

BETWEEN:

SYED OBAIDULLA HUSSAINI

Applicant

and

HALIFAX INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Deena Baltman

Heard: April 19, 20, 21 & 22, 1999, at the Offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Suraj Batra for Mr. Hussaini
Eric K. Grossman for Halifax Insurance Company

Issues:

The Applicant, Syed Obaidulla Hussaini, was injured in a car accident on January 5, 1995. He applied for and received income replacement benefits (IRBs) from Halifax Insurance Company (“Halifax”), payable under the *Schedule*.¹ Halifax reduced the amount of IRBs on May 6, 1996,

¹The *Statutory Accident Benefits Schedule — Accidents after December 31, 1993 and before November 1, 1996*, Ontario Regulation 776/93, as amended by Ontario Regulations 635/94, 781/94, 463/96 and 304/98.

and then terminated them altogether on November 4, 1996. The parties were unable to resolve their disputes through mediation, and Mr. Hussaini applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

The issues in this hearing are:

1. Was Halifax entitled to reduce the amount of Mr. Hussaini's IRBs on May 6, 1996?
2. Is Mr. Hussaini entitled to IRBs beyond November 4, 1996?
3. Is Mr. Hussaini entitled to recover the cost of prescription drugs or travel expenses?
4. Is Mr. Hussaini liable to repay Halifax the benefits he received?
5. Is either party entitled to recover its expenses of the arbitration?
6. Is Halifax entitled to recover its assessment fee?

Result:

1. Halifax was entitled to reduce the amount of IRBs on May 6, 1996.
2. Mr. Hussaini is not entitled to IRBs beyond November 4, 1996.
3. Mr. Hussaini is not entitled to recover the cost of prescription drugs or travel expenses.
4. Mr. Hussaini is obliged repay Halifax the sum of \$37,879, plus interest.

5. Mr. Hussaini is denied his expenses of the hearing. Halifax is entitled to recover its expenses of the arbitration and its assessment fee.

EVIDENCE AND ANALYSIS:

Introduction:

Mr. Hussaini is a 40 year old married father of six. On January 5, 1995, he was involved in an accident while a passenger in a car being driven by his brother. He claimed IRBs from Halifax on the basis that before this accident he was employed full-time as a plumber's assistant. He has asserted repeatedly that his injuries from the accident have destroyed his ability to work, his family, and his future.

Halifax paid him IRBs at an agreed upon rate of \$390.20 weekly until May 6, 1996. It then reduced the benefit by 50 percent to \$195.13 weekly, on the basis that he failed to participate in rehabilitation, relying on section 73 of the *Schedule*. Following receipt of a disability assessment by a Designated Assessment Centre (DAC), and an "unremarkable" MRI, Halifax terminated benefits completely on November 4, 1996.

It has since become apparent that Mr. Hussaini's case is mostly a sham. He has lied about several critical aspects of his claim. He was not employed in any capacity for several years preceding this accident. The few injuries he sustained are insignificant. He denied relevant pre-accident injuries. He repeatedly misled his doctors and lawyers about his situation. His claim for benefits is not only meritless but an abuse of process. My reasons follow.

Claim for IRBs:

Mr. Hussaini's claim regarding IRBs is twofold: first, Halifax should not have reduced his benefit on the basis that he failed to cooperate with rehabilitation; secondly, it should not have terminated his benefit on the basis that he was no longer disabled from working.

However, both claims must fail, because they are predicated on the false assumption that Mr. Hussaini ever qualified for IRBs. Mr. Hussaini admitted at the hearing that he had not worked in any capacity for several years preceding this accident. From the evidence,² the following became apparent:

- In his Application for Accident Benefits, he falsely stated that he had been employed full-time as an assistant plumber for S. N. Plumbing Mechanical Services, for three weeks preceding the accident, at the rate of \$600 per week. Mr. Hussaini testified that he knowingly submitted a false application because "some family member(s)," whose name(s) he cannot recall, told him to do so.
- He submitted a false Employer's Confirmation of Income. He admitted knowing at the time he submitted the form that all the essential details were false. He blamed various family members, frequently referred to by Mr. Hussaini in his testimony as "they," who allegedly prepared this form and had him sign it. The alleged owner of the business, "Nemat H.," is a "far relation" of his, similar to a cousin.
- He submitted false pay stubs to the Insurer. "They" prepared these stubs and had him sign them.

²I cautioned counsel that only those portions of the exhibits that were referred to during the hearing would be considered as evidence in my deliberations.

- He submitted a detailed four-page, single spaced statement to the Insurer which contained numerous false statements regarding his employment history. In addition to lying about employment with S. N. Plumbing, he also told the Insurer that he had worked for A.Z. Plumbing from 1989 to 1994, when in fact he had not worked anywhere since 1990.
- It was on the basis of these documents that Halifax paid him IRBs of \$390.20 per week.

