

(iii) If you can identify the employee or the employee can recall your inquiry about benefits—

(A) Statements from the employee concerning the alleged contact, including statements about the questions you asked, the facts you gave, the questions the employee asked, and the information provided to you at the time of the alleged contact; and

(B) Our assessment of the likelihood that the employee provided the alleged misinformation;

(iv) An evaluation of the credibility and the validity of your allegations in conjunction with other relevant information; and

(v) Any other information regarding your alleged contact.

(e) *Information which does not constitute satisfactory proof that misinformation was given.* Certain kinds of information will not be considered satisfactory proof that we gave you misinformation which caused you not to file an application. Examples of such information include—

(1) General informational pamphlets that we issue to provide basic program information;

(2) General information which we review or prepare but which is disseminated by the media, e.g., radio, television, magazines, and newspapers; and

(3) Information provided by other governmental agencies, e.g., the Department of Veterans Affairs (except for certain employees of the SSA Division of the Veterans Affairs Regional Office in the Philippines as provided in paragraph (c)(1) of this section), the Department of Defense, State unemployment agencies, and State and local governments.

(f) *Claim for benefits based on misinformation.* You may make a claim for SVB based on misinformation at any time. Your claim must contain information that will enable us to determine if we did provide misinformation to you about qualification for SVB which caused you not to file an application. Specifically, your claim must be in writing and it must explain what information was provided, how, when and where it was provided and by whom, and why the information caused you not to file an application. If you give us this information, we will make

a determination on such a claim for benefits if all of the following conditions are also met.

(1) An application for SVB is filed with us by you or someone described in § 408.315 who may file. The application must be filed after the alleged misinformation was provided. This application may be—

(i) An application on which we have made a previous final determination or decision awarding SVB, but only if the claimant continues to be entitled to benefits based on that application;

(ii) An application on which we have made a previous final determination or decision denying the benefits, but only if such determination or decision is reopened; or

(iii) A new application on which we have not made a final determination or decision.

(2) The establishment of a deemed filing date of an application for benefits based on misinformation could result in entitlement to benefits or payment of additional benefits.

(3) We have not made a previous final determination or decision to which you were a party on a claim for benefits based on alleged misinformation involving the same facts and issues. This provision does not apply, however, if the final determination or decision may be reopened.

#### WITHDRAWAL OF APPLICATION

#### § 408.355 Can you withdraw your application?

(a) Request for withdrawal filed before a determination is made. You may withdraw your application for SVB before we make a determination on it if—

(1) You, or a person who may sign an application for you under § 408.315, file a written request for withdrawal at a place described in § 408.325; and

(2) You are alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if you repay all benefits already paid based on the application being withdrawn or we are satisfied that the benefits will be repaid.

(c) *Effect of withdrawal.* If we approve your request to withdraw your application, we consider that the application

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was never filed. If we disapprove your request for withdrawal, we treat your application as though you did not file a request for withdrawal.

### § 408.360 Can you cancel your request to withdraw your application?

You may request to cancel your request to withdraw your application and have your application reinstated if all of the following requirements are met:

(a) You, or someone who may sign an application for you under § 408.315, file a written request for cancellation at a place described in § 408.325;

(b) You are alive at the time you file your request for cancellation; and

(c) A cancellation request received after we have approved your withdrawal must be filed no later than 60 days after the date of the notice of approval.

## Subpart D—Evidence Requirements

AUTHORITY: Secs. 702(a)(5), 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1006, and 1010); sec. 251, Pub. L. 106-169, 113 Stat. 1844.

### GENERAL INFORMATION

#### § 408.401 What is this subpart about?

We cannot determine your entitlement to SVB based solely on your statements about your qualification for benefits or other facts concerning payments to you. We will ask you for specific evidence or additional information. We may verify the evidence you give us with other sources to ensure that it is correct. This subpart contains our rules about the evidence you need to give us when you claim SVB.

#### § 408.402 When do you need to give us evidence?

When you apply for SVB, we will ask you for any evidence we need to make sure that you meet the SVB qualification and entitlement requirements. After you begin receiving SVB, we may ask you for evidence showing whether your SVB payments should be reduced or stopped. We will help you get any documents you need but do not have. If your evidence is a foreign-language record or document, we can have it

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translated for you. The evidence you give us will be kept confidential and not disclosed to anyone but you except under the rules set out in part 401 of this chapter. You should also be aware that section 811 of the Act provides criminal penalties for misrepresenting the facts or for making false statements to obtain SVB payments for yourself or someone else, or to continue entitlement to benefits.

#### § 408.403 Where should you give us your evidence?

You should give your evidence to the people at a Social Security Administration office. In the Philippines, you should give your evidence to the people at the Veterans Affairs Regional Office. Elsewhere outside the United States, you should give your evidence to the people at the nearest U.S. Social Security office or a United States Foreign Service Office.

#### § 408.404 What happens if you fail to give us the evidence we ask for?

(a) *You have not yet qualified for SVB.* Generally, we will ask you to give us specific evidence or information by a certain date to prove that you qualify for SVB or to prove your foreign residence. If we do not receive the evidence or information by that date, we may decide that you do not qualify for SVB or may not receive SVB and deny your claim.

(b) *You have qualified for or become entitled to SVB.* If you have already qualified for or become entitled to SVB, we may ask you to give us information by a specific date to decide whether you should receive benefits or, if you are already receiving benefits, whether your benefits should be stopped or reduced. If you do not give us the requested evidence or information by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be stopped or reduced.

(c) *If you need more time.* You should let us know if you are unable to give us the evidence or information within the specified time and explain why there will be a delay. If this delay is due to illness, failure to receive timely evidence you have asked for from another source, or a similar circumstance, we