirement and was entitled to a deferred vested pension. We note for the Board's information that, should it decide the matter on this basis, the pension benefit amount would be calculated based upon Mr. [REDACTED] credited service; the contiguous noncovered service is applied only to the participant's vesting credit.

For the reasons outlined above, we hereby request that Domenico [REDACTED] be recognized as a deferred vested participant under the plan and that the plan immediately calculate and pay his wife, Maria [REDACTED], the benefits due to her as his surviving spouse.

Please direct your written response to me at: New England Pension Assistance Project, Gerontology Institute, Univ. of Massachusetts Boston, 100 Morrissey Blvd. Boston, MA 02125. Thank you for your attention to this matter.

Sincerely,


Jeanne M. Medeiros, Esq.
Legal Coordinator

Enclosures

cc: Maria [REDACTED]

Affidavit of Maria Della Pace

I, Maria [REDACTED] of 11 Loretta Road, Waltham, Massachusetts, hereby swear to the truth of the following statements:

1. My late husband, Domenico [REDACTED], and I lived at 45 Williams Street in Waltham, Massachusetts during the years 1975, 1976, and part of 1977.
2. In October 1977, we moved from 45 Williams Street in Waltham, Massachusetts, to 11 Loretta Road in Waltham, Massachusetts.
3. Throughout this time, it was my understanding that my husband was working in the local area.
4. To my knowledge, my husband did not work in the State of Maine during this time.
5. During this time, we filed income tax returns only with the federal government and the Commonwealth of Massachusetts.
6. If my husband had earned wages in Maine, it is my understanding that we would have had to file a tax return with the state of Maine. We never did.
7. My husband was home every night after work during these years, and was never away from our home in Waltham, Massachusetts, overnight due to his work.

Maria [REDACTED]

Maria [REDACTED]

Commonwealth of Massachusetts

Middlesex County

Subscribed and sworn to before me this 28th day of Nov, 2009.

Vyjayanti Chhabra
(Signature of Notary Public)



VYJAYANTI CHHABRA
Notary Public
Commonwealth of Massachusetts
My Commission Exp. Mar. 8, 2013

EXHIBIT 4

FEINBERG, CAMPBELL & ZACK, P.C.

Attorneys at Law

177 Milk Street, Suite 300 • Boston, Massachusetts 02109

617-338-1976

Fax 617-338-7070 Toll Free 800-338-6004

www.fcslaw-firm.com

MICHAEL A. FEINBERG

maf@fcslaw.com

CATHERINE M. CAMPBELL

Also admitted in CA

cmc@fcslaw.com

ARTHUR G. ZACK

agz@fcslaw.com

JAN 26 2010

JONATHAN M. CONTI

Also admitted in CT and WI

jmc@fcslaw.com

RENEE J. BUSHEY

Also admitted in RI

rjb@fcslaw.com

January 25, 2010

Jeanne M. Medeiros, Esq.
Legal Coordinator
University of Massachusetts Boston
Gerontology Institute
Pension Action Center
100 Morrissey Boulevard
Boston, MA 02125

RE: Massachusetts Bricklayers and Masons Pension Fund and Domenico E. [REDACTED]

Dear Ms. Medeiros:

Please be advised that this office represents the Massachusetts Bricklayers and Masons Pension Fund.

Mr. [REDACTED] pension credit file, along with the numerous letters between your office and the Pension Fund, has been referred to me for review and response.

It is my understanding that an appeal has been filed by Maria [REDACTED] (widow of Domenico [REDACTED]) claiming that her late husband, who died in 1988, had satisfied the Pension Plan's 10 year vesting requirement. According to the Pension Plan records, Mr. [REDACTED] had accrued 9.4 years of vesting credit at the time of his death. It appears that the critical issue is whether Mr. [REDACTED] accrued additional credit when he was employed by A&J [REDACTED] during the 1975, 1976, 1978 and 1979 Plan years. Apparently Mr. [REDACTED] most recent covered employment prior to his death was in 1982.

As pointed out in your correspondence, the critical issue is whether the employment Mr. [REDACTED] had with A&J [REDACTED] in the Plan year ending in March 1978, as well as other periods of time, should be considered in order to grant additional vesting credit to Mr. [REDACTED]

Since the Fund did not receive any contributions from A&J [REDACTED] on behalf of Mr. [REDACTED] for the years in question, the Administrator of the Pension Plan made a diligent search and effort to determine where Mr. [REDACTED] was employed by A&J [REDACTED] during the years in

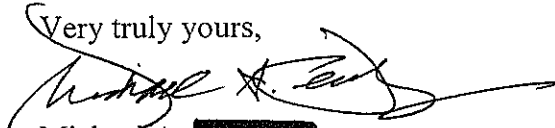
question. As you are aware, the Itemized Statement of Earnings supplied to the Pension Fund by the Social Security Administration merely indicated Mr. [REDACTED] annual earnings for A&J Conti, but not his particular place of employment.

