



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K F. v. Minister of Employment and Social Development and C. R.*, 2017 SSTGDIS 177

Tribunal File Number: GP-16-2780

BETWEEN:

**K. F.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**C. R.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Jaime Mellott

HEARD ON: November 15, 2017

DATE OF DECISION: December 22, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The deceased Contributor passed away on January 18, 2015. The Appellant applied for a *Canada Pension Plan* (CPP) survivor's pension that was received by the Respondent on March 9, 2015 (GD2-49). In a letter dated July 16, 2015 (GD2-64), the Respondent advised the Appellant that she was not entitled to a survivor's pension because the Contributor had been living in a common-law relationship with the Added Party at the time of his death.

[2] The Appellant requested that the Respondent reconsider its decision. The Respondent denied the Appellant's request. The Appellant appealed the decision to the Social Security Tribunal (Tribunal).

[3] The Tribunal decided to hear this appeal by teleconference for the following reasons:

- a) 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; and
- b) The Appellant and the Added Party live on opposite coasts. Because of the time difference, the Tribunal member determined that the most efficient method of proceeding for the hearing was by teleconference.

[4] The following people attended the hearing:

- a) C. R., the Added Party; and
- b) S. R., the Added Party's Witness and ex-husband.

[5] The Tribunal has decided that the Appellant is not eligible for a CPP survivor's pension for the reasons set out below.

## **PRELIMINARY ISSUES**

[6] On November 2, 2017, the Appellant requested an adjournment of the hearing because she was unable to take the time off work. The Tribunal sent a letter to the Added Party asking if she had objections to the adjournment. The Added Party responded that she objected to the adjournment because it would inconvenience both her and her witness. The Tribunal member considered both positions and decided that the Appellant's reasons for requesting the adjournment did not merit a delay in the hearing. When she was notified of the Tribunal member's decision, the Appellant advised that she would send in written submissions. On December 4, 2017, a staff member of the Tribunal left voicemail messages on both of her contact telephone numbers and advised that the Tribunal member had set a deadline of December 6, 2017 to provide her submissions. As of writing, the Appellant did not make further submissions or otherwise contact the Tribunal.

## **EVIDENCE**

[7] The Tribunal reviewed all the evidence and arguments but has recorded only that which is relevant to the analysis and conclusion below.

### *The Appellant's Evidence*

[8] The Appellant submitted a marriage record showing that she and the Contributor were married on July 23, 2011 (GD2-63).

[9] The Appellant's application for a survivor's pension was received by the Respondent on March 9, 2015 (GD2-49). The Appellant wrote that

... [The Added Party] does not qualify for [survivor's] benefits as she did not reside with the [Contributor] in a common-law relationship for one year prior to his death. The [Contributor] and I began to live separate and apart in the last week of March, 2014 when the deceased attended our home for the last time to remove his belongings. He had previously absented himself from our home on January 3<sup>rd</sup>, 2014 when he left on what I understood to be a temporary basis. The deceased did not commence a relationship with

[the Added Party] until February 5<sup>th</sup>, 2014 as evidenced by the attached Statutory Declaration of [redacted] sworn March 2, 2015.

[10] In a Statutory Declaration executed March 2, 2015 (GD2-57), an individual wrote that on February 4, 2014 she was chatting with the Contributor on a social media site and he referred to the Added Party as his “roomie.” Later, the individual stated that the Contributor indicated that his status has changed to “In an Open Relationship” on February 5, 2014 and to “Got Engaged to [the Added Party]” on April 15, 2014. Appended to the Statutory Declaration was an apparent record of the February 4, 2014 online conversation that included the unattributed phrase “...roomie kind and considerate at least not like other.”

[11] In a letter dated October 2, 2015 (GD2-68), the Appellant wrote that on January 3, 2014, the Contributor moved into a friend’s home in Langley, British Columbia. The Appellant wrote “Although I don’t know the exact date he moved in with [the Added Party], they would have had to rent a new place so presumably they couldn’t have moved in before February 1, 2014, which again, even if you considered their relationship at that point as being common-law, which was not [*sic*], it does not make the one year requirement....”

#### *The Added Party’s Evidence*

[12] The Added Party’s application for a survivor’s pension was received by the Respondent on January 23, 2015 (GD2-4).

[13] In a Statutory Declaration of Common-Law Union received by the Respondent on January 23, 2015 (GD2-11), the Added Party stated that she had lived with the Contributor for one year, beginning on January 3, 2014 and ending on January 18, 2015.

