

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

**Tribunal File Number: 18-006404/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Goshu Goshu**

**Applicant**

and

**Aviva Insurance Company**

**Respondent**

**AMENDED MOTION DECISION & ORDER**

**Order made by: Maureen Helt, Vice Chair**

**Date of Amended Order: May 7, 2019**

**Appearances:**

For the Applicant: **Zeitoon Vaezzadeh**

For the Respondent: Louise Canary

## OVERVIEW

- [1] The applicant was injured in an automobile accident on **Tuesday, June 20, 2017**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective June 1, 2016 (the "Schedule").
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] A case conference took place on **Thursday, January 10, 2019**, and an order was issued dated **January 10, 2018**.
- [4] During the case conference certain issues were resolved with the only issue remaining in dispute being entitlement to income replacement benefits.
- [5] Also during the case conference, the parties disagreed on certain production issues and the case conference adjudicator directed the parties to have their production issues determined by way of a motion hearing.

## MOTION

- [6] On February 26, 2019, the respondent filed a Notice of Motion requesting that the Tribunal make an Order for the production of the following:
  - i. The applicant's Employment Insurance (EI) file or bank statements for the period June 20, 2017 to date;
  - ii. The complete accident benefits file from Belair Insurance for the motor vehicle accident which occurred May 21, 2018
- [7] The applicant did not consent to the motion. In addition, in its responding submission the applicant submits that the respondent erroneously identified the productions in dispute as agreed upon at the case conference. I do not find that it is necessary for me to consider this discrepancy given my decision on the motion.

## RESULT

- [8] The respondent's motion is granted, in part. The applicant is to provide the complete accident benefits file relating to the May 21, 2018 accident subject to redactions for relevance and privilege. The applicant is not required to produce the EI file from June 20, 2017 to date or the bank statements.
- [9] The applicant shall provide an explanation and summary for each redaction.

## ANALYSIS

[10] The applicant has been involved in two accidents. The first on June 20, 2017 for which the applicant received income replacement benefits (IRBs) from the respondent for the period June 27, 2017 through to November 9, 2018. It is this accident for which the applicant has filed an application to the Tribunal for entitlement to ongoing IRBs.

[11] The second motor vehicle accident occurred on May 21, 2018. The respondent submits that the applicant's involvement in the second accident was not disclosed to the insurer's examination assessors who delivered reports, dated October 24, 2018, regarding the applicant's entitlement to ongoing IRBs.

[12] I will deal with each of the requested productions below.

**a. Complete Accident Benefits file from Belair regarding the May 21, 2018 accident**

[13] In its motion submissions the respondent submits that the applicant's accident benefits file with respect to the second accident is relevant to a determination of the applicant's impairments following the June 20, 2017 accident and the status of those impairments at the time of the second accident. The file will also provide information with respect to any ongoing impairments.

[14] The applicant submits that the respondent has sufficient documentation before it to assess the status of the impairments arising from the applicant's first accident and the difference between the impairments arising from the second May 20, 2018 motor vehicle accident.

[15] The applicant further submits that it has already or will provide the employment and medical files from 1 year pre-accident to date which will enable the respondent to assess the applicant's condition prior to the first accident and subsequent to the second accident to assess causation, mitigation, quantum of benefits and essentially entitlement to benefits.

[16] The applicant submits that "production of the entire May 30, 2018 file is also not relevant as it contains a plethora of documentation that are not only irrelevant but also immaterial, such as correspondence, invoices, statement of benefit summaries, and settlement information."

[17] The applicant submits that these very issues were recently considered by the Tribunal wherein the Tribunal determined that the applicant was not required to produce an unrelated accident benefits file pertaining to a different accident. In reviewing the decision in 17-005617/AABS, I note that the issue in dispute was income replacement benefits, medical benefits and attendant care benefits and the request for production related to a previous accident benefits file. The Tribunal found at para 16 that: "all the benefits that are in dispute relates to the current accident of April 2, 2015. I am satisfied that the accident benefits file from the December 2012 accident is not producible because it is not relevant to the

issues that are in dispute.”