According to conversations between Joseph M. [REDACTED] President and CEO of A&J [REDACTED] and Gregory L. [REDACTED] Pension Fund Administrator, during the years in question, Mr. [REDACTED] was employed by A&J [REDACTED] on a number of masonry projects in the State of Maine. As you have been previously informed by the Pension Fund Administrator, during the pertinent period of time, Bricklayers Local 3 did not have jurisdiction over any work conducted or performed in the State of Maine. While Mr. [REDACTED] may have earned credit for another Health and Welfare Fund, Annuity Fund, and International Pension Fund for work performed in the State of Maine, A&J [REDACTED] was not contractually obligated to pay fringe benefit contributions for employees working in the State of Maine to the Massachusetts Bricklayers and Masons Health, Pension and Annuity Funds. Under the Plan then in effect, credited service was defined as a period of a member's covered employment. Section 2.19 of the Plan in effect at that time defines covered employment as the "...employment of a member within the craft jurisdiction of the B.M.P.I.U. for which the Employer pays an hourly rate into the Fund in accordance with a written agreement to do so." Since A&J [REDACTED] was not party to any collective bargaining agreement that required contribution to the Pension Fund for work in the State of Maine, Mr. [REDACTED] work is considered non-covered employment. Therefore, Mr. [REDACTED] did not earn any credited service in the Massachusetts Bricklayers and Masons Pension Fund for any work performed in the State of Maine, nor was there any provision in the Pension Plan then in effect for the years in dispute that would have required the Pension Fund to grant credited service to Mr. [REDACTED]

The Pension Fund Administration is not required to ascertain the truthfulness of the information given to it by Mr. [REDACTED]. Critically, Mr. [REDACTED] was given an annual statement of credited service by the Pension Fund during the years in question and at no time did he or his spouse inform the Pension Fund office that the hours were incorrect or that A&J [REDACTED] or any other employer for that matter, failed to make contributions to him for work performed in Bricklayers Local Union 3's jurisdiction.

Therefore, for all of these reasons, it would appear that the Fund Administrator and the Trustees of the Massachusetts Bricklayers and Masons Pension Fund correctly relied on the records of the Fund that Mr. [REDACTED] had 9.4 years of credited service at the time of his death, as well as the statements of the President of A&J [REDACTED] indicating that Mr. [REDACTED] had worked for A&J Conti in geographical areas not covered by the agreement between A&J [REDACTED] and Bricklayers Local 3.

If you have any further questions, please feel free to contact me.

Very truly yours,

Michael A. [REDACTED]



UNIVERSITY OF MASSACHUSETTS BOSTON

GERONTOLOGY INSTITUTE
PENSION ACTION CENTER

February 12, 2010

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Board of Trustees
Massachusetts Bricklayers and Masons
Health, Pension and Annuity Funds
645 Morrissey Blvd.
Boston, MA 02122

Re: Maria [REDACTED]
Surviving Spouse of Domenico [REDACTED]
Soc. Sec. No. XXX-XX-[REDACTED]

Dear Board of Trustees:

On January 25, 2010, this office was mailed a letter from Attorney Michael A. [REDACTED] which purported to be a decision on Maria [REDACTED] appeal of an adverse benefit decision on her claim for survivor's benefits pursuant to the Massachusetts Bricklayers and Masons Pension Plan.

The January 25, 2010 letter fell short of the standards for benefit claims required by ERISA in that it did not address the issue of law raised by Mrs. [REDACTED] that contiguous noncovered service must be counted toward vesting, nor did it adequately address the issue of fact that Mr. [REDACTED] worked in Massachusetts, not Maine, nor did the Board of Trustees review the appeal as required by ERISA. I address each of these issues in depth below.

We request that the Board of Trustees review this matter in light of the substantive and procedural requirement for meaningful review pursuant to ERISA and issue a determination which complies with the law. We request that the Board of Trustees act in the interest of avoiding possible litigation.

The plan's failure to appropriately review Mrs. [REDACTED] claim constitutes an abuse of discretion and a breach of the fiduciary duty it owes to her. Due to that letter's failure to comply with ERISA's mandate of a full and fair review process, as well as its failure to comply with the claims procedures outlined at 29 C.F.R. §2560.503-1(g), the letter



of January 25, 2010, does not constitute an adverse benefit decision pursuant to ERISA.

Mrs. [REDACTED] hereby re-states the facts and arguments contained in her appeal letter dated December 11, 2009. A copy of this letter is enclosed along with a copy of the exhibits submitted with her original claim.

In her appeal, Mrs. [REDACTED] presented evidence and arguments on two issues. The first was that her late husband actually worked in covered employment in Massachusetts and not in Maine as asserted by Joseph M. [REDACTED] of A & J [REDACTED]. The second issue was that, should the Board find that Mr. [REDACTED] did in fact work in Maine during the disputed period, this time must be credited toward **vesting** service as “contiguous noncovered service” within the meaning of 29 C.F.R. §2520.210(c)(3)(iv)(A).

