



Appeal P99-00046

OFFICE OF THE DIRECTOR OF ARBITRATIONS

SYED OBAIDULLA HUSSAINI

Appellant

and

HALIFAX INSURANCE COMPANY

Respondent

BEFORE: David R. Draper, Director's Delegate

REPRESENTATIVES: Suraj Batra (for Mr. Hussaini)
Eric K. Grossman (for Halifax Insurance)

APPEAL ORDER

Under section 283 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, **it is ordered that:**

1. The appeal is dismissed and the arbitration order dated August 13, 1999 is confirmed.
2. No appeal expenses are payable.

David R. Draper
Director's Delegate

December 17, 1999

REASONS FOR DECISION

I. NATURE OF THE APPEAL

This is an appeal by Syed Obaidulla Hussaini from an arbitration order dated August 13, 1999.

Mr. Hussaini submits that the arbitrator erred in:

- dismissing his claims for additional income replacement benefits and the cost of prescription drugs and travel expenses;
- ordering him to repay \$37,879, plus interest;
- ordering him to pay Halifax’s arbitration expenses; and,
- ordering him to pay an assessment of \$3,000 under s.282(11.2) of the *Insurance Act* on the basis that his arbitration was frivolous, vexatious or an abuse of process.

II. BACKGROUND

On January 5, 1995, Mr. Hussaini was involved in an accident while a passenger in a car driven by his brother. He claimed income replacement benefits (“IRBs”) from Halifax Insurance Company (“Halifax”) on the basis that he was unable to perform the essential tasks of his employment as a full-time plumber’s assistant. Based on the information provided, Halifax paid him \$390.20 per week until May 6, 1996. At that point, Halifax reduced his benefits by 50 per cent under s.73 of the *SABS-1994*,¹ claiming that he failed to participate in rehabilitation. Six months later, Halifax stopped paying IRBs entirely based on an assessment by a Designated Assessment Centre and an “unremarkable” MRI.

¹ Ontario Regulation 403/96, as amended, the *Statutory Accident Benefits Schedule—Accidents after December 31, 1993 and before November 1, 1996*.

Following an unsuccessful mediation, the dispute went to arbitration. Mr. Hussaini claimed ongoing IRBs, with no reduction for failure to participate in rehabilitation, and the cost of prescription drugs and travel expenses. Halifax argued that not only was Mr. Hussaini not entitled to any further benefits, he should be ordered to repay all the benefits he received. In addition, Halifax claimed that the arbitration was so lacking in merit that Mr. Hussaini should be ordered to pay its expenses and an assessment under s.282(11.2) of the *Insurance Act*.

In a strongly worded decision, the arbitrator described Mr. Hussaini's claim as "mostly a sham." Most significantly, Mr. Hussaini admitted during the hearing that he had not worked in any capacity for several years before the accident. Because his claim for IRBs was based on pre-accident income he did not have, it was not difficult for the arbitrator to conclude that his claim was without merit. However, she did not stop there. She also considered the strength of the medical evidence, finding "a dearth of compelling medical evidence from the physicians Mr. Hussaini relied on." In conclusion, the arbitrator states as follows:

I find that Mr. Hussaini was not disabled as a result of this accident. His evidence is so fraught with deceit that it is difficult to determine if he even suffered an impairment. As I noted above, he failed to establish any of the employment criteria required by section 7. Even if he had done so, his claim for IRBs would have in any case failed, given the paucity of evidence regarding any injuries sustained.

The arbitrator then dealt with the issue of repayment. According to s.70 of the *SABS-1994*, an insured person is required to repay benefits that are paid through error, wilful misrepresentation or fraud, with limits on recovery if only error is involved. Halifax claimed repayment of IRBs (\$31,722), medical expenses (\$31,574) and rehabilitation and case management services (\$6,157).

Because she found that Mr. Hussaini lied about his employment status, his medical history, and an outstanding claim for benefits from a previous accident, the arbitrator concluded that he was obliged to repay all the IRBs he received, plus interest. She also ordered him to repay the rehabilitation expenses, as the entire rehabilitation program was designed to return Mr. Hussaini to pre-accident employment he did not have.

The arbitrator reached a different conclusion on the medical expenses. Although she expressed grave doubts about Mr. Hussaini's need for many of the expenses claimed, she found it plausible that he needed some medical intervention. The problem was that Halifax did not provide any basis for separating the necessary and unnecessary treatment. In the circumstances, the arbitrator declined to order repayment. Halifax did not appeal this part of the order. Finally, the arbitrator ordered Mr. Hussaini to pay Halifax's arbitration expenses and an assessment of \$3,000.

III. THE APPEAL

The arbitration decision is dated August 13, 1999. On September 13, 1999, the Commission received a *Notice of Appeal* from Mr. Hussaini. Mr. Suraj Batra is listed as his representative, the same person who represented him at the arbitration hearing. Although the grounds for the appeal are hard to follow, the appeal was accepted and acknowledged under Rule 47.3 of the Dispute Resolution Practice Code ("the Practice Code").

