



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. H. v. Minister of Employment and Social Development*, 2016 SSTGDIS 54

Tribunal File Number: GP-15-1465

BETWEEN:

J. H.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Raymond Raphael

HEARD ON: July 12, 2016

DATE OF DECISION: July 20, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

J. H.: Appellant

INTRODUCTION

[1] The Appellant's application for *Canada Pension Plan* (CPP) survivor's benefits in relation to the deceased contributor A. B. (A. B.) was date stamped by the Respondent on January 19, 2015. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] The hearing of this appeal was by teleconference for the following reasons:

- a) The Appellant will be the only party attending the hearing.
- b) There are gaps in the information in the file and/or a need for clarification.
- c) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] Paragraph 44(1)(d) of the CPP provides that a survivor's pension is payable to the survivor of a deceased contributor. Subsection 42(1) defines the survivor in relation to a deceased contributor to be the common-law partner of the deceased contributor at the time of the contributor's death, and if there is no eligible common-law partner, the person who is married to the contributor at the time of death.

[4] Subsection 2(1) defines the common-law partner in relation to a contributor to be the person who was cohabitating with the contributor in a conjugal relationship at the time of the contributor's death, having so cohabited with the contributor for a continuous period of at least

one year. Case law has determined that the common-law partner is not eligible if he or she is separated from the deceased contributor at the time of the contributor's death.

ISSUE

[5] The Tribunal must decide whether the Appellant was living in a common-law relationship with A. B. at the time of his death in accordance with the CPP criteria. The burden of proof lies upon the Appellant to establish the common-law relationship on the balance of probabilities.

APPLICATION MATERIALS

[6] In her CPP survivor's benefits application the Appellant indicated that A. B. died on December 16, 2014 and that she and A. B. were living in a common law relationship at the time of his death. She noted that they had started to live together on July 1, 1980.

[7] Two statutory declarations of common-law union sworn on January 9, 2015 accompanied the application. The first statutory declaration indicated that they had lived together in a common-law relationship from July 1, 1980 to July 2010. The second indicated that they had also lived together in a common-law relationship from March 2014 to December 16, 2014. *In her oral evidence at the hearing, the Appellant testified that the second period was from June 2014 to December 16, 2014.*

ORAL EVIDENCE

[8] She and A. B. started to live together in 1980. He moved into her apartment. Up until July 2010 they lived together with all of the usual attributes of a common-law relationship. They had a son and for a period of time owned a house in their joint names. In August 2005 they moved into a two bedroom apartment at 1175 X. They were living together in that apartment when A. B. died in December 2014, and she still lives there.

[9] In early 2010 she moved out and stayed with a friend. She moved out because A. B. was an alcoholic; he was abusive; and he was fighting with their son. She stated, "I couldn't take it anymore." She initially moved in with a friend waiting for her apartment in X to be ready. After she had an argument with her friend she moved back in with A. B. until July 2010. In July 2010

her apartment was ready and she moved to her own apartment in X. A. B. stayed in the X apartment.

[10] She described the relationship between her and A. B. from July 2010 until June 2014. She stated that neither had a relationship with anyone else; that she talked to him all the time; that because he couldn't read or write she helped him with doctor's appointments, banking, paying his bills, and writing the rent cheques. She had moved all of her clothes and personal belonging to her X apartment. They were intimate the "odd time." She continued to be the beneficiary of his life insurance from work and of his RRSP. She also continued to receive benefits under his workplace medical plan.

[11] They didn't socialize because of his drinking and didn't go to places together because he would only go to bars. They talked on the phone every day, and on weekends she would go to his apartment and do his laundry and shopping. They continued to have a joint bank account into which his pay cheques were deposited and from which she paid his expenses. She opened a new account in her own name in which she deposited her pay cheques and from which she paid her expenses. On the advice of a girl-friend she cancelled life insurance policies that she had on him, herself and her son in order to save expenses. She filed income taxes separately – before she had filed them as common-law spouses. Neither of them had wills. They did not go on any vacations together after she moved out.

[12] In September 2013 A. B. was doing well in rehab and she thought about getting back together but then he started drinking again. When asked about her intention as to her moving back with him, she stated, "I couldn't live with him when he drank...I still loved him ... I was hoping that he would turn around."

[13] In June 2014 she gave up her apartment in X moved back into the X apartment. A. B.'s health was getting worse and their son couldn't look after him. They shared a bedroom. He was still drinking heavily and there was no sexual intimacy. She moved all of her personal possessions and belongings back into the X apartment. She continued to have the joint account as well as her separate account. She would pay the rent and expenses from the account that had enough money in it.