A favorable finding on either of these issues would result in the conclusion that Domenico [REDACTED] had satisfied the 10-year requirement for a deferred vested benefit, and consequently, a survivor’s benefit must be paid to his widow. Neither of these issues was adequately addressed in the letter of January 25th, as will be argued below.

Issue of “contiguous noncovered service”

Section 203(b)(1) of ERISA requires that “all years of service with the employer or employers maintaining the plan” be counted toward vesting service, with certain delineated exceptions not relevant to the instant case. 29 C.F.R. §2520.210(c)(3)(iv)(A), which applies to multiemployer plans, explicitly provides that periods of noncovered service which are contiguous to periods of covered service, without any intervening quit, discharge or retirement, are to be counted toward vesting service.

Ms. [REDACTED] argued in her appeal letter of December 11, 2009, that, even if the Plan were to conclude that her late husband was in noncovered service during the 1978 plan year with A & J [REDACTED] an “employer maintaining the plan”, this service must be counted as vesting service. The service with an “employer maintaining the plan” is documented by Social Security Detailed Earnings, and it is contiguous to covered service in the 1979 plan year. The crediting of such service for vesting purposes is mandatory; the plan has no discretion in the awarding of vesting credit for this period of time.

The letter of Attorney [REDACTED] failed to address this claim. It includes no indication that the claim for contiguous noncovered service was considered by the Board of Trustees. As the U.S. District Court for the District of Massachusetts recently stated in McGahey v. Harvard University Flexible Benefits Plan, 2009 U.S. Dist. LEXIS 115364 (D. Mass. 2009), the ERISA appeals process will “not be deemed to provide a claimant with a reasonable opportunity for a full and fair review unless **all documents, records and other information submitted by the claimant relating to the claim is taken into account**” (emphasis supplied). *Id.* at Note 16. Failure to do so renders a denial of benefits arbitrary and capricious.

Issue of actual employment

The letter of January 25, 2010, fails to address the evidence and arguments submitted on Mrs. [REDACTED] behalf regarding the locus of her husband's employment during the relevant period. It is conclusory in nature and offers no indication that the Trustees actually considered the evidence presented and arguments made on her behalf. Mrs. [REDACTED] submitted an Affidavit stating that her husband had not worked in Maine during the time period in question, that he was at home in Waltham every night during that period, and that the couple never filed an income tax return in the state of Maine. We further pointed out that the statements of Joseph [REDACTED] were ex parte, unsupported by any evidence, not made under the pains and penalties of perjury, and lacked credibility due to both the passage of time since the events in question occurred, the lack of documentation, and the self-serving nature of the statements themselves. Despite these indicia of unreliability, the letter of January 25, 2010, accepts these uncorroborated hearsay statements made by Mr. [REDACTED] and appears to give no weight at all to Mrs. [REDACTED] sworn statement. Mrs. [REDACTED] clearly presented sufficient evidence to support her claim that her late husband had worked within the jurisdiction of the Massachusetts Fund.

Attorney Feinberg's letter makes the startling claim that, "The Pension Fund Administrator is not required to ascertain the truthfulness of the information given to it by Mr. [REDACTED]." This is precisely what it is called upon to do in the context of the ERISA-governed administrative claim process. In Vlass v. Raytheon, 244 F. 3d 27, 32 (1st Cir. 2001), the Court pointedly held that, "It is the responsibility of the administrator to weigh conflicting evidence." To fail to evaluate evidence presented in the appeal constitutes a flagrant abuse of discretion and a breach of fiduciary duty.

The letter of January 25th provides no indication that the Board considered the evidence presented by Mrs. [REDACTED], of the weight it gave to her evidence, what other evidence it considered, and the factual and legal bases upon which its conclusion is based. It "does not address any of the new information provided and seems to have merely copied and pasted its conclusion from the prior letter", Whitehouse v. Raytheon, 2009 U.S. Dist LEXIS 113780 (D. Mass. 2009). In the Whitehouse case, the plan's failure to consider the plaintiff's evidence led the Court to conclude that the plan's decision was not reasoned nor supported by substantial evidence.

Courts have consistently held that such conclusory denials constitute an abuse of discretion. Whitehouse v. Raytheon, *supra*; Taylor v. Metropolitan Life, 2009 U.S. Dist. LEXIS 27939 (D. Mass. 2009). The claims process required by ERISA requires a "reasoned opinion", providing both findings of fact and the rationale supporting the decision. Doyle v. Paul Revere Life Ins. Co., 144 F. 3d 181, 184 (1st Cir. 1998). The persistent core requirements of review intended to be full and fair include knowing what evidence the decision-maker relied upon, having an opportunity to address the accuracy and reliability of that evidence, and having the decision-maker consider the evidence presented by both

parties. A reviewing board must, at a minimum, state upon what evidence it relied, invite comment or rebuttal on that evidence, and make an effort to ascertain all relevant facts. Bald-faced conclusions do not satisfy this requirement, Taylor, supra.

