



Citation: Bridgmohan v. Economical Mutual Insurance Company, 2023 ONLAT 22-013915/AABS-PI

Licence Appeal Tribunal File Number: 22-013915/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:

Glenn Bridgmohan

Applicant

and

Economical Mutual Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: Tavlin Kaur

APPEARANCES:

For the Applicant: Michelle Velvet, Counsel

For the Respondent: Angelo Sciacca, Counsel

HEARD: By way of written submissions:

OVERVIEW

- [1] On December 6, 2014, the applicant's children were involved in an accident. The applicant 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, Economical Mutual Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issues to be decided are as follows¹:
- i. Is the applicant precluded from proceeding with his claim for accident benefits due to his failure to notify the insurer about his intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable?
 - ii. Is the applicant barred from proceeding with their claim for benefits as he failed to submit the application for benefits (OCF-1) within the time prescribed in the *Schedule*?

RESULT

- [3] The applicant is barred from proceeding with his application.

ANALYSIS

Background

- [4] The applicant's children were involved in an accident on December 6, 2014. In 2021, the applicant submitted two treatment plans due to an alleged psychological injury as a result of the accident. The treatment plans were denied on the basis that the applicant never submitted an Application for Accident Benefits (“OCF-1”) and never provided a reasonable excuse for the late submission.
- [5] The respondent submits that the applicant never submitted an OCF-1 to the respondent for benefits or notified the respondent of his intention to claim accident benefits. Nor has he provided a reasonable explanation for his failure to

¹ The Tribunal received confirmation from the parties that, to resolve the stated issue in dispute involving s. 32(5), it first needed to consider s. 32(1) and proceeded accordingly.

comply with the timelines prescribed by the *Schedule*. The respondent submits that the applicant should be barred from proceeding with his application.

- [6] The applicant submits that the submission of the treatment plan for a psychological assessment and psychological treatment dated March 25, 2021, constitutes as notifying the insurer of his intention to apply for one or more benefits described in the Regulation. Furthermore, the psychological assessment report from the January 22, 2021 contains the necessary information to notify the insurer of the “intention” of the applicant to apply for medical benefits.
- [7] The applicant submits that the respondent failed to send the OCF-1 to the applicant as required by section 32(2) of the *Schedule*. As such, the 30-day deadline to send the respondent the completed and signed application for benefits never started to run because there is no evidence that the respondent provided the applicant with the OCF-1 and application package.

LAW

- [8] Pursuant to [section 32\(1\)](#) of the *Schedule*, a person who intends to apply for statutory accident benefits shall notify the insurer of their intention no later than the seventh day after the circumstances that give rise to the entitlement to the benefit, or as soon as practicable after.
- [9] Once an insurer receives notice of an applicant’s intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 forms, a written explanation of the benefits available, information to assist the person in applying for benefits and information on the election relating to the specified benefits (s. 32(2)). Pursuant to section 32(5) of the *Schedule*, the applicant must then submit a completed and signed application for benefits to the respondent within 30 days after receiving the forms.
- [10] It should be noted that section 34 of the *Schedule* states that “a person’s failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation.” The interpretation of “reasonable explanation” is guided by *Horvath and Allstate Insurance Company of Canada*, FSCO A02-000482, June 9, 2003, and was more recently reiterated in *K.H. vs Northbridge General Insurance Company*, [2019 CanLII 101613](#) (ON LAT). The guiding principles are summarized as follows:
1. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed.

2. The onus is on the insured person to establish a “reasonable explanation.”
3. Ignorance of the law alone is not a “reasonable explanation”.
4. The test for “reasonable explanation” is both a subjective and objective test that should take account of both personal characteristics and a “reasonable person” standard.
5. The lack of prejudice to the insurer does not make an explanation automatically reasonable.
6. An assessment of reasonableness includes a balancing of prejudice to the insurer, hardship to the claimant and whether it is equitable to relieve against the consequences of the failure to comply with the time limit.

Section 32(1)

- [11] The accident occurred on December 6, 2014. Based on the adjuster’s log notes, the respondent received the OCF-18 on February 22, 2021. Even if I were to accept the applicant’s position that the submission of the OCF-18 along with the assessment report constitutes as “notifying” the respondent of his intention to apply for medical benefits, there is a significant delay of many years in notifying the respondent. Moreover, the applicant did not explain what the circumstances were that gave rise to the entitlement to the benefit.
- [12] As such, I must determine whether the applicant had a reasonable explanation for the delay. Upon reviewing the submissions and evidence, I find that there is no reasonable explanation for the delay in notifying the respondent regarding the circumstances giving rise to the claim. In fact, the submissions are silent on this point.
- [13] As I have determined that the applicant failed to provide a reasonable explanation for the delay in notifying the respondent regarding the circumstances that gave rise to the entitlement to the benefit, I find that it is unnecessary to consider whether the applicant is barred from proceeding with his claim for benefits for failing to submit the OCF-1 within the time prescribed in the *Schedule*. Pursuant to section 55(1)1 of the *Schedule*, the applicant shall not apply to the Tribunal as a result of his failure to adhere to the timelines provided by the [Schedule](#).

COSTS

- [14] The applicant has requested costs. I find that the applicant has not met the test set out in Rule 19 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, October 2, 2017, as amended*. In the absence of reasons and particulars, I am unable to award costs to him. In any event, I find the actions of the respondent are not sufficient to award costs. Rule 19.1 stipulates that behaviour that may attract costs must be unreasonable, frivolous, vexatious or in bad faith. The test to find behaviour that is in bad faith, unreasonable, frivolous, or vexatious is very high. There is no evidence that the respondent's behaviour has met this threshold.

CONCLUSION AND ORDER

- [15] The applicant failed to notify the respondent of his intention to apply for benefits no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day. He has not provided a reasonable explanation for the delay.
- [16] The application is dismissed.

Released: October 20, 2023



Tavlin Kaur
Adjudicator