

CB13E0A2-BB43-4FA7-8

# 1406138



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



JUL 25 2003

Re: Appeal  Savage Industries Inc., Factory Union  
Pension Plan (Plan or Union Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's June 28, 2002 corrected determination of your benefit. For the reason stated below, the Appeals Board changed PBGC's determination by finding you are entitled to receive \$207.53 until age 65 and \$225.53 after age 65.

PBGC's June 2002 determination letter stated that you are entitled to a Straight Life Annuity (SLA) of \$134.90 per month until age 65 (February 6, 1996) and \$152.90 after that age. This letter explained that because you are receiving estimated payments of \$235.60, you would have received \$4,436.64 too much through September 1, 2002, which PBGC would recoup by reducing your PBGC entitlement by 10% until repaid. PBGC's first (June 18, 2001) determination, which you also appealed (Appeal 2001-1131) contained similar information, except for the \$18 increase at age 65. (Note: Estimated monthly payments of \$235.60 have continued while your appeal has been pending.)

Your July 15, 2002 appeal claimed that your benefit should be based on a benefit rate of \$10 instead of the \$6.50 rate PBGC used, as shown by the Benefit Statement included with PBGC's letter. You described your transfer in 1976 from a union (Hasset Lodge #1420 I.A.M.) position with Savage Arms Division of Emhart Corporation (SAD/EC) to a management position with Emhart Corporation (Emhart) until that employment ended in December of 1981. You also described the sale during 1981 of SAD/EC to two individuals who continued that business as Savage Industries, Inc. (Savage). You noted that in 1986 at age 55 you began receiving \$63.76 per month (\$30 times 5 years of service adjusted for early payment at age 55 and for the Joint and 100% Survivor Annuity form you elected) from an Emhart pension plan for the 5 years you were a management employee. You explained you could not receive your Union Plan benefit until age 62 and noted the difficulty in obtaining your Union Plan benefit. You stated that in "1994 the PBGC forced Savage . . ." to pay your pension, which apparently is the \$235.60 you have been receiving. You also claimed that PBGC's "formal determination" in 1994 could not be changed after 3 years per guidelines in the PBGC brochure, "Your Right to Appeal."

The record available to the Appeals Board contains the following data relevant to your case:

Date of birth	<input type="text"/>
Date of hire	April 19, 1951
Date of transfer to salaried position	September 6, 1976 (age 45)

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Date employment ended	December 7, 1981 (age 50)
Normal Retirement Date	March 1, 1996
Actual retirement date	March 1, 1994 (age 63)

Because PBGC files do not contain the SAD/EC plan document in effect in 1976 when you transferred from SAD/EC union to Emhart management employment, the Appeals Board will decide your case by applying the terms of such plan as in effect beginning November 1, 1978<sup>1</sup> (referred to below as the 1978 Plan). The 1978 Plan later became the Union Plan named at the start of this letter. Although the Union Plan terminated November 1, 1989, PBGC did not become its trustee until April 27, 1998..

Section 9.1 of the 1978 Plan provides for vesting, as follows: "An Employee whose **employment with all members of the Controlled Group is terminated** for any reason other than retirement or death, and who at the time of such termination shall have ten (10) or more years of Continuous Service, shall be entitled to receive in lieu of any other retirement benefit hereunder, when he attains age sixty-five (65), a monthly retirement benefit computed in accordance with the terms of the Plan on the date of such termination and based on his Credited Service at the time of such termination and shall be computed as a retirement benefit in accordance with Section 3.2." (Emphasis added.)

Section 2.24 of the 1978 Plan clearly includes Emhart within the meaning of "Controlled Group." When your employment with Emhart ended December 7, 1981 at age 50, you met the 1978 Plan's conditions for entitlement to a deferred vested benefit (i.e., ten years of Continuous (vesting) Service) and you had 26 years of Credited (benefit amount) Service under the Plan -- from your hire in April of 1951 to your transfer to salaried employment on September 6, 1976.

The issue, then, is the applicable benefit rate -- \$6.50 as in effect for terminations in 1976 or the \$10.00 rate "... for an Employee who retires on or after November 1, 1980." (1978 Plan Section 3.3.) The Appeals Board noted that the 1978 Plan is not altogether clear on this matter. Therefore, we reviewed the records of other similarly situated Union Plan members for information as to how this provision has been applied. Reading together Plan provisions and the facts of your case (specifically, your transfer from a Savage Union to an Emhart (rather than Savage) management position) and the facts for similarly situated individuals, the Board found that your accrued vested benefit under the terms of the 1978 Plan is based on the \$10 benefit rate in effect when your employment with the Controlled Group ended. Your accrued monthly benefit under the terms of the 1978 Plan, now the Plan/Union Plan which PBGC trustees, is \$260.00 (\$10.00 x 26 years).

As noted above, although the Union Plan ended as of November 1, 1989, PBGC did not become its trustee until April 27, 1998. It was not PBGC, therefore, who determined the \$235.60 amount you have been receiving. Although PBGC continued paying you this amount after they took over payments for the Plan, PBGC considers it an estimate until a formal benefit determination can be made. Further, PBGC

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<sup>1</sup> Savage Arms Division Emhart Industries, Inc. Employee Non-Contributory Pension Plan, first established January 1, 1963 and amended from time to time until restated effective November 1, 1978.

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files do not contain a sheet showing how the former Plan administrator calculated the \$235.60 amount. An actuary for the Appeals Board reviewed the file and believes that the \$235.60 amount was calculated based on the \$10 benefit unit, 25.55 years of Credited Service and an Early Retirement factor (ERf) of 92%. Our review found that the Plan's 92% ERf applied for a 63-year old participant who was eligible for immediate early retirement under the terms of either the 1978 Plan or the Union Plan when his or her employment ended. As your employment ended when you were only age 50, the REf for your deferred vested payments beginning 24 months early (age 63) is 79.82 %. The Appeals Board found, therefore, that you are entitled to \$207.53 until age 65 ( $\$260 \times 0.7982$ ) and \$225.53 ( $\$207.53 + \$18$  Medicare supplement) after age 65.

The Appeals Board noted that the first date as of which overpayments may be recouped under the facts and circumstances of this case and PBGC policy is March 27, 1998. Because the amount of your overpayment is less than \$500 as of the date of your original appeal, PBGC will not seek recoupment.

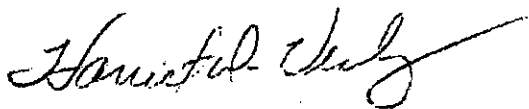
Summary of Decision

Having applied Plan terms and PBGC policy to the facts of your case, the Appeals Board found you are entitled to receive \$207.53 per month until age 65 and \$225.53 after that age (see Enclosure), and you are not required to repay any amount to PBGC. This is the final agency decision regarding the amount of your benefit and you may, if you wish, seek court review.

Please note that this decision applies only to your PBGC payment and has no effect on the benefit you are receiving from Black and Decker as a result of your participation in the Emhart salaried plan.

We appreciate your patience while your case has been pending and apologize for any concern this matter may have caused. The Insurance Operations Department, the office responsible for determining and paying PB GC benefits, will implement this decision by reducing you future monthly payments to \$225.53. Meanwhile, please call PBGC's Customer Contact Center at 1-800-400-7242 if you need other information about your PBGC benefit payment.

Sincerely,



Harriet D. Verburg  
Chair, Appeals Board

Enclosure