The letter of January 25th falls far short of the level of acceptability. It failed to explain why the Board found Mr. [REDACTED] unsworn, uncorroborated, self-serving statements more persuasive than Mrs. Della Pace's sworn Affidavit. Even if the January 25th letter did constitute a reasoned conclusion, based on the evidence presented by both parties, that Mr. [REDACTED] actually worked in Maine during the relevant period, it would still be deficient pursuant to ERISA. There is no indication that the Board of Trustees has actually reviewed the evidence and arguments presented. Pursuant to Section 21.2 of the plan, only the Board of Trustees has the authority to determine eligibility in the context of the administrative appeal process.

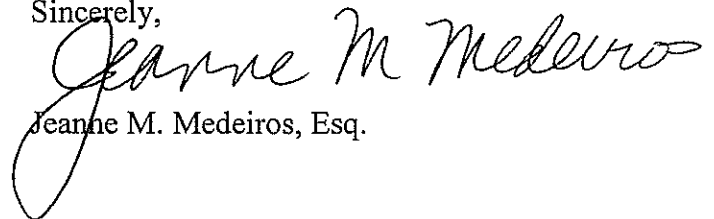
The plan's failure to provide Mrs. [REDACTED] with a full and fair review of her claim constitutes an abuse of discretion and a breach of the fiduciary duty it owes to her.

Conclusion

For the reasons discussed above and in the original appeal letter dated December 11, 2009, we hereby request that the Board of Trustees review this matter, that it render a decision in favor of Mrs. [REDACTED] which comports with the procedural and substantive requirements of ERISA, and that it calculate and pay the benefits due to Mrs. [REDACTED]

Please direct your written response to me at: New England Pension Assistance Project, Gerontology Institute, Univ. of Massachusetts Boston, 100 Morrissey Blvd., Boston, MA 02125. Thank you.

Sincerely,


Jeanne M. Medeiros, Esq.

Enclosures

cc: Regional Director,
Employee Benefits Security Administration, U.S. Dept of Labor
Maria [REDACTED]
Michael A. [REDACTED] Esq.

Jeanne Medeiros

From: Michael Feinberg [maf@fczlaw.com]
Sent: Monday, April 26, 2010 4:52 PM
To: Jeanne Medeiros
Subject: RE: Bricklayers pension matter - Della Pace

After much deliberation the Trustees of the Pension Fund have decided to attempt to resolve Mrs. [REDACTED] claim on the following basis: [1] a lump sum payment of \$15,000 with a monthly life pension of \$160 commencing in the month next following the month in which this settlement is accepted; or [2] a lump sum of \$20,000 without any monthly pension payment. The Trustees have decided to make this final offer of settlement given the anticipated cost and fees of having to defend an action filed by Mrs. [REDACTED]. However, you and your client should be aware that the Trustees feel that if this matter were to proceed to litigation the Pension Fund will prevail. For this reason, if the Trustees are forced to issue a "denial" letter with respect to Mrs. [REDACTED] March 31, 2010 appeal, this offer of settlement will be withdrawn and the matter will have to be resolved in court.

Michael A. Feinberg, Esq.
Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109
Tel: (617) 338-1976
Fax: (617) 338-7070
maf@fczlaw.com

From: Jeanne Medeiros [mailto:Jeanne.Medeiros@umb.edu]
Sent: Wednesday, April 21, 2010 9:41 AM
To: Michael Feinberg
Subject: Bricklayers pension matter - DellaPace

Hi Mike –

Mrs. [REDACTED] does not feel that the pension fund's offer of a \$10,000 lump sum with the \$160 monthly going forward (or, in the alternative, a \$15,000 lump sum) is acceptable. She is interested in settling the case without litigation, but feels that, in light of the number of years since Mr. [REDACTED] death, that the lump sum offers are just too low. (As you know, the value of the retroactive monthly survivor's benefit alone, over the 22 years since Mr. [REDACTED] death, without anv interest, is over \$42,000).

She feels that, in light of this, and in light of the weight of the evidence, and other equitable factors, a more reasonable settlement would be: either a single lump sum of \$22,500, or a lump sum of \$17,500 with the \$160 monthly survivor's benefit going forward.

I realize that you are out of your office until April 26th. Please relay this to the Trustees at your earliest opportunity. Thank you. - Jeanne

Jeanne M. Medeiros, Esq.
New England Pension Assistance Project
Gerontology Institute, U. Mass Boston
100 Morrissey Blvd

4/27/2010

3/10/10 T/C to Greg Sano - 617-436-5500
ext 725

left msg asking whether Trustees
will be taking any action
in response to my letter
of 2/12/10

3/16/10 T/C from Greg Sano - my letter will
be treated as an appeal at
the next
Board of Trustees meeting
on March 31st

3/16/10 T/C to Greg Sano -
asked whether I could
attend meeting on March 31st -
also asked whether client could
↓
He'll check w/ Bd chair & get
back to me

-meeting is at restaurant in Randolph

3/19/10 T/C to Greg Sano - left message
re: above

July 10, 2010

Jeanne M. Medeiros, Esq.