Halifax responded, raising three preliminary objections:

- The appeal was filed one day beyond the 30-day appeal period, with no request for an extension or explanation for the delay [Rule 48].
- The *Notice of Appeal* does not provide sufficient detail to allow a response [Rule 47.2(c)].
- The *Notice of Appeal*, to the extent that it can be ascertained, challenges the arbitrator's factual findings without raising any question of law [Rule 47.2(a)].

Halifax also responded to the appeal on its merits. In its submission, the arbitrator's decision was the only one available on the evidence presented. Halifax also objected to any suggestion that Mr. Hussaini should have been considered for another type of weekly benefits. It contends that he maintained his claim for IRBs and, therefore, cannot change the nature of his claim at this late date.

After receiving Halifax's *Response*, I wrote to the representatives, refusing to dismiss Mr. Hussaini's appeal. However, I asked Mr. Batra to address Halifax's preliminary issues when he prepared his written submissions. In addition, Mr. Batra was specifically asked to indicate whether he wanted to make oral submissions and, if so, why he felt they were necessary.

Mr. Batra filed a *Reply by the Appellant* form and written submissions on behalf of Mr. Hussaini. After reviewing them, I decided that the appeal would proceed on the record without oral submissions, as allowed by s.283(4) of the *Insurance Act* and Rule 53.5 of the Practice Code. Not only was there no specific request for oral submissions, I was not persuaded they would be helpful. Halifax was invited to make written submissions, but chose not to do so.

III. ANALYSIS

This appeal has little, if any, merit. Even if it raises a question of law, which is doubtful, it provides no valid reason to question the arbitrator's decision.

Mr. Hussaini complains that the arbitrator disregarded the opinions of his doctors and failed to mention some medical reports in his favour. In my view, however, the arbitrator clearly explains her unwillingness to rely on this evidence. Put bluntly, Mr. Hussaini provided incomplete and misleading information to his doctors, seriously compromising their opinions. The record provides overwhelming support for this assessment and, therefore, I am not prepared to interfere.

In Mr. Hussaini's submission, the fact that he lied about his pre-accident employment and neglected to disclose an earlier motor vehicle accident has no bearing on medical findings that he suffered from disc degeneration. However, the medical opinions were far from unanimous about the extent and cause of Mr. Hussaini's disc problems, or their effect on his functional abilities. Again, I find no error in the arbitrator's approach to the evidence, or the conclusions she reached.

Mr. Hussaini submits that in the face of conflicting medical opinions, the arbitrator should have referred the matter to the Medical and Rehabilitation Advisory Board (“MRAP”), as allowed by Rules 39 and 49 of the Practice Code. The problem with this submission is that Mr. Hussaini must be working from an outdated version of the Practice Code. MRAP was eliminated years ago through an amendment to the *Insurance Act*. As a result, it was not an option at the time of this arbitration hearing.

Mr. Hussaini claims that if he is not entitled to IRBs as someone employed at the time of the accident, he should qualify for weekly benefits under some other section. As I understand his argument, he contends that he qualifies for IRBs under s.7(2) of the *SABS-1994*, as having worked at some point during the 156 weeks before the accident, or for caregiver benefits under s.18. As noted above, Halifax submits that Mr. Hussaini proceeded to arbitration on his entitlement to IRBs based on his inability to work as a plumber’s assistant, a job he claimed he had at the time of the accident.

I find no support for Mr. Hussaini’s position. According to the arbitrator, Mr. Batra acknowledged that Mr. Hussaini could not establish the employment criteria under s.7. Also, the arbitrator found that Mr. Hussaini had not worked anywhere since 1990, significantly more than 156 before his accident in January 1995. This finding, which I have no reason to second-guess, precludes his entitlement under s.7(2) of the *SABS-1994*.

The arbitrator also states, consistent with Halifax’s submission, that Mr. Hussaini never made an alternative claim for other disability benefits under Part V of the *SABS-1994*. It is implicit in the decision that he also did not claim caregiver benefits. I agree with Halifax that it is far too late to ask that the claim be reconsidered under another category.

In any event, the arbitrator effectively dealt with Mr. Hussaini’s alternative argument. While she did not receive an alternative claim under any specific section of the *SABS-1994*, the arbitrator acknowledges Mr. Batra’s argument that Mr. Hussaini was entitled to “compensation of some

kind.” Therefore, for the sake of completeness, she considered the medical evidence, but concluded that Mr. Hussaini was not disabled as a result of this accident.

Finally, Mr. Hussaini submits that his submissions prove that the arbitrator was biased and prejudiced. This is a serious allegation, requiring specifics that are lacking here. I find no indication that the arbitrator approached this case with a closed mind. She assessed the evidence, as she was required to do. The fact that she did not accept Mr. Hussaini’s evidence does not prove bias and, given the obvious problems with his evidence, is fully supported.

For these reasons, the appeal is dismissed.

IV. APPEAL EXPENSES

Typically, the reasons set out above would lead to an award of appeal expenses to the insurer. However, given the large repayment order already in place, it is not clear what purpose would be served by ordering Mr. Hussaini to pay Halifax’s appeal expenses, which should be relatively small. Therefore, no appeal expenses will be ordered.

David R. Draper
Director’s Delegate

December 17, 1999