



Citation: Rahnema v. Unifund Assurance Company, 2021 ONLAT 20-001160/AABS

**Released Date: 06/24/2021
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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:

Atoosa Rahnema

Applicant

and

Unifund Assurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Shahram Bahmadi, Counsel

For the Respondent: Geoffrey Keating, Counsel

Heard by way of written submissions

OVERVIEW

- [1] The Applicant was injured in an automobile accident on September 15, 2019 and sought benefits from the respondent pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*, O. Reg. 34/10 (the “Schedule”).
- [2] The Respondent determined the Applicant was not entitled to income replacement benefits (“IRBs”). As a result, the Applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of this dispute.

ISSUES

- [3] The disputed claims referred to me in this hearing are:
1. Is the Applicant entitled to IRBs in the amount of \$400.00 per week for the period from February 4, 2020 to-date and ongoing?
 2. Is the Applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] The Applicant is not entitled to IRBs as claimed. No interest is payable.

BACKGROUND

- [5] The Applicant was the driver of a vehicle which was struck on the driver’s side by another vehicle that was exiting a driveway. She was taken by ambulance from the scene of the accident to the hospital, due to left arm and hip pain. X-rays were performed at the hospital, which showed no fractures. The Applicant was diagnosed with soft-tissue injuries and discharged from the hospital.
- [6] The Applicant seeks payment for the cost of an accountant’s report and IRBs as a result of the accident, apparently for the period from January 14, 2020 to-date and ongoing.
- [7] The Respondent submits that the request for payment for an accountant’s report is not an issue for this hearing and, thus, the Tribunal should not rule on it. It further submits the Applicant failed to provide any evidence to justify an order for entitlement to IRBs and that the IRB period in dispute, per the Tribunal Case Conference Report and Order dated July 20, 2020 (“the Order”), is February 4, 2020, to-date and ongoing, rather than January 14, 2020, to-date and ongoing.

ANALYSIS

- [8] For the following reasons, I find that the Applicant's request for payment of an accountant's report is not properly before me. Further, I find that Applicant has failed to meet her onus to prove that she is entitled to any IRBs.

ACCOUNTANT'S REPORT

- [9] I find that the issue of entitlement to payment of an accountant's report is not a disputed issue and not properly before the Tribunal. Thus, I have no jurisdiction to rule on it.
- [10] The issue is not identified in the Order. The only issue in dispute according to the Order is entitlement to IRBs for the period from February 4, 2020 to-date and ongoing. Further, there is no evidence to show that the Applicant sought leave from the Tribunal to add the issue. Similarly, there is no evidence to show that the Applicant sought consent from the Respondent to add the issue. Lastly, I have no substantive submissions from the Applicant and the Respondent on the issue and will not to seek any, as the issue in dispute is not properly before me.

INCOME REPLACEMENT BENEFITS ("IRBs")

- [11] The Applicant may be entitled to IRBs if she is able to prove that her accident-related impairments cause her to suffer a substantial inability to perform the essential tasks of her employment.
- [12] I find that the Applicant has failed to meet her onus to prove that she is entitled to IRBs.
- [13] The Applicant claims that she has been suffering from chronic pain which has adversely affected her ability to work as an office assistant. However, her claim is not supported by her disability certificates. Further, the Applicant, in her submissions, identifies no impairments, and led no evidence to show that she lost income as a result of the accident.

The Start Date of the Applicant's Claim

- [14] As noted above, the Applicant's submissions are unclear as to the start of her claim for IRBs. I agree with the Respondent that the Order identifies the start date of February 4, 2020. The Applicant participated in the case conference and received a copy of the Order but took no action to correct the record. Similarly, the Applicant made reply submissions for this hearing but chose not to address

this discrepancy. Thus, I find the disputed period of disability starts on February 4, 2020, as outlined in the Order.

Disability Certificates

- [15] The disability certificates are unresponsive of the Applicant's claim for IRBs, despite the discrepancy over the duration of her claim.
- [16] The disability certificate completed by M. Lotfi, dated September 21, 2019, is for a disability period ending in mid-December 2019, which is prior to the date she claims entitlement. The document identifies cervical and lumbar strains, lower back pain and shoulder pain, and tension-type headaches. It confirms that the Applicant is substantially unable to perform the essential tasks of her employment, is unable to return on modified duties and anticipates a 9 to 12-week recovery period. The disability certificate dated October 29, 2019 is mostly identical as the first but states that the Applicant can work, albeit on modified duties and hours. However, the Applicant made no submissions and led no evidence to show that she lost income as a result of working modified duties or hours.