As Mr. Hussaini never qualified for IRBs under section 7 of the *Schedule*, he cannot dispute either of Halifax's decisions to reduce or terminate his IRBs. For completeness sake, however, I find that Halifax fully complied with the requirements under sections 73 and 64 of the *Schedule*. It gave the required notices in a timely and prescribed manner, and relied on persuasive medical evidence. Mr. Hussaini did not argue that Halifax breached any of the notice obligations under the *Schedule*, or that it was not in receipt of an opinion that could arguably support a reduction of benefits. Rather he asserted that his doctors' views were more persuasive. I deal below with what I find to be a dearth of compelling medical evidence from the physicians he relied upon.

That disposes of Mr. Hussaini's claims regarding IRBs. I note that he did not, at any time, assert an alternative claim for Other Disability Benefits (ODBs). Practically speaking, this means Mr. Hussaini cannot recover any form of disability benefits under the *Schedule*. Moreover, although he raised travel and drug expenses as an issue, he advanced no evidence in support thereof at the hearing. As a result, his medical condition is irrelevant to this case.

Mr. Hussaini's counsel acknowledged that although his client had brought his claim under section 7 of the *Schedule*, he could not establish its criteria of employment. He argued, however, that Mr. Hussaini is nonetheless profoundly disabled, and is therefore entitled to compensation of some kind. Although not framed within the context of any legitimate claim for weekly benefits, for completeness sake I will briefly address his alleged injuries.

Alleged injuries from the Accident:

Mr. Hussaini testified that following the accident, he suffered a brief period of unconsciousness, but was awake by the time the ambulance arrived at the accident scene. There is no evidence to corroborate this assertion that he was unconscious; in any case, if true, it must have been a brief and relatively benign incident. The ambulance call sheet indicates that he was found alert, orientated, and there was no loss of consciousness. He received a Glasgow coma scale reading of 15, the highest available. The admitting notes of North York General Hospital are revealing:

...He was brought in immobilized by the Paramedics but **the patient recalls no loss of consciousness** with the accident...**There were no obvious signs of injury**...His abdominal exam showed tenderness primarily in the lower part of the abdomen, however, this kept changing, in the sense that sometimes the pain was more in the left upper quadrant and sometimes in the left lower quadrant. Nonetheless when the patient was distracted, i.e. when talking with him, there was no tenderness noted and when the patient did have tenderness and I asked how bad it was, he said it actually was just minimal...[emphasis added]

Because his presentation was so puzzling, he was kept overnight at hospital, and released the following day with a diagnosis of soft tissue injury to his neck and shoulder, and a minor sprain to his right ankle. Hospital staff treated him with ice packs and recommended physiotherapy.

Contrary to the modest injuries recorded by the hospital staff, Mr. Hussaini asserts that as a result of this accident he sustained a brain injury, including memory loss, headaches, and reduced cognitive function. He also complains of pain in his low back and neck, dizziness, insomnia, and depression.

The medical evidence casts huge doubt on Mr. Hussaini's assertions. The following are just some highlights:

- Five days after the accident Mr. Hussaini signed a statement for the Insurer which he later admitted was filled with numerous, detailed misstatements regarding his employment and medical history. This suggests that despite his alleged head injury, he was of sufficiently sound mind within days after the accident to fabricate an elaborate story in order to qualify for IRBs.
- Although he advised Halifax that he “had never been hurt before...never been in a car accident before,” it later became apparent that he was previously disabled because of a car accident in December 1990. Mr. Hussaini brought a tort claim as a result of that accident. In an affidavit dated October 15, 1996, in support of a motion to increase his claim for damages, Mr. Hussaini stated that in the 1990 accident he suffered a concussion, lacerations to his forehead with resultant scarring, “severe” neck, back and shoulder pain, dizziness, and “post-traumatic cerebral syndrome.” He stated that it was “unlikely” that he would return to any type of employment. In an examination for discovery in February 1997, Mr. Hussaini related that because of the 1990 accident, his “disability has been increasing day by day, which I am suffering until today.”
- Mr. Hussaini admitted that after the 1995 accident, which is the subject of this hearing, he retained new counsel, even though he already had a lawyer working on the 1990 accident case. He did not tell either lawyer about the other, or that he had been involved in two car accidents.
- Dr. Chen, a family physician, treated him with respect to injuries from the 1990 accident. In 1993, he began to see a second family physician, Dr. B. Purewal, for other matters. Later, he sought treatment from Dr. Purewal for injuries arising from the 1995 accident. Mr. Hussaini did not advise either doctor that he was seeing the other, or about the other car accident.

Mr. Hussaini argued that various doctors supported his position. He referred, in particular, to Dr. A. Kachooie, a physiatrist, who in March 1996 diagnosed a closed head injury, whiplash, and low back pain. In his report of April 24, 1998, Dr. Kachooie stated that Mr. Hussaini “appears to have suffered a significant head injury with cognitive impairment, clinical depression.” He found that Mr. Hussaini was disabled from returning to his “previous employment as an Assistant Plumber.”

