



Licence Appeal Tribunal File Number: 23-000503/AABS

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

Between:

Anfal Sabbar

Applicant

and

Travelers Insurance

Respondent

MOTION ORDER

VICE CHAIR:

Terry Hunter

APPEARANCES:

For the Applicant:

Nidhi Vinayak, Counsel

For the Respondent:

Sara Baum, Counsel

**Motion heard by
Teleconference:**

March 3, 2023

BACKGROUND

- [1] The applicant was involved in an automobile accident on **March 1, 2019**. The applicant advised the insurer immediately following the accident there were no injuries because of the accident.
- [2] On March 1, 2021, the applicant sought benefits pursuant to the Statutory Accident Benefits Schedule *Effective September 1, 2010 (including amendments effective June 1, 2016)*.
- [3] On March 7, 2021, the applicant submitted an OCF-1 dated March 4, 2021. On March 15, 2021, the applicant submitted an OCF-3 dated March 8, 2021. The insurer approved an OCF-23 dated March 15, 2021, in the amount of \$2,200.00. The insurer denied various OCF-18s for treatment and assessments based on the belief the applicant's injuries fell within the MIG and/or because she failed to apply for accident benefits for two years post-accident.
- [4] The applicant filed an initial LAT Application 21-004070/AABS on April 5, 2021. The matter proceeded to a case conference on January 28, 2022. The parties agreed the preliminary issue raised by the respondent would be heard by way of a motion, with the insurer's submissions due March 1, 2022. The insurer served and filed their motion materials on February 28, 2022. The applicant withdrew her LAT Application on March 2, 2022, and the Tribunal file was closed.
- [5] On January 16, 2023, the applicant filed this LAT Application.

MOTION

- [6] On February 15, 2023, the respondent filed a Notice of Motion requesting that the Tribunal:

Grant an order that the applicant be barred from proceeding with her application pursuant to section 55 of the SABS and her application dismissed pursuant to section 55(1) of the SABS for failing to apply for accident benefits within the time limits imposed by section 32 of the SABS and not providing a "reasonable explanation" for the delay.

RESULT

- [7] The respondent's motion is granted.

ANALYSIS

- [8] The applicant did not notify the insurer of her intention to apply for accident benefits until March 1, 2021 and did not submit an OCF-1 until March 7, 2021.
- [9] Section 32(1) of the SABS states that:

A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her 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 after that day.

[10] Section 34 of the SABS provides the following exception:

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.

[11] At her Examination Under Oath (EUO) the applicant testified that she did not apply for accident benefits until 2 years post-accident because she "didn't know the rules in Canada".

[12] The following principles have been adopted by the LAT in interpreting what constitutes a "reasonable explanation" for the purposes of section 34 of the SABS, see *JV v Unifund Assurance Company*, 2019 CanLII 30359 (ON LAT):

1. An explanation must be determined to be credible of worthy of belief before its reasonableness can be assessed.
2. The onus is on the injured person to establish a "reasonable explanation".
3. Ignorance of the law alone is not a "reasonable explanation".
4. The test for a "reasonable explanation" is both a subjective and objective test that should take into 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 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.

[13] The applicant's submission for the motion was the insurer did not provide an OCF-1 which should relieve against the dismissal of her application. The applicant again submitted she had no knowledge of the procedure in Canada. The caselaw is clear lack of knowledge of the law alone is not a reasonable explanation.

[14] Was the insurer required to provide an OCF-1 to the applicant? Section 32(1) provides if the applicant intends to apply for one or more benefits, they shall notify the insurer of that intention no later than the 7th day after the circumstances arose that give rise to the entitlement to the benefit. The applicant and her son in telephone discussions on March 1, 4, 11, 12, 21 and 26, 2019 with the respondent at no time advised the insured had sustained any injuries because of

the accident. The insurer's requirement to help under 32(2) of the SABS is only triggered when they are advised there is an intention to apply for one or more benefits. The applicant maintained she had no injuries and called only about property damage and a rental vehicle. I find the insurer was not required to provide an OCF-1 to the applicant.

- [15] Finally, I have reviewed the possible prejudice to each of the parties. I find the prejudice to the insurer exceeds any prejudice to the applicant. The applicant initially reported no injuries and there is no evidence that she suffered anything more than soft tissue injuries which resolved quickly. The applicant testified in the EUO she was independent with personal care and continued with most pre-accident activities. The insurer, because of the delay in applying for accident benefits, could not investigate, administer, and assess the applicant's claim. There is no contemporaneous evidence about the applicant's accident-related injuries or the effects the accident had on the applicant.

CONCLUSION

- [16] The applicant is barred from proceeding with her application pursuant to section 55 of the SABS, and her application is dismissed.

Released: March 8, 2023



Terry Hunter, Vice Chair