UMASS Gerontology Institute

Pension Action Center

100 Morrissey Boulevard

Boston, MA 02125-3393

Dear Jeanne,

We are writing to you to thank you immensely from the bottom of our hearts for the professional and caring service you provided in representing my mom's case against the Mass Bricklayers and Masons Pension Fund. For us, as you know, it was more of an emotional win and not so much about the monetary counterpart. When I think back about my Dad's angst about his pension, it always brought sadness to both my mom and I. My Dad had decided not to pursue the verbal denial of his request for his pension because he was not the confrontational type but it always bothered him until the time of his death. He just wanted what he was entitled to when he worked for them as a union paying member. This resolution, thanks to you, hopefully will resound with him and he can finally be at peace.

We are thankful that an organization like yours exists and is available to those who need pension help. We certainly could not have pursued this matter nor would we have expected such great service and attention if it wasn't for you and your organization. We feel so lucky to have ascertained your services. Besides our gratefulness and deep appreciation for your continued persistence in this matter, your professionalism and astute knowledge, please accept the enclosed as a donation. Again, thank you so much for everything. We know others in the same situation will be served well by you and your organization.

With much gratitude,

Sincerely,

Rita M. Toufanidis (daughter) & Maria Della Pace (beneficiary)

Effective:[See Text Amendments]

Code of Federal Regulations Currentness

Title 29. Labor

Subtitle B. Regulations Relating to Labor

Chapter XXV. Employee Benefits Security Administration, Department of Labor (Refs & Annos)

Subchapter D. Minimum Standards for Employee Pension Benefit Plans Under the Employee Retirement Income Security Act of 1974

■ Part 2530. Rules and Regulations for Minimum Standards for Employee Pension Benefit Plans (Refs & Annos)

■ Subpart D. Plan Administration as Related to Benefits

→ § 2530.210 Employer or employers maintaining the plan.

(a) General statutory provisions--

(1) Eligibility to participate and vesting. Except as otherwise provided in section 202(b) or 203(b)(1) of the Act and sections 410(a)(5), 411(a)(5) and 411(a)(6) of the Code, all years of service with the employer or employers maintaining the plan shall be taken into account for purposes of section 202 of the Act and section 410 of the Code (relating to minimum eligibility standards) and section 203 of the Act and section 411(a) of the Code (relating to minimum vesting standards).

(2) Accrual of benefits. Except as otherwise provided in section 202(b) of the Act and section 410(a)(5) of the Code, all years of participation under the plan must be taken into account for purposes of section 204 of the Act and section 411(b) of the Code (relating to benefit accrual). Section 204(b) of the Act and section 411(b) of the Code require only that periods of actual participation in the plan (e.g., covered service) be taken into account for purposes of benefit accrual.

(b) General rules concerning service to be credited under this section. Section 210 of the Act and sections 413(c), 414(b), and 414(c) of the Code provide rules applicable to sections 202, 203, and 204 of the Act and sections 410, 411(a), and 411(b) of the Code for purposes of determining who is an “employer or employers maintaining the plan” and, accordingly, what service is required to be taken into account in the case of a plan maintained by more than one employer. Paragraphs (c) through (e) of this section set forth the rules for determining service required to be taken into account in the case of a plan or plans maintained by multiple employers, controlled groups of corporations and trades or businesses under common control. Note throughout that every mention of multiple employer plans includes multiemployer plans. See § 2530.210(c)(3). Paragraph (f) of this section sets forth special break in service rules for such plans. Paragraph (g) of this section applies the break in service rules of sections 202(b)(4) and 203(b)(3)(D) of the Act and sections 410(a)(5)(D) and 411(a)(6)(D) of the Code (rule of parity) to such plans.

(c) Multiple employer plans--

(1) Eligibility to participate and vesting. A multiple employer plan shall be treated as if all maintaining employers constitute a single employer so long as an employee is employed in either covered service or contiguous noncovered service. Accordingly, except as referred to in paragraph (a)(1) and provided in paragraph (f) of this section, in determining an employee's service for eligibility to participate and vesting purposes, all covered service with an employer or employers maintaining the plan and all contiguous noncovered service with an employer or employers maintaining the plan shall be taken into account. Thus, for example, if an employee in service covered under a multiple employer plan leaves covered service with one employer maintaining the plan and is employed immediately thereafter in covered service with another employer maintaining the plan, the plan is required to credit all hours of service with both employers for purposes of participation and vesting. If an employee moves from contiguous noncovered to

covered service, or from covered service to contiguous noncovered service, with the same employer, the plan is required to credit all hours of service with such employer for purposes of eligibility to participate and vesting.

(2) Benefit accrual. A multiple employer plan shall be treated as if all maintaining employers constitute a single employer so long as an employee is employed in covered service. Accordingly, except as referred to in paragraph (a)(2) and provided in paragraph (f) of this section, in determining a participant's service for benefit accrual purposes, all covered service with an employer or employers maintaining the plan shall be taken into account.

(3) Definitions.

