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

[Redacted]

November 18, 2005

Re: Appeal Number [Redacted] Case 140378
Pan American World Airways, Inc. ("Pan Am")
Defined Benefit Plan for Flight Engineers (the "Plan")

Dear [Redacted]

We are responding to your October 10, 2004 appeal of PBGC's determination of your benefit. As is explained below: (1) your appeal is untimely; and (2) you have not provided sufficient grounds, as required under PBGC's regulation, for the Appeals Board to accept your untimely appeal.

Copy of PBGC's 1997 Determination

You state you do not recall receiving PBGC's benefit determination letter. We have enclosed a copy of PBGC's February 28, 1997 determination letter and benefit calculation statement. Please see Enclosure 1.

Your Appeal is Untimely

You state: "I understand there has been a policy change from my initial pension determination letter when the PBGC took over the administration of my pension plan on July 31, 1991. I therefore appeal and request a recomputation of my pension and adjustment based on the PBGC policy change."

PBGC's "Rules for Administrative Review of Agency Decisions ("Rules") allow 45 days after the date of a benefit determination to appeal. See 29 Code of Federal Regulations ("CFR") §§ 4003.4, 4003.52. PBGC explained the 45-day appeal period in your February 28, 1997 determination letter and in an enclosed pamphlet, "Your Administrative Appeal Rights." See Enclosure 3. Since your October 10, 2004 appeal is dated more than 7 years after PBGC's February 28, 1997 determination, your appeal is untimely.

For your information, the policy change you have referred to is found under PBGC's Policy Bulletin 00-3, "Adjusting the Maximum Guaranteed Benefit for Ages Greater than 65." This policy, however, does not apply to benefits that became final before its March 6, 2000 effective date. Therefore, since your benefit determination had already become final once your 45-day appeal period ended on April 14, 1997, you do not fall within the scope of

the Policy Bulletin 00-3. Additionally, your filing of this untimely appeal does not change this result and make the Policy apply to your benefits.

Your Request for Review of Your Untimely Appeal

You state that you "do not recall receiving a Letter of Initial Determination."

The Rules, at 29 C.F.R. § 4003.5, allow the Appeals Board to process your non-timely request for review if the following conditions are met:

- You demonstrate in your request for review that you did not file a timely appeal because you neither knew, nor with reasonable diligence could have known, of PBGC's initial determination; and
- Your appeal is filed within 45 days after the date that you, exercising due diligence at all relevant times, first learned of the initial determination.

Your statement that you "do not recall" receiving PBGC's determination is insufficient to meet the above requirements. First, while your statement raises the possibility that you never received the February 28, 1997 determination letter, there is nothing in PBGC's records indicating that this occurred. We note that PBGC sent the 1997 letter to the same [redacted] address you used at least until 1998. Please Enclosure 2.

Additionally, you did not offer any explanation or information concerning the second requirement under the Rules: that you, despite exercising due diligence at all times, did not learn of PBGC's determination until 45 days before you filed your appeal (i.e., before August 26, 2004).

The Board agreed, however, to provide you with a further opportunity to demonstrate that you meet the criteria under the Rules for the review of your untimely appeal. Accordingly, the Board decided that it may further consider a request to review an untimely appeal from you, but only if:

- After examining PBGC's February 28, 1997 benefit determination letter (Enclosure 1), you conclude that you did not receive it before August 26, 2004; AND
- You sign the Declaration in Enclosure 4 before a Notary Public and submit it to the Appeals Board. Please note that making false, fictitious or fraudulent statements to the Pension Benefit Guaranty Corporation is a crime punishable under Title 18, Section 1001, United States Code; AND

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- You submit an additional, specific explanation with any supporting evidence to demonstrate that: (1) you have exercised due diligence at all times, and (2) despite such due diligence, you neither knew nor should have known of of PBGC's determination before August 26, 2004.

If you believe, based on the Rules, that you are entitled to have the Board review your appeal, you may submit the Declaration, the additional explanation with any supporting evidence, and your appeal by January 3, 2006, which is the first business day after the federal holiday 45 days from the date of this letter. Your appeal must specifically explain why your PBGC determination is wrong and the result you are seeking. For an explanation of how to file an appeal, please see PBGC's brochure "Your Right to Appeal," Enclosure 3. You may file these documents, either in person, by fax, or by the U.S. Postal Service, at the address at the top of this letter, Attention: Appeals Board, Suite 480.

Decision

The Appeals Board is unable to review your October 10, 2004 appeal because it is untimely. The Board, however, will further consider a request for review if you submit a notarized Declaration and the other information discussed above no later than January 3, 2006.

Thank you for your patience while we carefully reviewed your October 10, 2004 letter. Please direct any questions about your benefit to:

PBGC Authorized Plan Representative
PO Box 151750
Alexandria VA 22315-1750

You may also contact PBGC's Authorized Representative at 800-400-7242 extension 2000.

Sincerely,



William D. Ellis
Appeals Board Member

Enclosures:

- 1) Copy of PBGC's February 28, 1997 benefit determination letter and calculation statement (4 pages)
- 2) Your April 30, 1998 Direct Deposit Sign-up Form showing you were still at the Flagler Beach address
- 3) PBGC's brochure Your Right to Appeal
- 4) Declaration to facts, which you must sign before a Notary Public.