UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2011 MSPB 81

Docket No. SF-0831-11-0048-I-1

Glenda J. Williams,
Appellant,
v.
Office of Personnel Management,
Agency.

September 2, 2011

Glenda J. Williams, San Diego, California, pro se.

Evelyn K. Payne, Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

OPINION AND ORDER

¶1 The appellant has petitioned for review of the initial decision that affirmed the reconsideration decision of the Office of Personnel Management (OPM) denying the appellant's application for a survivor annuity under the Civil Service Retirement System (CSRS). For the reasons set forth below, we AFFIRM the initial decision as modified and SUSTAIN OPM's reconsideration decision.

BACKGROUND

¶2 The appellant filed an initial appeal of the OPM reconsideration decision denying her benefits as a dependent of Lewis Williams, her deceased father, who

was a federal employee covered by the CSRS prior to his death. Initial Appeal File (IAF), Tab 2 at 12, Tab 4, Subtab II-D at 27. Mr. Williams died on December 24, 1966, when the appellant was 12 years old. IAF, Tab 4, Subtab II-D at 28-29. On December 21, 2009, at the age of 55, the appellant wrote to OPM requesting that she be considered for a survivor annuity as a dependent child. *Id.* at 31. The appellant submitted evidence that she suffers from retinitis pigmentosa, a degenerative eye disease, and that she is currently legally blind. IAF, Tab 4, Subtab II-B at 28, Subtab II-D at 1-2, 5-26. She submitted documentation from her treating physician stating that this condition was inherited at birth. IAF, Tab 4, Subtab II-D at 2; *see also* IAF, Tab 8, Exhibit B. She also submitted a photograph of herself as a young girl wearing glasses to demonstrate that symptoms of her disease manifested at an early age. IAF, Tab 4, Subtab II-B at 3. OPM denied her application. IAF, Tab 4, Subtab II-C. After the appellant received OPM's reconsideration decision affirming its initial decision, she appealed to the Board. *Id.*, Subtab II-A.

¶3 After a hearing, the administrative judge affirmed OPM's decision, based in part on his finding that any right to a dependent child annuity terminated under 5 U.S.C. § 8341(e)(3) because the appellant did not demonstrate that she was incapable of self-support after she ceased to be a student subsequent to becoming 18 years of age. IAF, Tab 11, Initial Decision at 7.

¶4 The appellant has filed a petition for review, arguing that the administrative judge did not give full consideration to the medical records, that the medical records support her claim for benefits, and that her inherited eye disease affected her ability to function normally in her life. Petition for Review File, Tab 1 at 8-9. She argues that, although she was not diagnosed with eye disease until later in life, it has "alway[s] been present." *Id.* at 8.

ANALYSIS

¶5 The burden of proving entitlement to a survivor annuity is on the applicant for benefits. *Cheeseman v. Office of Personnel Management*, 791 F.2d 138, 140-41 (Fed. Cir. 1986). In order to qualify for a survivor annuity as a dependent child, the appellant was required to demonstrate that she is an "unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18." 5 U.S.C. § 8341(a)(4)(B). The statutory right to a dependent child annuity terminates under a variety of circumstances as set forth in 5 U.S.C. § 8341(e)(3),[1] including when the child "ceases to be . . . a student after becoming 18 years of age unless he is then incapable of self-support." 5 U.S.C. § 8341(e)(3)(D).

¶6 According to the appellant's hearing testimony, she first realized that she had serious eye problems between the ages of 38 and 40 and was diagnosed with retinitis pigmentosa 8 to 10 years ago. Hearing Compact Disc (HCD). The record reflects that the appellant turned 18 on February 2, 1972, and she testified that she subsequently attended 1-2 years of college at Columbus State University. HCD. After that, she held several part-time jobs over the course of her adult life, a full-time job with a credit card company for 10 years in the 1980s, and a full-

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[1] The annuity of a child under this subchapter . . . and the right thereto terminate on the last day of the month before the child--

> (A) becomes 18 years of age unless he is then a student as described or incapable of self-support;
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> (B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;
>
> (C) becomes 22 years of age if he is then such a student and capable of self-support;
>
> (D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or
>
> (E) dies or marries;
>
> whichever first occurs.

time job from 1994-2007 as a paraprofessional in the public school system. HCD. She returned to Columbus State University from 1995-1998 to obtain her undergraduate degree. HCD. The appellant testified that she never married and lived with her mother, for whom she cared over the course of 30 years until her mother's death in October 2009. HCD.

¶7 We find that the administrative judge correctly determined that the appellant was capable of self-support after she completed her 1-2 years at Columbus State University after she turned 18. Indeed, the record reflects that she engaged in meaningful employment after her initial period of time at Columbus State University, that she returned to college to obtain her undergraduate degree, and that she supported her mother for 30 years. Furthermore, the appellant does not dispute the administrative judge's finding that she was capable of self-support after she completed her 1-2 years at Columbus State University subsequent to turning 18. Consequently, we agree with the administrative judge's finding that any right to a survivor annuity as a dependent child[2] terminated and there is no provision in the statute to revive such a right.[3] 5 U.S.C. § 8341(e)(3)(D).

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[2] There appears to be a dispute concerning whether the appellant meets the definition of a child. We do not reach this issue, however, because any right to an annuity terminated under 5 U.S.C. § 8341(e)(3)(D).

[3] For example, the statute explicitly revives the right to a dependent child annuity for an individual whose annuity terminated by virtue of marriage and whose marriage subsequently dissolves through divorce or death of the spouse. 5 U.S.C. § 8341(e)(3)(E), (e)(4); *see* Omnibus Consolidated Appropriations Act, sec. 633, § 8341(e)(4), 110 Stat. 3009 (1996). Congress has not included a provision reviving the right to a dependent child annuity in cases in which the applicant's right to an annuity terminated under 5 U.S.C. § 8341(e)(3)(A)-(D).

ORDER

¶8 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's

"Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

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William D. Spencer
Clerk of the Board
Washington, D.C.