(i) For purposes of this section, the term "multiple employer plan" shall mean a multiemployer plan as defined in section 3(37) of the Act and section 414(f) of the Code or a multiple employer plan within the meaning of sections 413(b) and (c) of the Code and the regulations issued thereunder. Notwithstanding the preceding sentence, a plan maintained solely by members of the same controlled group of corporations within the meaning of paragraph (d) of this section or by trades or businesses which are under the common control of one person or group of persons within the meaning of paragraph (e) of this section shall not be deemed to be a multiple employer plan for purposes of this section, and such plan is required to apply the rules under this section which are applicable to controlled groups of corporations or commonly controlled trades or businesses respectively.

(ii) For purposes of this section, the term "covered service" shall mean service with an employer or employers maintaining the plan within a job classification or class of employees covered under the plan.

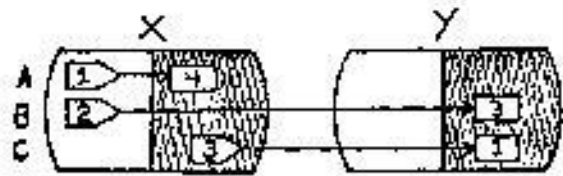
(iii) For purposes of this section the term "noncovered service" shall mean service with an employer or employers maintaining the plan which is not covered service.

(iv)(A) General. For purposes of this section

noncovered service shall be deemed "contiguous" if (1) the noncovered service precedes or follows covered service and (2) no quit, discharge, or retirement occurs between such covered service and noncovered service.

(B) Exception. Notwithstanding the preceding paragraph, in the case of a controlled group of corporations within the meaning of paragraph (d) of this section or trades or businesses which are under the common control of one person or group of persons within the meaning of paragraph (e) of this section, any transfer of an employee from one member of the controlled group to another member or from one trade or business under common control to another trade or business under the common control of the same person or group of persons shall result in the period of noncovered service which immediately precedes or follows such transfer being deemed "noncontiguous" for purposes of paragraph (c) of this section.

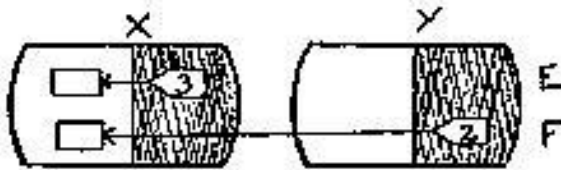
Diagram No. 1. (Multiple Employer Plan.)



Assume for purposes of diagram No. 1 that X and Y are both employers who are required to contribute to a multiple employer plan and that neither employer maintains any other plan. Covered service is represented by the shaded segments of the diagram. After completing 1 year of noncovered service, employee A immediately enters covered service with X and completes 4 years of covered service. For purposes of eligibility to participate and vesting, the plan is required to credit employee A with 5 years of service with employer X because his period of service with X includes a period of covered service and a period of contiguous noncovered service. On the other hand, employee B, immediately after completing 2 years of noncovered service with X, enters covered service with Y. Because B quit em-

ployment with X, his period of noncovered service with X is not contiguous and, therefore, is not required to be taken into account. In the case of employee C, the plan is required to take into account all service with employers X and Y because employee C is employed in covered service with both employers.

Diagram No. 2. (Multiple Employer.)



The multiple employer plan rules with respect to noncovered service are illustrated in diagram No. 2. Assume that X and Y are both employers who are required to contribute to a multiple employer plan and that neither employer maintains any other plan. Covered service is represented by the shaded segments of the diagram. Employee E completed 3 years of service with employer X in covered service and then immediately entered noncovered service with X. Because E's noncovered service is contiguous, the plan is required to take into account all service with X for purposes of eligibility to participate and vesting under the multiple employer plan. Employee F does not continue to receive credit; F quit the employment of Y and entered noncovered service with X.

(d) Controlled groups of corporations.

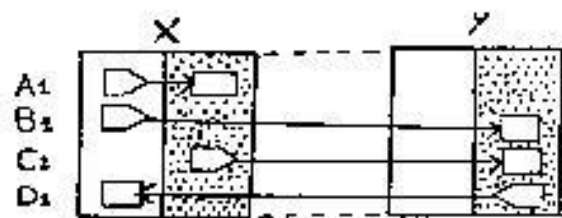
(1) With respect to a plan maintained by one or more members of a controlled group of corporations (within the meaning of section 1563(a) of the Code, determined without regard to sections 1563(a)(4) and (e)(3)(C), all employees of such corporations shall be treated as employed by a single employer.

(2) Accordingly, except as referred to in paragraph (a)(1) and provided in paragraph (f) of this section, in determining an employee's service for eligibility to participate and vesting purposes, all service with any employer which is a member of the controlled group of corporations shall be taken into account. Except as referred to in paragraph (a)(2) and provided in paragraph (f) of this

section, in determining a participant's service for benefit accrual purposes, all service during periods of participation covered under the plan with any employer which is a member of the controlled group of corporations shall be taken into account.

