



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. W. v Minister of Employment and Social Development*, 2019 SST 1446

Tribunal File Number: GP-18-1996

BETWEEN:

J. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Teleconference hearing on: November 7, 2019

Date of decision: November 8, 2019

DECISION

[1] I am dismissing the appeal. The Claimant, J. W., is not entitled to a *Canada Pension Plan* (CPP) survivor's pension. These are my reasons.

OVERVIEW

[2] S. B. is the deceased CPP contributor in this appeal. She and the Claimant started living together in 1978, and separated in January 1993. They were still separated when S. B. died in September 1998.¹ The Claimant applied for a CPP survivor's pension in October 2017. The Minister denied the application, and the Claimant appealed to the Tribunal.

ISSUE

[3] I have to decide if the Claimant is S. B.'s survivor, as defined in the CPP.

ANALYSIS

Eligibility for a CPP survivor's pension

[4] A survivor's pension may be paid to a person who was the common-law partner of a contributor when the contributor died.² The CPP says a common-law partner is someone who was "cohabiting with the contributor in a conjugal relationship" for a continuous period of at least one year at the time of the contributor's death.³

[5] The Claimant spoke honestly and in a straightforward manner at the hearing. He admitted that he and S. B. did not live together in the year before her death, or at any time after January 1993. But he said they were only apart because of her mental illness. He gave her financial support, and also supported and helped care for their four children. He submitted that in his particular circumstances he should qualify for a survivor's pension.

¹ GD2-4-9

² Paragraph 44(1)(d) and subsection 42(1) *Canada Pension Plan*.

³ Subsection 2(1) of the *Canada Pension Plan*.

[6] I accept what the Claimant told me about his relationship with S. B.. They were common-law partners for many years. However, the evidence of their connection after they stopped living together does not satisfy the eligibility requirements for a CPP survivor's pension.

Background

[7] The Claimant described how in the summer of 1992 S. B. became ill and was hospitalized for three days. Her behaviour changed significantly after that. She falsely accused the Claimant of assault and threatening behaviour, and within a few months he was forced to move out of the family home. He wanted to reconcile, but they never did. He never lived with S. B. again. She would not talk to him and she insisted he keep his distance. Through their lawyers they negotiated agreements and consent orders about division of property, maintenance, custody, and child support.

[8] The Claimant told me S. B. began to abuse drugs and alcohol. On paper, she retained custody of the two youngest children, but all four children went to live with him. No one gave him information about S. B.'s health problems. He knew she was in and out of hospital but he did not realize how bad things were for her until she took her own life in September 1998.

The Claimant and the contributor were not cohabiting in a conjugal relationship

[9] The CPP does not explain what "cohabiting with the contributor in a conjugal relationship" means, but decisions from courts and tribunals have given some guidelines. One decision listed elements that are usually found in a conjugal relationship. Not all of them are necessary. They include:

- financial interdependence
- a sexual relationship
- a common residence
- the purchase of gifts for each other on special occasions
- a sharing of household responsibilities
- shared use of assets
- shared responsibility in raising children
- shared vacations

- the expectation of mutual dependency each day
- the naming of each other as beneficiary in wills and insurance policies
- where each kept their clothing
- caring of each other during illness
- knowledge of each other's medical needs
- communication between the parties
- public recognition of the parties as a couple
- marital status declared by the parties on various applications or other forms completed by them, and
- responsibility for funeral arrangements.⁴

[10] After 1992, most of these were absent from the Claimant's relationship with S. B.. The ones that remained are often found in dissolved relationships: the shared responsibility for the children, the continued financial support, the fact that S. B. remained the beneficiary of the Claimant's life insurance policy, and the fact that he arranged her funeral. On their own, they do not establish a conjugal relationship.

[11] The Claimant told me he and S. B. had a good relationship before she got sick. They rarely argued. He believes she acted the way she did because she was mentally ill, and they would be together if not for that. While there may be situations where a separation is unintentional because it is caused by the mental or physical health of one of the parties, I cannot say that is what happened here. S. B. may have had mental impairments that caused her to make bad choices and act in ways that hurt the Claimant and the children, but there is no evidence she was ever declared incapable of managing herself or her affairs. On the contrary, she was competent enough to obtain and instruct a legal aid lawyer, be given custody of at least two of the children, enter into agreements, and consent to court orders. However much the Claimant wanted to continue the common-law relationship, S. B. clearly did not.

[12] The core of the conjugal relationship is that "the parties have by their acts and conduct shown a mutual intention to live together in a marriage-like relationship of some permanence."⁵

⁴ *Betts v. Shannon*, 2001 CP 11654 Pension Appeals Board

⁵ *MSD v. Pratt*, 2006 CP 22323 (Pension Appeals Board)

Although I sympathize with the Claimant's position, I cannot disregard the eligibility requirements for the CPP survivor's pension. The Claimant was not S. B.'s common-law partner when she died. As a result, he is not entitled to a CPP survivor's pension.

CONCLUSION

[13] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security