



Citation: Sivarajah v. Unifund Assurance Company, 2022 ONLAT 20-009190/AABS

Licence Appeal Tribunal File Number: 20-009190/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:

Balagowry Sivarajah

Applicant

and

Unifund Assurance Company

Respondent

DECISION

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Thamara Jeyakumar, Paralegal

For the Respondent: Geoffrey Keating, Counsel

HEARD: By way of written submissions

BACKGROUND

- [1] The applicant, B.S., was involved in an automobile accident on May 26, 2020. B.S. sought various benefits from the respondent, Unifund, pursuant to the Statutory Accident Benefits Schedule - *Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] B.S. claimed entitlement to additional interest on the income replacement benefit (“IRB”). Unifund denied the claim on the basis that IRBs and interest were paid for the period of entitlement, and no further benefits or interest were owing. B.S. disagreed and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES IN DISPUTE

- [3] The issues to be decided are as follows:
- a. Is B.S. entitled to interest in the amount of \$50.80 with respect to IRBs?
 - b. Is B.S. entitled to a special award?
 - c. Is Unifund entitled to costs?

FINDING

- [4] B.S. is not entitled to interest in the amount of \$50.80.
- [5] B.S. is not entitled to a special award.
- [6] Unifund is not entitled to costs.

ANALYSIS

Interest Payable

- [7] Section 51(1) of the *Schedule* provides that payment of a benefit is overdue if the insurer fails to pay within the time required by the *Schedule*. Under s. 51(2) if payment is overdue, the insurer shall pay interest on the overdue amount in accordance with this section for each day the amount is overdue. Section 51(3) provides that interest is payable at the rate of 1 per cent per month, compounded monthly, from the date on which the amount becomes overdue until the earlier of the following dates:
- a. The date on which the overdue amount is paid.

- b. The date, if any, on which interest becomes payable in accordance with subsection (4).
- [8] The onus rests on B.S. to establish entitlement to interest.
- [9] The parties agree that the OCF-3 was submitted on June 26, 2020. B.S. submits that Unifund missed the 10-business day requirement under the *Schedule*, when it responded to the OCF-3 on July 13, 2020, the 11th business day. On July 13, 2020, Unifund requested that B.S. submit an election form (“OCF-10”), given that the OCF-3 found that she was entitled to both IRBs and non-earner benefits.
- [10] Unifund received the completed OCF-10 on July 29, 2020. B.S. elected IRBs and having calculated the period of entitlement for IRBs to be June 2 to July 13, 2020, Unifund issued payment on August 11, 2020.
- [11] Additionally, interest was calculated by Unifund and based on the \$2,400.00 payable for the period, one percent interest totalled \$24.00. Compounded at a rate of one percent for five months, the total interest payable (and issued to B.S.) was \$25.22.
- [12] Although she raises the issue of the amount of interest payable being \$50.80, B.S. provides no analysis as to how this calculation of interest was made.
- [13] With no basis for her claim for the increased amount of interest, I find no grounds to interfere with Unifund’s interest calculation. I find that the amount of interest has been properly calculated at \$25.22.

SPECIAL AWARD

- [14] Section 10 of Regulation 664 permits the Tribunal to award a lump sum of up to 50% of the amount to which the insured person (i.e., B.S.) was entitled at the time of the award together with interest on all amounts then owing (including unpaid interest) if it finds that that an insurer (i.e., Unifund) has “unreasonably” withheld or delayed payments.
- [15] B.S. appears to imply that Unifund’s failure to respond to the OCF-3 in the required 10 business days justifies an award. She provides a timeline of submission of documents and dates of responses from Unifund. However, I do not find that she has established that any action on Unifund’s behalf led to an unreasonable withholding or delay of payments.
- [16] I find that B.S. has failed to establish grounds for an award for several reasons. First, missing the 10-business day deadline by one day, is not an unreasonable

delay. B.S. has not directed me to any prejudice or undue hardship that she may have suffered as a result of the OCF-10 being responded to on the 11th business day. Second, in responding to the OCF-10, Unifund paid her the full amount of IRBs that was she entitled to, including interest payable, again, without unreasonably delaying or withholding payment. Lastly, having found that she failed to meet her onus to establish that she is entitled to the higher interest amount, makes her claim for an award moot.

[17] Consequently, I find that an award is not appropriate.

COSTS

[18] Under Rule 19.1, a party may request costs if it believes another party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith. A cost award under Rule 19 is a discretionary remedy that is made in exceptional circumstances. A cost award is meant to deter and penalize behaviour that goes against the spirit of the resolution process. To receive an award under Rule 19, there must be sufficient evidence that the other party has conducted themselves in the proceeding in a way that is unreasonable, frivolous, vexatious or in bad faith.

[19] On the evidence, I find that Unifund is not entitled to costs.

[20] Unifund submits that B.S. failed to comply with the Tribunals orders as follows:

- a. Did not submit a case conference summary to the Tribunal pursuant to Rule 20.4; and
- b. Failed to produce any of the productions and follow-up enquires have not been responded to.

[21] Unifund further submits that B.S.' submissions failed to properly address the issues in dispute. On the whole, its position is that the examples of B.S.'s conduct during the proceeding amounts to unreasonable, frivolous and vexatious behaviour.

[22] While I agree that B.S.'s failure to produce documents may be a source of frustration for Unifund, I do not find that this behaviour amounts to the level of conduct that justifies a cost award. Those failures only hurt B.S. because, in the end, it is B.S.'s onus in the proceeding, and the onus was not fulfilled because of a lack of documentary proof.

- [23] Despite not having a case conference summary and some of the productions, Unifund was able to calculate the amount of IRB and interest B.S. was entitled to. It was further able to rely on its own evidence in support of its position that B.S. is not entitled to further interest. It did not point me to any evidence that it was prevented from properly responding to the case before it due to any lack of productions.
- [24] The onus is on B.S. to establish her case. Her failure to do so is her own failing and is not a ground for a cost award. As a result, Unifund successfully defended its position, but a successful defence is not the basis for a costs award without more.

CONCLUSION

- [25] B.S. failed to meet her onus to establish that she is entitled to interest on the IRB in the amount of \$50.80.
- [26] B.S. is not entitled to an award.
- [27] Unifund is not entitled to costs.

Released: August 17, 2022

**Derek Grant
Adjudicator**