[14] She took him for medical appointments, bathed him, and when necessary changed his diapers. He had bad arthritis in his knees and could hardly walk – he had to use a walker. He was also started to suffer dementia. When he was hospitalized in September 2014 with a gastrointestinal bleed, she visited him every day after work and gave instructions to the doctors and nurses.

[15] She made the funeral arrangements and paid for them out of the insurance money. She received the proceeds from his life insurance plan at work and she is still on benefits from his workplace medical plan. She is designated as the beneficiary of his RRSP. It has not yet been paid out since there are still some issues as to whether she can roll it over to her plan.

Documentation

[16] There is extensive documentation in the hearing file (GD2-40 to GD2-80) confirming that the Appellant was covered as an eligible dependent for health, dental and vision benefits under A. B.'s workplace benefit plan and that this coverage is to continue until December 16, 2016; that the Appellant was the beneficiary of A. B.'s life insurance policy with Blue Cross; that the Appellant and A. B. were joint tenants of the X apartment starting from August 1, 2005; that the Appellant was residing in the X apartment as of January 5, 2015; that A. B. made the Appellant his continuing power of attorney for property and personal care in May 2014; that the Appellant was the beneficiary of A. B.'s group RSP; that A. B. was a beneficiary of the Appellant's workplace medical and life insurance plans; that the Appellant paid Ogden Funeral Homes for A. B.'s funeral expenses; that the Appellant was the beneficiary of Appellant's group life insurance with Desjardins Insurance; and that the Appellant and A. B. had joint bank accounts with the Bank of Montreal.

SUBMISSIONS

[17] The Appellant submitted that she is entitled to survivor's benefits because:

- a) She and A. B. have an over 30-year history of a common-law relationship;

- b) She moved out because of his drinking and abusive behaviour, and it would be unfair if she were denied survivor's benefits because she had moved back in for a period of less than one year before his death;
- c) They had a joint bank account and were on each other's benefits at work;
- d) Even though she did not live with A. B. for 12 continuous months prior to his death, there was always an ongoing relationship and neither of them had a relationship with another person since they first lived together in 1980.

[18] The Respondent submitted that the Appellant is not entitled to survivor's benefits because:

- a) There was a lengthy separation prior to the resumption of cohabitation in June 2014;
- b) Although the Appellant and A. B. were living together at the time of A. B.'s death, this does not establish a continuous period of at least one year from the time of death which is an essential requirement for "common-law partners" as defined by Section 2 of the CPP;
- c) Although the common-law relationship existed from July 1980 until July 2010, in July 2010 they demonstrated a clear intention to end their relationship and start living separate and apart;
- d) The period of common-law relationship from July 1980 to July 2010 should not be considered towards determining eligibility because there was a clear intention to end the common-law relationship;
- e) The Respondent relied on the Supreme Court of Canada decision in *Hodge v MHRD* (2004 SCC 65) which states that a common-law relationship ends when either party considers it to be at an end.

ANALYSIS

[19] The Appellant must prove on a balance of probabilities that, at the time of A. B.'s death, she was cohabitating with him as his common-law partner in accordance with the CPP definition.

[20] In (*McLaughlin* 2012 FC 556) the Federal Court stated that the factors that are indicative of a common-law relationship include the following:

- 1) Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- 2) Sexual and personal behaviour, including whether the parties have sexual relations, maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts;
- 3) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- 4) Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members;
- 5) Societal, including the attitude and conduct of the community towards each of them as a couple;
- 6) Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property; and
- 7) Attitude and conduct concerning any children.

[21] In *Betts v Shannon* (2001), CCH, CE B & PGR No. 8661, pp. 6775-6782) the Pension Appeals Board (PAB) stated that in determining whether persons are cohabitating, the Tribunal

should consider elements such as continued financial interdependence, a sexual relationship, a common residence, expenses for each other on special occasions, a sharing of responsibilities in running the household, a shared use of assets, shared vacations, continued mutual dependency, the naming of each other as beneficiaries in the will of the other and as a beneficiary under insurance policies, where each kept their clothing, who cared for each person when ill, communication between the parties, public recognition of the relationship, what status was declared by the parties on various applications and other forms, and who took care of the deceased's funeral arrangements.

[22] There is no dispute that the Appellant and A. B. lived together in a common-law relationship for 30 years from July 1980 to 2010. The evidence also establishes that they were living in a common-law relationship from June 2014 up until A. B.'s death in December 2014.

[23] The Appellant had moved back into the X apartment for which they were joint tenants; she had moved all of her clothes and personal belongings back into the apartment; they shared the same bedroom; she handled his finances and took care of his medical and personal needs; they had a joint bank account; they were beneficiaries of each other's life and employment medical policies; she visited him daily and gave instructions when he was hospitalized in September 2014; and she arranged and paid for his funeral expenses.