- [18] That is not the case in this instance as any impairments from the second accident may impact the issues in dispute in this application.
- [19] In considering the request the test for productions is relevance. The issue in dispute in this case involves ongoing entitlement to IRB's. The occurrence of a second accident and the applicant's ability/inability to work is relevant.
- [20] Under Rule 9.1 of the Tribunal's Rules<sup>1</sup>, I may, at any stage in the proceeding, order any party to provide such further particulars or disclosure as I consider relevant and necessary for a full and satisfactory understanding of the issues in the proceeding.
- [21] The applicant also argues that the Tribunal must consider proportionality when determining if certain productions should be ordered to be disclosed. I agree that, in addition to relevance proportionality is a factor to consider when making an order for production.
- [22] In my view, the accident benefits file from the May, 2018 accident is relevant and ought to be provided as the applicant's impairments at the time of the second accident is relevant to the issue in dispute as is information with respect to ongoing impairments and whether they are the result of the subject accident or the applicant's involvement in the second accident. I also find that the request for productions is not disproportionate to the issues in dispute. They are relatively easy to produce.
- [23] The applicant submits that disclosure of the May 30, 2018 would violate settlement privilege. According to s.5.4 (2) of the *Statutory Powers Procedure Act*, this does not mean that I have the authority to require a party to disclose privileged information.
- [24] While I find that the May 2018 accident file must be produced I also find that the applicant can redact privileged portions of the accident benefits file and redact for relevance but must clearly provide details of the redactions made.

#### **EI file for the period June 20, 2017 to date**

- [25] The respondent submits that information relating to whether or not the applicant received IRBs as a result of the second accident is relevant as it would involve a determination of the applicant's employment status, weeks, worked and whether or not the applicant was receiving any other benefits at the time. It would also speak to the quantum of income replacement benefits. For this reason the respondent submits that the EI file for the period June 20, 2017 is relevant and

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<sup>1</sup> *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version 1 (October 2, 2017).*

ought to be produced.

- [26] The applicant submits that information with respect to any income received from employment sources and or temporary disability benefits received after the June 27, 2017 accident is available to the respondent if it requests an OCF-13 Declaration of Post – Accident Income.
- [27] In addition the applicant argues that the EI file is not relevant as the respondent is not entitled to deduct post-accident EI benefits to determine quantum.
- [28] The respondent states that there is an indication on the file that the applicant submitted an application for EI and/or EI Sickness Benefits shortly after his involvement in the second accident. The respondent suggests that to qualify for EI it presumes that the applicant was employed and working at some point prior to that date, a time in which he was receiving IRB's which would affect the quantum of IRBs.
- [29] I find that the respondent has failed to establish that the nexus between the information requested in the EI file with the issue in dispute, namely quantum of IRBs. The respondents request is based on “an indication” of something that may have been applied for. I also agree with the applicant that the respondent has other means to obtain this information, and as such I find that the EI file from June 20, 2017 need not be produced.

### **Bank Statements**

- [30] The respondent submits that bank statements from June 20, 2017 are relevant to the quantum of benefits, in order to determine any deduction for post – accident income from employment.
- [31] The applicant argues production of bank statements is highly intrusive and irrelevant as income tax returns and notices of assessment have already been produced.
- [32] I agree with the applicant and find that the respondent has failed to establish why the bank statements are relevant or necessary given the information already produced to the respondent. Further, ordering the production of such personal information would be highly intrusive.
- [33] For the reasons set out above I order the following:
- i. The applicant is to provide the complete accident benefits file relating to the May 21, 2018 accident subject to redactions for relevance and privilege.
  - ii. The applicant shall provide an explanation and summary for each redaction.

[34] **Except for the provisions contained in this order all previous orders made by the Tribunal remain in full force and effect.**

**OTHER PROCEDURAL MATTERS**

[35] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Date of Issue: May 7, 2019**



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**Maureen Helt  
Vice Chair**