Dr. Hormozdi's Clinical Notes and Records

- [17] The letters from Dr. Hormozdi are unconvincing. The letter dated December 20, 2019, notes that the applicant is unable to work for a month starting January 6, 2020. This letter makes no reference to the subject accident or accident-related impairments and the Applicant provided no clinical notes and records ("CNRs") to cross-reference the reasons for the letter.
- [18] The letter dated July 28, 2020 states that the Applicant "was not able to perform the essential tasks of her employment from (September 15, 2019) until (January 6, 2020)." This letter somewhat contradicts the December letter, and, like the December letter, this letter makes no reference to the subject accident or accident-related impairments. Further, no CNRs are provided to cross-reference the reasons for the letter and the period of disability ends prior to the start of the Applicant's claim for IRBs.
- [19] The assessment report from Dr. Y. Chen, neurologist, dated July 8, 2020, makes no reference to the subject accident and fails to show that the Applicant suffers a substantial inability to perform the essential tasks of her employment. The assessment was conducted as a result of a history of left-hand numbness or tingling which was aggravated 1 to 2 months prior. This fails to show that the Applicant is disabled from performing her work tasks. The assessment notes that

her symptoms are aggravated by certain sleep postures and her strength is normal. There is no mention of the Applicant's work or the subject accident.

- [20] The CNRs from Mount Sinai are also unresponsive of the Applicant's claim. The records include an assessment report by Dr. M. Wodzinski, dated January 15, 2020. The assessment report is mostly unrelated to the subject accident but notes that the Applicant "has been able to function fairly well at work despite her symptoms." There is no record of a recommendation to refrain from work and no record that the Applicant missed work during the period which she claims IRBs.

The Insurer's Examinations

- [21] The Respondent's Insurer's Examinations ("IEs") find that the Applicant fails to qualify for IRBs.
- [22] Dr. A. Gwardjan, physician, assessed the Applicant and issued a report dated January 24, 2020. Dr. Gwardjan noted the Applicant's neck and low back pain complaints but documented that she had returned to work by the time of the assessment. Dr. Gwardjan recommended no functional limitations or physical restrictions and found no signs of ongoing impairments which would result in the Applicant having a substantial inability to perform the essential tasks of her employment.
- [23] T. Hartog, kinesiologist, also assessed the Applicant for an IE and issued a report dated January 24, 2020. Kinesiologist Hartog noted that the Applicant returned to work about a month following the accident and had resumed full-time, unmodified duties by the time of the January 6, 2020 assessment. The job demands analysis found that the Applicant's employment was in the limited strength category and included mostly sitting, forward reaching, and keyboarding. Kinesiologist Hartog also conducted a functional abilities evaluation and found that the Applicant gave an inconsistent effort, which invalidated test results.
- [24] The IE reports remain persuasive despite the fact they did not include a review of Dr. Hormozdi's CNRs. The Applicant takes the position that the Respondent failed to uphold its duty to continuously adjust the Applicant's claim as new information was received. She submits that its failure to send Dr. Hormozdi's CNRs to the IE assessors for an addendum opinion is a breach of the Respondent's duty. I disagree. While the Respondent has an ongoing obligation to adjust the Applicant's claim, the new information confirmed that the Applicant was working full-time at full duties. There is no evidence to show that she stopped working again following the assessment, thus, there was no need to get

another opinion on the records. Further, as noted above, Dr. Hormozdi's CNRs are unresponsive of the Applicant's claim for IRBs from February 4, 2020.

INTEREST

[25] Interest is payable on any overdue payment of benefits pursuant to section 51 of the *Schedule*. The applicant is not entitled to any interest as no payments went overdue.

CONCLUSION

[26] The Applicant returned to work on a full-time basis with unmodified duties prior to the start of her claim for IRBs. She has provided no compelling evidence to show that she suffers a substantial inability to perform her pre-accident work tasks and thus, she is not entitled to any IRBs or interest.

[27] The Application is dismissed.

Released: June 24, 2021

**Brian Norris
Adjudicator**