(e) Commonly controlled trades or businesses. With respect to a plan maintained only by one or more trades or businesses (whether or not incorporated) which are under common control within the meaning of section 414(c) of the Code and the regulations issued thereunder, all employees of such trades or businesses shall be treated as employed by a single employer. Accordingly, except as referred to in paragraph (a)(1) and provided in paragraph (f) of this section, in determining an employee's service for eligibility to participate and vesting purposes, all service with any employer which is under common control shall be taken into account. Except as referred to in paragraph (a)(2) and provided in paragraph (f) of this section, in determining a participant's service for benefit accrual purposes, all service during periods of participation covered under the plan with any employer which is under common control shall be taken into account.

Diagram No. 3. (Controlled group or commonly controlled trade or business.)



Assume for purposes of diagram No. 3 that X and Y are either members of the same controlled group of corporations or trades or businesses which are under the same common control. The dotted segments of the diagram represent plan coverage under plans separately maintained by X and Y. Neither employer maintains any other plans. Because A1, B1, C1, and D1 have their service with X and Y treated as if X and Y were a single employer, the plans are required to take into account all service with X and Y for eligibility to participate and vesting purposes.

(f) Special break in service rules.

(1) In addition to service which may be disregarded under the statutory provisions referred to in paragraph (a) of this section, a multiple employer plan may disregard noncontiguous non-covered service.

(2) In the case of a plan maintained solely by one or more members of a controlled group of corporations or one or more trades or businesses which are under common control, if one of the maintaining employers is also a participating employer in a multiple employer plan which includes other employers which are not members of the controlled group or commonly controlled trades or businesses, service with such other employer maintaining the multiple employer plan may be disregarded by the controlled group or commonly controlled plan.

Diagram No. 4. (Break in Service Rules.)

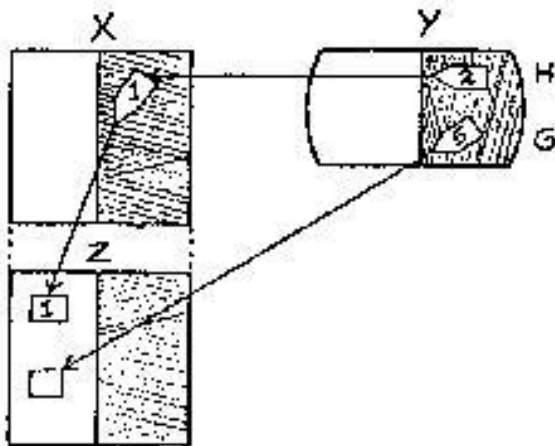


Diagram No. 4 illustrates the break in service rules of paragraph (f) of this section. Assume for purposes of diagram No. 4 that employer Z is controlled by employer X but employer Y's only relation to X and Z is that X, Y, and Z are required to contribute to a multiple employer plan. The multiple employer plan, represented by the shaded segments of the diagram, provides for 100 percent vesting after 10 years. X, Y, and Z maintain no other plans.

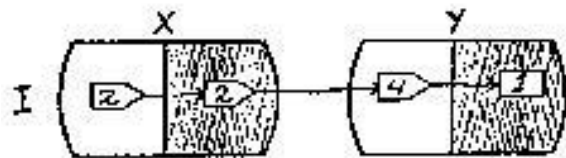
Employee G completed 5 years of covered service with employer Y, and then moved to non-covered service with employer Z. G's non-covered service is noncontiguous (see employee F in

diagram No. 2 above), and such service may be disregarded for purposes of the multiple employer plan under the rule in paragraph (f)(1).

Employee H completed 2 years of covered service with employer Y and then entered covered service with employer X for 1 year. The multiple employer plan is required to credit H with 3 years of service. H then entered noncovered service with employer Z. H's noncovered service is noncontiguous (see employee F in diagram No. 2 above), and such service may be disregarded for purposes of the multiple employer plan under the rule in paragraph (f)(1).

(g) Rule of parity. For purposes of sections 202(b)(4) and 203(b)(3)(D) of the Act and sections 410(a)(5)(D) and 411(a)(6)(D) of the Code, in the case of an employee who is a nonvested participant in employer-derived accrued benefits at the time he incurs a 1-year break in service, years of service completed by such employee before such break are not required to be taken into account if at such time he incurs consecutive 1-year breaks in service which equal or exceed the aggregate number of years of service before such breaks. This is so even though the period of noncontiguous noncovered service with an employer or employers maintaining the plan may subsequently be deemed contiguous as the result of the employee entering covered service with the same employer maintaining the plan and, consequently, such plan may be required to credit such service.

Diagram No. 5. (Rule of parity)



Assume for purposes of diagram No. 5 that X and Y are both employers who are required to contribute to a multiple employer plan which contains a provision applying the rule of parity. Covered service is represented by the shaded segments of the diagram. The plan has 100% vesting after 10 years. X and Y maintain no other plan.

The multiple employer plan credited employee I with 4 years of service with X when he quit employment with X and entered noncovered service with Y. As a result of 4 years of noncontiguous noncovered ser-

vice with Y, employee I incurred 4 consecutive 1-year breaks in service, so that the multiple employer plan may disregard his prior service (i.e., the 4 years of service with X).