[14] To support her application, the Added Party provided the following:

- Rent receipts that showed that the Added Party and the Contributor rented an apartment in Surrey, British Columbia from January 5, 2014 to August 1, 2014 (GD2-26 to GD2-33);

- A letter from an insurer dated April 8, 2015 (GD2-24) that stated that the Added Party and the Contributor had tenant insurance policy for an apartment in Surrey, British Columbia from January 15, 2014 to August 19, 2014;
- Bank statements that showed that she and the Contributor had a joint bank account from October 2014 to January 2015 (GD2-19 to GD2-22);
- A letter from an insurer dated April 13, 2015 (GD2-23) that stated the Added Party and the Contributor had a home/tenant insurance policy from September 2014 to March 11, 2015; and
- A letter dated April 19, 2015 (GD2-25) that stated that the Added Party and the Contributor rented an apartment in Dartmouth, Nova Scotia from September to November 2014.

[15] In a letter dated October 20, 2016 (GD4-4), the Added Party's witness wrote that he could confirm that the Added Party and the Contributor resided at the same address in a conjugal relationship as of January 5, 2014 because he had helped them move in to their new apartment on that day. The Added Party's witness wrote that he regularly dropped off and picked up his son at the apartment for visits with the Added Party until she moved to Nova Scotia.

[16] The Added Party testified that she, her witness, the Appellant, and the Contributor were friends before January 2014. The Added Party testified that, in addition, she had a sexual relationship with the Contributor before January 2014. The Added Party testified that the Contributor ended his relationship with the Appellant on January 3, 2014 and on that day he and the Added Party stayed in a hotel until they moved into an apartment together on January 5, 2014. The Added Party testified that as of that date, she and the Contributor lived together in a committed relationship until he passed away. The Appellant confirmed that she had covered the cost of the Contributor's funeral.

[17] The Added Party's Witness is her ex-husband. The Added Party's Witness confirmed that what he had written in the letter of October 20, 2016 was accurate and that he had helped move the Contributor and the Added Party into a one bedroom apartment on January 5, 2014. The

Added Party's Witness testified that as of that day, he understood that the Added Party and the Contributor were in a romantic relationship and lived together as couple.

#### *Additional Evidence*

[18] A death certificate shows that the Contributor died on January 18, 2015 (GD2-61).

[19] The Respondent provided a print out of the Contributor's address history (GD2-41). It shows that the Appellant reported that his home address was an address in Surrey, BC, beginning on January 15, 2014 and ending on July 4, 2014.

[20] The Respondent provided a print out of the Added Party's address history (GD2-42) that showed that the Appellant reported that her home address was an address in Mission BC beginning in November 24, 2010 and ending October 16, 2014.

#### **SUBMISSIONS**

[21] The Appellant submitted that she qualifies for a survivor's pension because the Added Party and the Contributor had not resided together for one year and therefore could not be common-law partners. The Appellant submitted that because she was separated but not yet divorced from the Contributor and he was not living in common-law with another person, she is entitled to a survivor's pension.

[22] The Respondent submitted that the Appellant does not qualify for a survivor's pension because the Added Party and the Contributor were in a common-law relationship at the time of his death.

#### **ANALYSIS**

[23] To establish that she is entitled to a survivor's pension, the Appellant must show that she meets the requirements as set out in the CPP. Foremost among these requirements is that the Appellant must show that she was, in fact, the Contributor's survivor at the time of his death. Paraphrased for clarity, paragraphs 42(1)(a) and (b) of the CPP define a "survivor" as the common-law partner of the contributor at the time of his or her death or, if there is no common-law partner, a person who was married to the contributor at the time of his or her death. Again

paraphrased for clarity, section 2 of the CPP defines a common-law partner to be a person who was cohabitating with the contributor in a conjugal relationship at the time of his or her death and had cohabitated in a conjugal relationship continuously for a period of at least one year at the time of his or her death. The Appellant submits that the Added Party and the Contributor were not in a common-law relationship and therefore, as his married spouse, the Appellant is entitled to the survivor's pension. In effect, the Appellant's arguments are twofold: first, the Appellant argues that the Added Party and the Contributor did not cohabit in a conjugal relationship for at least one year before his death and therefore the Added-Party could not have been his common-law partner. Second, the Appellant argues that even if the Added Party and the Contributor cohabitated for one year before his death, they were not in a conjugal relationship until at least February 2014 and therefore the Added-Party could not have been his common-law partner.

