



Citation: Nagendram v. Allstate Insurance, 2023 ONLAT 21-009671/AABS - PI

Licence Appeal Tribunal File Number: 21-009671/AABS

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

Between:

Mahendran Nagendram

Applicant

and

Allstate Insurance

Respondent

PRELIMINARY ISSUE DECISION AND ORDER

ADJUDICATOR: Tavlin Kaur

APPEARANCES:

For the Applicant: Ariane Wiseman, Applicant

For the Respondent: April C. Snow, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

- [1] Mahendran Nagendram, the applicant, was involved in an incident on October 23, 2017, and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Certas Home and Auto Insurance, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issue to be decided is whether the applicant is barred from pursuing a claim to the Tribunal in relation to income replacement benefit since the Disability Certificate does not support the applicant’s entitlement for it?
- [3] The question that is before the Tribunal in this decision is a very narrow one. However, I noted that the parties’ submissions discuss issues that are not properly before the Tribunal. If a party wishes to add an issue to be decided, they must follow the appropriate procedure such as, requesting the Tribunal to add an issue by filing a motion in accordance with the Tribunal’s Rules. That has not been done in this case. As such, the Tribunal will not consider any additional issues in this decision beyond this narrow question.

RESULT

- [4] The applicant may proceed with his application.

ANALYSIS

Background

- [5] The applicant was involved in two accidents which occurred on October 23, 2017 (“the first accident”) and May 22, 2018 (“the second accident”). On December 10, 2017, the applicant submitted a disability certificate (“OCF-3”). The OCF-3 stated that he did not suffer a substantial inability to complete the essential tasks of his pre-accident employment, as he had returned to work at the time the OCF-3 was completed. After the second accident, the applicant stopped working and has been unable to return to work to date.
- [6] The applicant attended an insurer examination (“IE”) in relation to the first accident. The IE assessor found that the applicant is substantially disabled from returning back to his pre-accident employment. The respondent denied his claim

on the basis that the OCF-3 does not support that the applicant suffers a substantial inability to perform the essential tasks of his pre-accident employment.

- [7] The applicant submits that he applied for IRBs by submitting a completed OCF-3. It is further his position that the fact that the OCF-3 did not support his entitlement to IRBs at the time the OCF-3 was completed does not bar the Applicant from his entitlement to IRBs. The applicant is relying on *Kabongo v. Aviva Insurance Company*, 2020 CanLII 123284 (ON LAT), *16-000279 v Certas Home and Auto Insurance Company*, 2016 CanLII 73693 (ON LAT), *Katsaros v TD Insurance Meloche Monnex*, 2022 CanLII 45263 (ON LAT), *B.M. v Travelers Insurance Company of Canada*, 2019 CanLII 101813 (ON LAT) and *17-000388 v The Co-Operators*, 2017 CanLII 148390 (ON LAT).
- [8] The respondent submits that sections 5(1)(1) and 36(2) and (3) set out clear requirements for the applicant to make a claim for an IRB – he must meet the relevant disability test within 104 weeks, and he is not entitled to receive any IRB before he provides a completed OCF-3. It is trite law that section 36 creates strict requirements and a complete claim for an IRB must be made within 104 weeks of an accident. The failure of the Applicant to comply with section 36 is not a mere technical breach, especially in the absence of other medical information.
- [9] The respondent submits that the applicant cannot be found to have applied for an IRB, to have notified the respondent of his intention to claim an IRB, or to have provided an OCF-3 supporting entitlement to an IRB. Therefore, he is statutorily barred from proceeding with his IRB claim. The respondent is relying on *JV v TD Insurance Meloche Monnex*, 2019 CanLII 110091 (ON LAT), *Valentine vs. AIG Insurance*, 2022 CanLII 75153 (ON LAT), *SB v Allstate Insurance*, 2019 CanLII 119725 (ON LAT), *SM v. Aviva Insurance Company of Canada*, 2020 CanLII 14426 (ON LAT) and *Munu Munu. v. Aviva Insurance Company*, 2021 CanLII 50788 (ON LAT).

Legislation

- [10] Section 32(5) of the *Schedule* requires an applicant to submit a completed and signed application for benefits to the insurer within 30 days after receiving the application forms. Section 36(2) specifies that an applicant for a specified benefit, e.g., an IRB or NEB, shall submit a completed disability certificate with his or her application under section 32. Therefore, the correct limitation period to submit the OCF-3 along with the OCF-1 remained 30 days after receiving the application forms from the respondent, as provided by section 32.

- [11] In order for an OCF-3 to be considered complete, it must be filled out and signed by a health practitioner of the applicant's choice. Once the insurer receives that completed OCF-3, it has 10 business days to either pay the benefit, ask for a section 44 assessment, or a request for more information under section 33.
- [12] Section 36(3) states “an applicant who fails to submit a completed disability certificate is not entitled to a specified benefit for any period before the completed disability certificate is submitted”.
- [13] Section 55(1) provides that the applicant shall not apply to the Tribunal if he “has not notified the insurer of the circumstances giving rise to a claim for a benefit or has not submitted an application for the benefit within the times prescribed by [the *Schedule*].”
- [14] I am not persuaded by the respondent’s position that the applicant did not submit a completed OCF-3. My interpretation of sections 36(2) and (3) is that an applicant must submit a completed OCF-3 along with his/her application. These sections do not make any reference to whether or not the applicant must meet the substantial inability test or the complete inability test. Moreover, I note that the respondent did not direct the Tribunal to any other deficiencies in the OCF-3.
- [15] Adopting the interpretation of the legislation proffered by the respondent would be inconsistent with the consumer protection spirit of the *Schedule*. By way of this logic, any OCF-3 that does not support entitlement to a specified benefit would be considered to be incomplete and could preclude applicants from applying to the Tribunal for dispute resolution. I do not believe this to be the intent of the legislature or else, it would have been clearly expressed in the legislation. Section 36 requests an applicant to submit a fully completed OCF-3, not an OCF-3 that fully supports eligibility for a specified benefit.
- [16] Moreover, I am not persuaded by the case law that the respondent is relying on. In my view, those cases are reading in an additional requirement into section 36(2) that has not been included by the legislature. Furthermore, these decisions are not binding on me. I am more persuaded by the case law provided by the applicant and have applied it to the facts before me.
- [17] I have reviewed the OCF-3 dated December 10, 2017 and find that the applicant sent the respondent a completed OCF-3. The OCF-3 has all the information available for the respondent to make a decision regarding the applicant’s entitlement. The OCF-3 was filled out, dated, and signed by a regulated healthcare professional. The document addressed the applicant’s disability and entitlement to the IRB.

- [18] The fact that his health practitioner noted that he did not meet the applicable test for the disability did not render the OCF-3 incomplete. Moreover, the highlighted duration section of the OCF-3 in the respondent's evidence brief could not have been checked off because the doctor did not respond "yes" to any of the disability tests that were set out in the OCF-3.
- [19] Furthermore, the respondent did not deny the application on the basis that it was incomplete. It was denied because the applicant did not meet the test for the benefit. In my view, the issues that the respondent has pointed out in the OCF-3 do not support its position. In my view, the applicant has met the requirements for an application for the IRB. Therefore, he may proceed with this issue to the hearing.
- [20] Based on the evidence before, I find that the OCF-3 complied with the requirements under sections 36(2) of the *Schedule*.

ORDER

- [21] The applicant may proceed with his application. The Tribunal will contact the parties to set a date and time for a new case conference.

Released: July 25, 2023

**Tavlin Kaur
Adjudicator**