



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

September 27, 2011



Re: Appeal [redacted] United Airlines Ground Employees' Retirement Plan (the "Ground Employees' Plan"); Case #: 199224

Dear [redacted]

We are responding to your appeal of PBGC's November 23, 2009 determination of your benefit under the Ground Employees' Plan. For the reasons explained below, we changed PBGC's determination by finding that you have 11 [redacted] years of participation, instead of 10 [redacted] years.

PBGC's Benefit Determination and Your Appeal

PBGC's letter said that you are entitled to a regular PBGC benefit of \$588.91 per month as a Joint & 100% Survivor Annuity, which was more than the \$557.39 per month you were then receiving on an estimated basis. PBGC also included a benefit statement showing the information PBGC used to calculate your benefit.

PBGC records show you were overpaid from the Plan termination date (March 11, 2005) through October 1, 2005, and underpaid from November 1, 2005 to December 1, 2009. The result was a net underpayment. On January 1, 2010, PBGC increased your estimated benefit from \$557.39 to \$588.91 per month. Also on that date, PBGC paid you a lump sum of [redacted] to cover the underpayment amount (\$735.30) plus interest (\$19.49).

Your November [redacted] 2009 appeal questioned only the 10 [redacted] years of participation service United Airlines (UAL) and PBGC used to compute your benefit amount. You said the terms of a *Compromise and Release* agreement that settled your Workers' Compensation claim against UAL showed that (1) the parties did not dispute the fact that the injury to your [redacted] was an occupational injury and (2) this meant that UAL "accepted" your [redacted] injury as occupational. As a result, you believe you were entitled to use your Industrial (Occupational) Leave after your personal leave ran out on March [redacted] 2002. You said this would have given you an additional nine months of participation service for benefit purposes for the period beginning March [redacted] 2002, when you were placed on Extended Illness Status, and ending November [redacted] 2002, when your employment terminated. Accordingly, you asked that we increase your participation service by 7 months, [redacted] days.

Your appeal and earlier letters to PBGC included an extensive chronology and explanation of your many contacts with various Union representatives, UAL officials, medical doctors, Workers' Compensation attorneys and PBGC employees. You also submitted copies of several documents, including (1) relevant pages from *The 2000-2005 Agreement Between United Air Lines, Inc. and The International Association of Machinists and Aerospace Workers*, (2) denials of your claims for Workers' Compensation from [redacted] UAL's Workers' Compensation insurance carrier, dated March 2, 2000 and October 30, 2000; (3) a *Compromise and Release* (the C&R) settling your Workers' Compensation claim against UAL that you, your then-attorney and a representative from [redacted] signed on January 6, 2005; (4) an *Order Approving Compromise & Release* (the *Order*) signed on February [redacted] 2005 by Judge [redacted] Administrative Law Judge for Workers' Compensation, (5) a July [redacted] 2007 letter to you from [redacted] your former Workers' Compensation attorney, in response to your request that he clarify that the Workers' Compensation Board had no authority over your Union contractual issues and thus you could not have given up any rights under that contract, and (6) a July 25, 2007 letter to you from Judge [redacted] responding to your request for clarification of certain provisions of the *Order*.

In accordance with established PBGC procedures, the Appeals Board referred your letter to PBGC's Benefits Administration and Payment Department ("BAPD"), the office responsible for determining and paying benefits, for a further explanation of your benefit. BAPD's January 15, 2010 response stated that UAL records indicate that you are not entitled to receive years of participation service while you were on a leave-of-absence from March [redacted] 2002 through November [redacted] 2002, because you did not receive earnings during that period. BAPD's letter also quoted the following two excerpts from the July 25, 2007 letter to you from Judge [redacted].

Because your case was settled by the Compromise and Release, there was never a finding by a Workers' Compensation Judge as to whether your time off in 2001-2002 was the responsibility of United Airlines.

You may wish to contact your Union to determine if there is any other way to contest this issue through the contract.

BAPD concluded, based on information in PBGC's records and its review of the Ground Employees' Plan, that their November 23, 2009 determination is correct. BAPD also gave you 45 days to provide the Appeals Board with additional information if you still believe PBGC's determination is wrong.