[24] With regard to the Appellant's first argument, the Tribunal finds that there is sufficient evidence to show that the Added Party and the Contributor began residing together as of January 5, 2014. The rent receipt dated January 5, 2014 shows that the Added Party and the Contributor were both named as renters and that rent had been paid for the remainder of the month. According to the additional rent receipts, the Contributor and the Added Party continued to live in that apartment until August 2014. Further, the letter from an insurance provider dated April 8, 2015 states that the Contributor and the Added Party had purchased a tenants' insurance policy that was effective January 15, 2014. Finally, the Contributor's address history showed that he had registered a change of his address to the same address as is on rent receipts effective January 15, 2014. The Tribunal acknowledges that the Added Party's address history does not also show that change but finds that, with a view to the documentary evidence cited above, that is it likely she simply failed to register the change.

[25] The Tribunal acknowledges the Appellant's submissions that on January 3, 2014 the Contributor moved out of their shared home and to his friend's home. The Tribunal further acknowledges the Appellant's argument that the Added Party and the Contributor could not have rented a home until the first of February, given that he had moved out on January 3, 2014. However, the Appellant's arguments are either speculative or not supported by documentary evidence. Furthermore, there is no evidence or arguments that suggest that at any point after they

began cohabitating that the Added Party and Contributor's relationship was interrupted. Finally, the Tribunal acknowledges that the Contributor's change of address is registered to start on January 15, 2014 and that their tenants' insurance policy became effective on January 15, 2014. However, the Tribunal finds that it is likely that at these dates represent administrative expediency or delays in purchasing the insurance or registering the change of address. In this regard, the Tribunal gives greater weight to the Added Party and her witness' testimony. As such, the Tribunal finds the evidence shows that it is more likely than not that the Contributor and the Added Party began cohabitating on January 5, 2014, which continued until his death on January 18, 2015. As such, the Tribunal finds that the Added Party and the Contributor had cohabitated for at least one year at the time of his death.

[26] With regard to the Appellant's second argument that even if the Contributor and the Appellant had been cohabitating for one year before his death, they had not been in a conjugal relationship for the duration, the Respondent pointed to *Betts v. Shannon (October 22, 2011)*, CP11654 (PAB) for guidance. In that decision, the Pension Appeals Board outlined a non-exhaustive list of elements that might establish cohabitation in a conjugal relationship. Among these elements are that the persons shared a common residence, had the expectation that there will be continued mutual dependency, and had public recognition of their relationship.

[27] With regard to the element of a common-residence, the Tribunal has already found that the Added Party and the Contributor began residing together as of January 5, 2014.

[28] With regard to the element of mutual dependency, the Tribunal finds that the Added Party and Contributor's decision to move to Nova Scotia shows that they were in a committed relationship and intended to rely on each other in the course of establishing their new life. Furthermore, the Tribunal accepts the Added Party's testimony that she covered the Contributor's funeral expenses and finds that this shows that, as his grieving partner, she felt responsible for undertaking this obligation.

[29] Finally, with regard to the element of public recognition, the Added Party's Witness testified that he recognized the Added Party and the Contributor to be in a romantic relationship as of January 5, 2014. As the Added Party's ex-husband, the Tribunal found his evidence to be particularly compelling. The Tribunal acknowledges the Appellant's evidence that the



Contributor did not change his social media status to indicate that he was in a new relationship with the Added Party until February 4, 2014. However, the Tribunal does not find that the mere fact that the Contributor changed his status on a social media site is evidence of the date on which he considered himself to be in a relationship.

[30] The Tribunal hopes that none of the above is taken to undermine the Appellant's grief and hurt. The events leading up to the Contributor's death must have been exceedingly difficult for the Appellant to process. However, the Tribunal is created by legislation and has only the powers granted to under its governing statute. This means that the Tribunal is required to interpret and apply the provisions as they are set out in the CPP. As such, weighing all the evidence, the Tribunal finds that the preponderance of evidence shows that the Added Party was in a common-law relationship with the Contributor at the time of his death. As such, the Appellant is not entitled to a survivor's pension.

## **CONCLUSION**

[31] The appeal is dismissed.

Jaime Mellott  
Member, General Division - Income Security