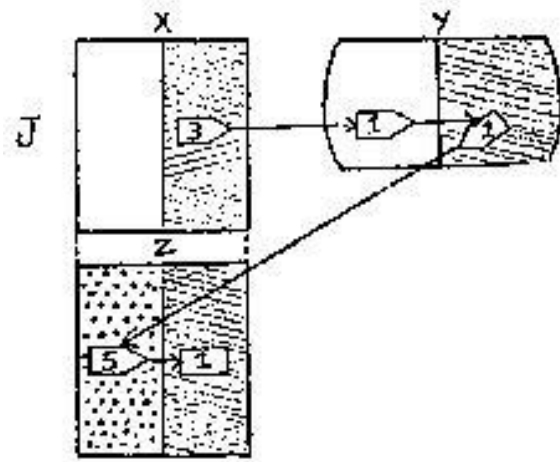
When employee I entered covered service with Y (as a "new employee"), his 4 years of noncontiguous service with Y became contiguous for purposes of the multiple employer plan. Consequently, after 1 year of covered service with Y, the plan is required to credit employee I with 5 years of service.

(h) Example. Under section 203(b)(1)(C) of the Act and section 411(a)(4)(C) of the Code, service with an employer prior to such employer's adoption of the plan need not be taken into account. The following example demonstrates that this rule applies even if an employee is employed in contiguous noncovered service. The example is applicable to any plan subject to the rules of this section. However, for purposes of clarity, the example assumes that X and Y are required to contribute to a multiple employer plan.

Assume that employee D completed 3 years of covered service with employer Y as of the date X adopts the plan. Immediately after X's adoption of the plan D left covered service with Y and D entered covered service with X. His prior covered service with Y is required to be counted, and D remains a participant.

On the other hand, if D had entered service with X any time prior to X's adoption of the plan and subsequently was covered by the plan when X adopted it, his prior service with Y must also be counted, unless such service may be disregarded under the break in service rules because the period of service with X before X's adoption of the plan was equal to or greater than his prior service with Y. For example, if X adopted the plan three years after D began employment with X, and consequently after D had incurred 3 consecutive 1-year breaks in service, his prior service with Y could be disregarded.

(i) Comprehensive diagram. (No. 6)



Assume for purposes of diagram No. 6 that employer Z is controlled by employer X within the meaning of paragraph (d) but employer Y's only relation to X and Z is that X, Y and Z are required to contribute to a multiple employer plan. The shaded segments represent coverage under the multiple employer plan which contains a provision applying the rule of parity. The dotted segment represents a separate plan maintained by Z. Both plans have 100% vesting after 10 years.

Employee J completed 3 years of service with employer X in covered service with the multiple employer plan. J then entered non-covered service with Y and remained with Y for 1 year, and thereby incurred a 1-year break in service under the multiple employer plan. J then entered covered service with employer Y, thereby causing the noncovered service with Y to become contiguous. Covered service with X and contiguous noncovered and covered service with Y must be taken into account for purposes of the multiple employer plan; accordingly, that plan is required to credit J with a total of 5 years of service.

J then left service with Y and entered noncovered service (with respect to the multiple employer plan) with Z. J remained in noncovered service with Z (with respect to the multiple employer plan) for 5 years and thereby incurred 5 consecutive 1-year break in service for purposes of the multiple employer plan. Consequently, the prior service with X and Y may be disregarded for purposes of the multiple employer plan.

J then entered covered service under the multiple employer plan with Z and completed 1 year of service. Because the 5 years of noncovered service with Z is contiguous with the 1 year of covered service, the multiple employer plan is now required to credit J with 6 years of service for purposes of eligibility to participate and vesting.

For purposes of Z's controlled group plan (i.e., dotted segment), employee J is entitled to receive credit for 9 years of service. The 3 years of service with X, a member of the controlled group, may not be disregarded under the rule of parity because J incurred only 2 consecutive 1-year breaks in service while employed with Y. When J entered service with Z covered under Z's controlled group plan, the 3 years of service with X were still required to be credited by the controlled group plan. In addition, J must receive credit for the 5 years of service with Z covered under the controlled group plan. Finally, when J moved to service with Z covered under the multiple employer plan the controlled group plan was required to credit J with an additional year of service.

SOURCE: 41 FR 56462, Dec. 28, 1976; 68 FR 16400, April 3, 2003; 72 FR 10073, March 7, 2007; 75 FR 32850, June 10, 2010, unless otherwise noted.

AUTHORITY: Secs. 201, 202, 203, 204, 210, 505, 1011, 1012, 1014, and 1015, Pub.L. 93-406, 88 Stat. 852-862, 866-867, 894, 898-913, 924-929 (29 U.S.C. 1051-4, 1060, 1135, 26 U.S.C. 410, 411, 413, 414); Secretary of Labor's Order No. 13-76. Section 2530.206 also issued under sec. 1001, Pub.L. 109-280, 120 Stat. 780.

29 C. F. R. § 2530.210, 29 CFR § 2530.210

Current through September 9, 2010; 75 FR 55066

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