You wrote to the Appeals Board on January [redacted] 2010. You again said that your "employer acknowledged acceptance in Compromise and Release through their attorney and mine and the court wrote 'left hand accepted'." You believe the following language in the *Order*, which was previously agreed to and signed off on by you, your then-attorney and UAL's Worker's Compensation attorney, makes it clear that UAL accepted your [redacted] injury as work-related:

Based upon the facts, it is found that a genuine, good-faith dispute exists as to injury to all body parts except [redacted] arising out of and occurring in the course of employment . . . (underlining added)

You also noted that you requested the  letters only after a PBGC employee told you that "legal said I had given up all my contractual rights." You explained that the Workers' Compensation Appeals Board (WCAB) "does not rule on or hear matters of union contractual rights" so you did not give up any contractual rights. You pointed out that you know Retirees no longer have Union representation because you went down that road already.

Background

Effective January 1, 1941, the predecessor of United Airlines established a pension plan for certain eligible employees. This Plan has been amended, restated and renamed several times, including the name change to its current name, United Air Lines Inc. Ground Employees' Retirement Plan, on January 1, 1994.

The Ground Employees' Plan terminated, effective March 11, 2005, without sufficient assets to provide all benefits and PBGC became Plan trustee on May 23, 2005. Because of legal limits under ERISA and PBGC's regulations, the benefits PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

Plan records PBGC's auditors obtained during the termination process show the following information for you:

1.	Date of birth	<input type="text"/>
2.	Most recent hire date	<input type="text"/>
3.	Participation start date	<input type="text"/>
4.	Extended Illness Status began	<input type="text"/>
5.	Last participation date	<input type="text"/>
6.	Date of termination	<input type="text"/>
7.	Annuity starting date	<input type="text"/>
8.	Service (vesting)	<input type="text"/>
9.	Participation (benefit) service	<input type="text"/>
10.	Age at retirement	<input type="text"/>
11.	Employee Group	Mechanics
12.	Benefit Computation Group	1
13.	Type of retirement	Early
14.	Benefit form	J&100%SA

Participation Service for Pension Purposes

As your appeal noted, the amount of a participant's benefit under the Ground Employees' Plan is based on "participation service." Under Plan section 4.3(a), a Participant "will be credited with a Month of Participation for each Month of Service credited to the Participant with respect to which he or she is also credited with Earnings in accordance with Section [3.2]. Section 3.2(a) provides that --

*Generally.* An employee or a Participant will be credited with a Month of Service for each calendar month for any portion of which he or she is either directly or indirectly paid or entitled to payment by the Company or an Affiliate for the performance of duties and for reasons other than the performance of duties (such as vacation or sick leave), or for any portion of which back pay, irrespective of mitigation of damages, has been awarded to the employee or Participant or agreed to by the Company or an Affiliate.

You stopped earning participation service when you were placed on Extended Illness Status, effective March  2002 because, at that point, you were no longer "either directly or indirectly paid or entitled to payment" by UAL.

Occupational Leave

Article XIV (Sick Leave) of *The 2000-2005 Agreement Between United Air Lines, Inc. and The International Association of Machinists and Aerospace Workers* (the "IAM Agreement") sets forth rules for accruing and using both non-occupational sick leave and occupational illness or injury leave ("Occupational Leave"). Section D of Article XIV describes Occupational Leave as follows:

Employees will accrue one (1) day of occupational illness or injury leave for each month of continuous service. This accrual will be in addition to non-occupational sick leave and may be used for absence resulting from occupational illness or injury only. After exhausting his occupational illness or injury leave, the employee may use his non-occupational sick leave credits. He may not, however, use occupational illness or injury leave for non-occupational illness or injury under any circumstances . . .

Section E of Article XIV describes the procedure for obtaining Occupational Leave:

When it is necessary for an employee to be absent from work because of an occupational injury or illness he must request payment for occupational illness or injury leave in writing no later than the pay period following his return to service on a form provided by the Company. A Doctor's certificate may be required before granting pay for this purpose.

