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

[Redacted]

MAR 04 2004

Re: [Redacted]

Case 194024, Trans World Airlines, Inc. (TWA) Retirement Plan for Pilots (the Plan)

Dear [Redacted]

The Appeals Board reviewed the appeal you filed for [Redacted] of PBGC's October 31, 2003 letter¹, which determined that [Redacted] is not entitled to a benefit from the Plan. For the reasons stated below, the Board decided that we must deny the appeal.

Determination and Appeal

PBGC determined that [Redacted] is not entitled to a survivor benefit under the Plan because she consented in writing to her late husband's waiver of the Plan's Joint and Survivor Annuity, the normal benefit form for married participants.

Your appeal letter claims that PBGC has

"chosen to ignore the exhibits which substantiate [Redacted] position on this matter, documents such as:

- a. September 1, 1991, Retirement Plan Benefit Election Form signed by [Redacted] and her deceased husband [Redacted] designating her a 50% Joint and Survivorship Annuity
- b. September 7, 1991, TWA permits [Redacted] to 'change' his selection to Single Life Annuity without [Redacted] knowledge or consent.
- c. September 13, 1991, one has to assume TWA advised [Redacted] he needed [Redacted] signature so all monetary benefits would go to him and him alone. He hands [Redacted] a folded piece of paper where it clearly stated: 'once your retirement date has occurred, your election cannot be changed', however TWA, once

¹ Although your appeal letter said you were basing your appeal on PBGC's December 15, 2003 letter, that letter was addressed to Senator Dianne Feinstein. PBGC's October 31, 2003 letter to [Redacted] was in response to [Redacted] October 15, 2003 letter to PBGC's Executive Director. The content of PBGC's October 31, 2003 letter is essentially the same as that of PBGC's December letter to Senator Feinstein. We note that PBGC's Office of the General Counsel also responded to [Redacted] October 15, 2003 letter in a letter dated February 5, 2004.

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However, the completed form reveals that [redacted] did elect the Single Life Annuity and [redacted] did consent in writing to [redacted] waiver of the Joint and Survivor Annuity.

2. The Timing of [redacted] Waiver and [redacted] Consent to that Waiver

Items "b" and "c" of your appeal suggest that TWA violated the provisions of the Plan and the Employee Retirement Income Security Act of 1974, as amended (ERISA) when TWA accepted [redacted] election of the Single Life Annuity on September 7, 1991 and [redacted] written consent to [redacted] waiver of the Joint and Survivor Annuity on September 13, 1991 because both events occurred after [redacted] September 1, 1991 "Retirement Date."

ERISA subsection 205(c)(3)(A) provides that: "Each plan shall provide to each participant within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of: (i) the terms and conditions of the qualified joint and survivor annuity, (ii) the participant's right to make, and the effect of, an election . . . to waive the joint and survivor annuity form of benefit, (iii) the rights of the participant's spouse . . ., and (iv) the right to make, and the effect of, a revocation of an election. . . ."

The Treasury regulations that were in effect when [redacted] retired provided that: "A plan must provide participants with the written explanation of the QJSA . . . no less than 30 days and no more than 90 days before the annuity starting date. Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date."

The record shows that TWA did not mail the election form to [redacted] until August 20, 1991. It appears that TWA then waited the required 30-day period before starting the payment of [redacted] retirement benefit, thereby allowing him the chance to make his election.

Both [redacted] election and [redacted] written consent to [redacted] waiver of the Joint and Survivor Annuity were delivered to TWA on September 16, 1991, within that 30-day period. And TWA did not start paying [redacted] his annuity until October 10, 1991, after TWA had received both [redacted] election form and [redacted] consent to [redacted] waiver.

While some plan administrators would have required a participant to return all forms before the effective retirement

