



Tribunal File Number: 19-006722/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:

Rolf Bodmer

Applicant

and

Aviva General Insurance

Respondent

MOTION ORDER

Order made by: Ian Maedel, Vice Chair

Date of Order: June 3, 2021

OVERVIEW

- [1] The applicant was injured in an automobile accident on **March 23, 2017** and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (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 **February 26, 2021** before Vice Chair Johal. A written preliminary hearing was scheduled for May 28, 2021 and a substantive videoconference hearing was scheduled for March 21 – 25, 28 – April 1, 2022.
- [4] The preliminary issue in dispute is whether the applicant is precluded from claiming income replacement benefits ("IRB"), due to his election to receive a non-earner benefit ("NEB").
- [5] In a Motion Order dated April 19, 2021, the written preliminary hearing was adjourned to June 7, 2021.

NOTICE OF MOTION

- [6] On May 20, 2021, the applicant filed a Notice of Motion requesting the following orders from the Tribunal:
 - i. An order to examine the handling adjuster, Ms. Nurith Gadkar, as a witness for the upcoming preliminary hearing set for June 7, 2021;
 - ii. An order permitting additional submissions based on evidence elicited from examination of the handling adjuster.

PARTIES' POSITIONS

- [7] The applicant submits there is evidence the handling adjuster misled the applicant regarding his election between an IRB or NEB. The preliminary issue is dispositive of the IRB issue, and the adjuster will provide evidence that goes to the heart of whether entitlement to an IRB can proceed as a substantive issue. The applicant submits he was provided incomplete and inaccurate information with regard to his entitlement to benefits that contravened s. 32 of the *Schedule*. This inaccurate information was never corrected. The applicant will be prejudiced if unable to examine the adjuster, as she will be able to provide evidence regarding decision-making behind the adjustment of his file during this period.
- [8] The respondent submits the adjuster's evidence is not required for a disposition of the preliminary issue in dispute. The applicant has already been provided the adjuster's log notes which are a record of the adjustment of the file. The timing of this motion is prejudicial, as it was not filed until after the respondent's initial written preliminary submissions were already provided. Otherwise, the

respondent's strategy in responding to this issue may have been different. The respondent also submits the scope of this motion is overly broad and may affect the substantive hearing relating to the award claimed.

RESULT

Applicant's Requested Relief

- [9] The applicant's motion is granted. The adjuster, Ms. Nurith Gadkar shall appear before the Tribunal for the purposes of examination-in-chief (if required) and cross-examination, via videoconference.
- [10] I am persuaded the adjuster will likely be able to provide relevant evidence related to the information provided to the applicant regarding his election between IRB and NEB, pursuant to s. 32 of the *Schedule*. While the log notes will provide an overview of the adjustment decisions, only the adjuster can provide details about these decisions, including why they were made. The threshold for permitting a party to call an individual to testify at a hearing is a low bar (i.e., relevance), and I find that the adjuster's evidence meets this standard.
- [11] The written preliminary submissions have already been provided. As such, I am going to strike the submissions already provided. The parties shall resubmit their written preliminary submissions following the *viva voce* evidence provided by the adjuster. This timeline will permit both parties to incorporate any evidence adduced by the adjuster into their submissions and alleviate any additional prejudice to either party.

Other, Necessary Forms of Relief

- [12] In granting the applicant's Notice of Motion, I then find that there are several other forms of relief that are necessary.
- [13] **The written preliminary hearing scheduled for June 7, 2021 shall be adjourned.**
- [14] The parties shall attend a half-day videoconference hearing for the express purpose of examining Ms. Gadkar. The parties shall provide their availability for a videoconference examination to the Tribunal by **June 11, 2021**. These mutually available dates shall fall within the next sixty days. Following the provision of these dates, one half-day shall be selected by the Tribunal, and the videoconference scheduled.
- [15] On consent, the parties shall also provide a new timeline for the provision of written submissions to follow the videoconference examination.
- [16] I am also satisfied that a summons shall issue for the adjuster, Ms. Nurith Gadkar, to appear before the Tribunal to provide *viva voce* evidence relating to the preliminary matter at issue.

[17] As per Rule 8.2 of the Tribunal's Common Rules of Practice and Procedure, the applicant is entitled to a summons once they have provided the Tribunal with a brief description of the anticipated evidence. This is a very low bar, and witnesses are generally added if they can satisfy this low threshold. In this case, I am satisfied Ms. Gadkar may provide evidence related to the adjustment of this file, specific to the information provided relating to the election pursuant to s. 32 of the *Schedule*. This evidence is relevant and satisfies Rule 8.2.

OTHER PROCEDURAL MATTERS

[18] The substantive hearing remains scheduled for **March 21 – 25, March 28 – April 1, 2022.**

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

[20] 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: June 7, 2021



**Ian Maedel
Vice Chair**