You explained that resolution of your Workers' Compensation case took nearly four years. During that time, you had [redacted] on your [redacted] (the first on [redacted] and the second in [redacted]); you were found disabled by the Social Security Administration under their rules effective [redacted] 2001; you retired [redacted] 2002; and UAL filed for Chapter 11 bankruptcy protection on December 9, 2002.

When you finally had a status conference at the Workers' Compensation Court on [redacted] 2004, you were told the Workers' Compensation Appeals Board would not hear your request for Occupational Leave for your [redacted] injury because the Board had no jurisdiction over contractual issues. You then contacted the National Labor Relations Board and were told they did not have jurisdiction.

You and [redacted] on UAL's behalf, eventually agreed to settle your Workers' Compensation claim. On [redacted] 2005, you, your attorney and an attorney from [redacted] signed a *Compromise and Release* (the *C&R*) settling your Workers' Compensation claim against UAL. The *C&R* document itself provides, among other things, for the release of any potential rights of the injured employee to workers' compensation benefits that are "a compensable consequence of the original injury." You noted that, in the margin below this paragraph, is a handwritten notation "all body parts except as to [redacted]" which you said was agreed to by the parties before the *C&R* was signed. Judge [redacted] signed the *Order Approving Compromise & Release* incorporating that language on [redacted] 2005. The *Order* said, in part, that:

Based upon the facts, it is found that a genuine, good-faith dispute exists as to: injury to all body parts except [redacted] (underlining added) arising out of and occurring in the course of employment . . .

After you received the *Order* with its statement "excepting" the [redacted], you contacted various IAM officials as you had planned. You were told that IAM could not help you with your claim for Occupational Leave because IAM no longer represented UAL's machinists. You next contacted the Aircrafts Mechanics Fraternal Association ("AFMA"), the union that replaced IAM, and were told AFMA did not represent retirees. You called UAL's Human Resources Department directly and were told UAL would not "address" your claim because the Ground Employees' Plan had terminated and PBGC was the trustee. You also called and wrote PBGC a number of times beginning in 2005. A PBGC employee asked you to seek additional information regarding the *C&R* and the *Order* from Mr. [redacted] and Judge [redacted] further delaying the process.

### Discussion

Based on the information available to the Appeals Board, we found that (1) the parties to your Workers' Compensation case agreed that your [redacted] injury was work-related, (2) both the *Order* and the *C&R* explicitly provided that the "good faith dispute" settled by the *C&R* applied only to injuries to body parts other than your [redacted], and (3) that the various releases from liability stipulated in the *Order* and *C&R* dealt with the body parts in dispute under your Workers' Compensation claim and other claims that are related to it, but they did not deal with your contractual rights under the *IAM Agreement* for your [redacted] injury.

We further found that the fact that UAL authorized its representative to sign off on the "except [ ] language is evidence that UAL would have accepted your [ ] injury as an occupational injury for purposes of Occupational Leave under the *IAM Agreement*. As a result, the Appeals Board decided that, for purposes of calculating your service under the Ground Employees' Plan, PBGC should include Occupational Leave that would have started March [ ] 2002, the date you were placed on Extended Illness Status. With your initial Occupational Leave balance of 738 hours, your salary and your Workers' Compensation adjustments, Occupational Leave would have continued until your employment ended on [ ] 2002. We note that the Pension Worksheet UAL prepared for you when you retired in 2002 lists your "Last Participation Date" as [ ] 2002, which is consistent with including Occupational Leave for this period. Under the Plan's rules for calculating participation service, you earned [ ] months of participation service ([ ] years) between [ ] 1991, your participation start date, and [ ] 2002.

Decision

For the reasons described above, the Appeals Board changed PBGC's November 23, 2009 determination by finding that you have [ ] years of participation service under the Ground Employees' Plan, instead of the [ ] years PBGC determined. This is the Agency's final decision on your participation service.

We will notify PBGC's Benefits Administration and Payment Department (BAPD), the organization responsible for determining and paying benefits, of this decision. BAPD will (1) calculate your benefit amount based on [ ] years of participation service, (2) compute the amount of any underpayments owed, and (3) issue you a revised determination of your benefit amount with a new 45-day right of appeal.

Meanwhile, if you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board