July 2010 to June 2014

[24] The Tribunal is also satisfied that the common-law relationship was not interrupted during the period that the Appellant had moved to her own apartment in X (July 2010 to June 2014).

[25] Cohabitation can exist where the couple was not living under the same roof due to the deceased contributor's addiction problems: *R.P. v MHRD* (May 31, 2010), CP 26623 (PAB). The Appellant moved out because of A. B.'s drinking and abuse. There was no intention on the part of either party to terminate the common-law relationship.

[26] Neither the Appellant nor A. B. had a relationship with another person; they talked on the phone every day and on weekends she went to his apartment to do laundry and shopping; they continued to have a joint bank account from which she paid his expenses and handled his

finances; they continued to be beneficiaries of each other's workplace medical and life insurance plans; the Appellant continued to love A. B. and she was hopeful that she would be able to move back in if A. B. "turned himself around." The *Hodge* case, cited by the Respondent, supra, indicates that a common-law relationship ends when either party considers it to be at an end. It is not necessary that all of the *McLaughlin* and *Betts* factors be present and the Tribunal is satisfied, on the balance of probabilities, that neither party intended to end the common-law relationship during the period that the Appellant lived in her own apartment in X.

Appellant still eligible even if interruption of common-law relationship

[27] Further, the Tribunal is also satisfied that the Appellant would still meet the CPP survivor eligibility requirements even if there was an interruption of the common-law relationship between July 2010 and June 2014. The Appellant was living with A. B. in a common-law relationship at the time of his death and she had lived with him in a common-law relationship for a continuous period of at least one year (from July 1980 to July 2010). The Tribunal disagrees with the Respondent's submissions that the continuous period of one year must have been immediately prior to the deceased contributor's death.

[28] If this was the intention of the legislation it could have unambiguously stated so. In (*Beaudoin* 1993 FCA 518) the Federal Court of Appeal stated as follows:

The Board appears to be in error in its view as to "the prescribed period of time", since it had previously stated the issue in this case as being "whether the deceased contributor was cohabitating with Line Beaudoin in conjugal relationship at the time of his death, having so cohabitated for at least one year "*immediately prior to his death*" [the emphasis is the court's]. As another Panel of the Board held - in my view correctly - in *The Minister of National Health and Welfare v Decoux* (Appeal CP2046, decided July 3, 1991), "Since s.2 [of the Act] does not specifically state that the continuous period of one year must "immediately precede death", I do not think we should give it that I interpretation" (at 4).

[29] The Tribunal has also been guided by the decision of the PAB in *Siou v MHRD* (April 16, 2002), CP 14667 (PAB) which states:

It is now beyond dispute having been determined by the Review Tribunal that the Appellant and the contributor continuously lived together in a conjugal relationship from 1983 to 1991, such being clearly a period well in excess of one year.

What is disputed however is the decision of the Review Tribunal that the continuous period of at least one year must be immediately prior to the death of the contributor.

Such decision runs completely contrary to the decisions of this Board which have held that since section 2 does not specifically state that the continuous period of one year must immediately precede the contributor's death it should not be given that misinterpretation - that is, the period can be broken and resumed before death (see *Minister of National Health and Welfare v. Decoux* (CP02046, 1991 unreported) also *Cartledge v. West v. Minister of Human Resources Development* (CP03703, 1996, unreported) and *MacGuigan J.A. in Beaudoin v. Canada (Minister of National Health and Welfare)* (C.A.), 3 F.C. 518, May 31, 1993).

CONCLUSION

[30] Having regard to the totality of the evidence the Tribunal is satisfied, on the balance or probabilities, that the Appellant and A. B. continuously cohabitated in a common-law relationship from July 1980 until his death in December 2014. Although the parties were not living under the same roof between July 2010 and June 2014 because of A. B.'s alcoholism, the Tribunal has determined that the common-law relationship continued during that time.

[31] Further, the Tribunal is also satisfied that even if there was an interruption of the common-law relationship from July 2010 until June 2014, the Appellant still meets the CPP survivor eligibility requirements since she was living with A. B. in a common-law relationship at the time of his death and they had lived together in a common-law relationship for a continuous period of at least one year (30 years from July 1980 to July 2010). It is not necessary that the continuous period of one year be immediately prior to the deceased contributor's death.

[32] The Appellant is a survivor in accordance with the CPP criteria in relation to the deceased contributor A. B. Accordingly, she is entitled to CPP survivor's benefits.

[33] The appeal is allowed.

Raymond Raphael
Member, General Division - Income Security