



**Citation: Ahmad v. Aviva General Insurance Company, 2023 ONLAT
21-002041/AABS**

Licence Appeal Tribunal File Number: 21-002041/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:

Awais Ahmad

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: Sandra Driesel

APPEARANCES:

For the Applicant: No one appeared for the applicant

For the Respondent: Marc Beddard, Adjuster
Jennifer Cosentino, Counsel

Court Reporter: Devon Makse

HEARD: by Videoconference: March 13, 2023

OVERVIEW

- [1] Awais Ahmad, the applicant, was involved in an automobile accident on January 31, 2020, 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, Aviva, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The issues in dispute are:
- i. Are the applicant’s injuries predominantly minor as defined by the *Schedule* and subject to a maximum treatment limit of \$3,500.00 under the Minor Injury Guideline (“MIG”)?
 - ii. Is the applicant entitled to \$1,998.00 for the cost of an attendant care assessment, recommended by Excel Medical Diagnostics Inc., denied on August 13, 2020?
 - iii. Is the applicant entitled to \$168.00 per week for an income replacement benefit (“IRB”) for the period from September 4, 2020, to date and ongoing, denied on August 26, 2020?
 - iv. Is the applicant entitled to \$2,635.15 for the cost of a neurological assessment, recommended by Excel Medical Diagnostics Inc., denied on October 28, 2020?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?
 - vi. Is the respondent entitled to costs?

RESULT

- [3] The applicant has failed to meet his onus in proving that he is entitled to the benefits as claimed. As there are no benefits owing, there is no entitlement to interest. The applicant shall pay the respondent the sum of \$500.00 for costs.

ANALYSIS

The applicant's claim must fail

- [4] On March 13, 2023, the first day of the hearing, neither the applicant nor anyone representing him appeared. The hearing was scheduled to begin at 9:30 am.
- [5] By way of background, the applicant was represented by counsel when the Tribunal application was first filed on February 19, 2021. The applicant was also present, with counsel, at the telephone case conference of May 4, 2022, when the matter was set down for a hearing.
- [6] On January 26, 2023, the applicant's counsel of record advised the Tribunal and the respondent that he no longer represents the applicant and on the following day, his office provided a current email and phone number for the applicant. There was no indication that the applicant's home mailing address had changed since the application was filed.
- [7] The respondent advised the Tribunal on the day of the hearing that it had made several attempts to communicate with the applicant, but he failed to reply. The communications included: the respondent's brief sent to the applicant on February 3, 2023; the respondent's witness list sent on February 8, 2023; and a request for the applicant to advise on his intention regarding the hearing, sent on February 17, 2023 (which included a blank "Notice of Withdrawal" for the applicant to complete, if applicable).
- [8] The Tribunal also re-sent the Notice of Hearing, dated November 21, 2022, and the videoconference link details to the applicant, on March 9, 2023, to the email and last known home postal address on file. Also, on February 27, 2023, the Tribunal followed up asking the applicant for a confirmation of his intentions regarding the hearing. The applicant failed to reply to any communications.
- [9] Given the above, I find that the Tribunal provided reasonable notice of the hearing in accordance with section 6 of the *Statutory Powers Procedure Act* ("SPPA"). The applicant failed to attend after the Tribunal and the respondent sent correspondence to determine both his status regarding potential representation at the hearing and the status of his submissions for the hearing.
- [10] By 10:15 am, I ordered that the hearing commence without the applicant. The hearing proceeded in the absence of the applicant in accordance with section 7 of the *SPPA*, which addresses the effect of non-attendance at a hearing by a party after due notice.

- [11] No submissions and evidence were filed with the Tribunal on behalf of the applicant. The applicant did not file any document briefs for the hearing as ordered by the Tribunal. The respondent provided a hearing brief as ordered by the Tribunal but did not present any evidence on the substantive issues.
- [12] Given his failure to provide submissions and to tender any evidence, I am unable to determine whether the applicant's injuries fall outside of the MIG limits, or whether his claims for an IRB and medical assessments are reasonable or necessary. The onus is on the applicant to prove entitlement to accident benefits. In this case the applicant's claim (the entirety of the Tribunal application) must fail for lack of evidence.

Costs requested by the respondent

- [13] Rule 19.2 of the Tribunal's *Common Rules of Practice & Procedure* allows a request for costs to be made in writing or orally at a case conference or hearing at any time before the decision or order is released. Rule 19.1 states that where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith, that party may make a request to the Tribunal for costs. Rule 19.6 restricts the amount of costs to a maximum of \$1,000.00 for each full day of attendance.
- [14] Rule 19.5 requires the Tribunal, in deciding whether costs should be awarded and the amount of costs to be awarded, to consider all relevant factors including: the seriousness of the misconduct; whether the conduct was a breach of a direction or order issued by the Tribunal; whether or not a party's behaviour interfered with the Tribunal's ability to carry out a fair and efficient and effective process; prejudice to other parties and the potential impact an order for costs would have on the individuals accessing the Tribunal system.
- [15] The respondent is seeking \$2,000.00 in costs: \$1,000.00 for May 4, 2022, when it attended the case conference for this hearing; and \$1,000.00 for attending today at the hearing.
- [16] The respondent's position is that it was prepared to proceed with a three-day hearing. The respondent further submits that it incurred significant costs, including court reporter fees and invested counsel time in preparing for and attending the hearing. The respondent claims that the applicant failed to appear or to provide reasons to the Tribunal as to why he did not appear.
- [17] While the applicant is self-represented, correspondence was submitted to his last known email and postal address on file. He did not reply to inquiries from the

Tribunal or the respondent regarding the hearing or his intention to proceed with the application. Having knowledge through the case conference that the matter would be scheduled for a hearing, I find the applicant acted unreasonably in the process by not communicating his intention to abandon the application.

[18] In assessing the amount of costs the applicant should pay to the respondent, I find that awarding costs for attendance at the May 4, 2022 case conference is not appropriate in the circumstances. Both the applicant and respondent participated in what is a requirement of the Tribunal process by attending the case conference. There was no indication that, at the time of the conference, the applicant had any other intention but to proceed to a hearing as ordered. Therefore, the respondent will not be awarded costs for attending the case conference.

[19] Next, the applicant eventually failed to comply with the order of the Tribunal stemming from the case conference and failed to attend today's hearing. I find that both the Tribunal and the respondent made best efforts to contact the applicant and give him an opportunity to advise of his intention regarding the application, in advance of the hearing. I find his failure to communicate to be unreasonable and in bad faith, causing prejudice to the respondent. That said, the hearing was completed in less than half a day. It was clear that the respondent anticipated a full hearing would not occur, as it cancelled its witnesses scheduled for the afternoon of the first day. I therefore award costs of \$500.00 against the applicant, being the costs for the respondent to prepare for and attend at the less than half-day hearing.

ORDER

[20] The applicant's claims for removal from the MIG, IRB and assessments in dispute are dismissed.

[21] As there are no benefits payable there is no interest owing.

[22] I order that the applicant pay to the respondent the sum of \$500.00 for costs.

Released: April 11, 2023



Sandra Driesel
Adjudicator