



Citation: *TK v Minister of Employment and Social Development*, 2024 SST 403

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: T. K.
Representative: T. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 26, 2023 (issued by
Service Canada)

Tribunal member: Anita Nathan

Type of hearing: Teleconference

Hearing date: February 13, 2024

Hearing participants: Appellant
Appellant's representative
Respondent's representative
Interpreter
Observers

Decision date: February 27, 2024

File number: GP-23-1909

Decision

[1] The appeal is dismissed. The Appellant, T. K., isn't eligible to receive a survivor's pension.

[2] This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a survivor's pension when her ex-spouse, P. K., passed away on July 1, 2021.¹ Her application was denied because she was neither living in a common-law relationship with the deceased, nor married to him at the time of his death.

[4] The Appellant asked the Minister to reconsider its decision on compassionate grounds. the Minister denied the Appellant's reconsideration request stating it must apply the law to the Appellant's case.² The Appellant appealed the Minister's decision to the Tribunal's General Division.

[5] The Appellant doesn't dispute that at the time of her ex-spouse's death, they were divorced. However, she says that the divorce was obtained fraudulently and asks that at least a portion of the survivor's benefit be paid to her based on compassionate grounds.

Reasons for my decision

[6] The Appellant and the deceased were married on December 7, 1969.³ They separated on August 25, 2015.⁴ When she filed an application for survivor's benefits, the Appellant thought they were still separated.⁵

¹ See GD2-36 to GD2-

² See GD2-18 to GD2-21.

³ See GD2-28.

⁴ See GD2-32.

⁵ See GD2-36 to GD2-37.

[7] The Appellant later learned that she and her ex-spouse had been divorced since December 21, 2019⁶ without her knowledge.⁷ The Appellant said the divorce was obtained fraudulently because she never agreed to it. Unfortunately, the Tribunal cannot decide whether the divorce was obtained by fraud.⁸

[8] I must accept the evidence that exists. The evidence is that the Appellant and the deceased were divorced before he died, as supported by a Certificate of Divorce from the Superior Court of Justice in Ontario.⁹

[9] The Canada Pension Plan says that a survivor's pension will be paid to the survivor of the deceased.¹⁰ The survivor of the deceased is defined as the person in a common-law relationship with the deceased at the time of his death, or if the deceased didn't have a common-law partner when he died, then the person that was married to the deceased when he passed away.¹¹

[10] The Appellant was neither married to the deceased or in a common-law relationship with the deceased **at the time of his death**. Therefore, the Appellant doesn't meet the definition of survivor and is not eligible to receive a survivor's pension.

I have to follow the law

[11] The Appellant asked that she be given a portion of the survivor's benefits on compassionate grounds. She detailed many traumas and difficulties she has and is currently experiencing, including financial difficulties. I am very compassionate to the Appellant's circumstances. On her account, she has faced many tragedies and injustices. But I have to follow the law.¹² This means I can't make a decision because I want to help the Appellant.

⁶ See GD2-30.

⁷ See GD2-46.

⁸ See *R.S. v. Minister of Employment and Social Development*, 2022 SST 385.

⁹ See GD2-30.

¹⁰ See s. 44(d)(ii) of the *Canada Pension Plan Act* (CPP Act).

¹¹ See s. 42(1) of the CPP Act.

¹² *Pincombe v Canada (Attorney General)*, 1995 FCJ No. 1320 (FCA).

[12] The Appellant's representative argued that she was entitled to some type of benefit. This appeal is only about survivor's pension, so that is the only benefit I can make a decision about.

Conclusion

[13] The Appellant doesn't meet the definition of survivor, so she is not eligible for a survivor's pension.

[14] This means the appeal is dismissed.

Anita Nathan

Member, General Division – Income Security Section