Dr. Kachooie did not testify at the hearing. Mr. Hussaini filed in evidence Dr. Kachooie’s report to Health & Welfare Canada, in support of Mr. Hussaini’s claim for a CPP disability benefit. It appears to be based primarily on Mr. Hussaini’s subjective complaints. The neurological examination was normal and Dr. Kachooie did not perform any mental status testing, nor did he recommend neuropsychological testing. He commissioned an MRI of the cervical spine, which found only minimal degenerative formations in the cervical spine that were not trauma related. The radiologist who conducted the MRI concluded that “the spinal cord signal is normal.” I see no reliable basis upon which Dr. Kachooie could conclude that Mr. Hussaini suffered a “significant head injury” or any serious impairment. He appears to have accepted Mr. Hussaini’s complaints at face value. For these reasons, I give little weight to his report.

Mr. Hussaini also relied upon Dr. J. Bateman, an orthopaedic specialist. In his medical-legal report of June 14, 1995, addressed to Mr. Hussaini’s (then) counsel, Dr. Bateman concluded that a combination of “cerebral trauma” and “thoracic injury” from the accident disabled Mr. Hussaini from working “as a labourer in the construction industry anymore.” It appears that Dr. Bateman was seriously misled. First, Mr. Hussaini falsely advised him that he was “employed as a general labourer in the construction business, but has not been able to resume these duties since the accident...” Second, Dr. Bateman diagnosed cerebral trauma on the basis of (a) Mr. Hussaini’s unsupported allegation that he was unconscious following the accident, and (b) his false report that he hit his head on the windshield, with the result that his “forehead was lacerated and bleeding following the impact” (the hospital records state Mr. Hussaini had “no abrasions, no

bruises and no lacerations.”). Third, Dr. Bateman diagnosed a compression fracture of the thoracic spine, largely by relying upon an x-ray which noted only a “slight” anterior wedging of T9, attributed to a “mild compression injury.” This impression was later proved inaccurate by a bone scan. For these reasons, I see no basis for Dr. Bateman’s conclusion of disability.

Dr. S. Sober, an orthopaedic specialist, also conducted a medical-legal assessment. He concluded that Mr. Hussaini had not sustained any significant physical injuries in the accident, but that due to psychological and emotional problems he was impaired from employment and everyday activities. Dr. Sober suffered from the same disadvantage as Dr. Bateman; Mr. Hussaini denied his previous car accident, exaggerated his injuries, and lied elaborately about his employment history (“...he says that he has worked for the past twenty years without interruption as a plumber’s assistant, working in new construction. The job, of course, is sometimes physically demanding, including heavy activity, as well as climbing, reaching and lifting.”) Dr. Sober’s opinion therefore suffers the same fate as that of Dr. Bateman’s.

A further example of a faulty diagnosis based on misleading information is seen in the reports of Dr. R. Jain, dated February 6, 1996 and January 14, 1997. Dr. Purewal referred Mr. Hussaini to Dr. Jain, a psychiatrist, because of complaints of anxiety, confusion and depression. Mr. Hussaini presented Dr. Jain with a very dramatic picture of emotional symptoms and changes in his personality since the accident:

He remains withdrawn, communicates very little and has lost interest in activities of daily living. There is excessive startle behaviour in reaction to sudden loud noise, telephone ring or Ambulance Sirens. He sleeps poorly and has nightmares of violent content in which he sees himself being the victim. He talks and laughs to himself. He is often irritable without provocation and shows poor anger control. He feels tired and there is headache which is almost constant with feelings of giddiness. Due to this he has fallen down on few occasions [sic]. He also says that his vision and hearing are both impaired.

Dr. Jain concluded that Mr. Hussaini's physical and mental symptoms disabled him from any type of employment or rehabilitation. I give little weight to Dr. Jain's opinion, who appears to have accepted Mr. Hussaini's complaints at face value. Mr. Hussaini misled Dr. Jain by telling him that before the accident he was "doing well, working hard as a plumber and was devoted to [my] work..." and in advising that because of the accident he was knocked unconscious, hospitalized for four days, suffered laceration wounds to his head, and broke his back, nose and two ribs. He did not tell Dr. Jain about his previous car accident. His complaints that he has fallen down repeatedly have never been corroborated. He told Dr. Jain that he could not use the TTC, but was surveilled using a TTC bus and accepted Halifax's reimbursement for busfare.

Even Dr. Jain questioned how reliable Mr. Hussaini's story was:

The question of exaggeration or subjective magnification of symptoms comes up again and again. This is done consciously or unconsciously [sic] to gain other people's attention, sympathy and necessary assistance to fulfill his dependency needs, because independently he can not function. It does not rule out the presence of underlying genuine symptoms. If one can rule out this, then it is relevant to talk about Malingering.

The question of malingering arose again in March 1997, when Mr. Hussaini was referred by his counsel to Dr. A. Margulies, a psychiatrist. Dr. Margulies noted that Mr. Hussaini presented as stunned and disoriented, and at times gave responses that were "bizarre in their inaccuracy but implied an understanding of the correct response in order to provide one so blatantly incorrect. For example, he identified a pen as a pencil, a cup as a glass, a watch as a clock, claimed that a cow had 'five' legs and that 2 plus 2 equalled 3."

Dr. Margulies believed that any cognitive deficits were non-organic, and diagnosed either a factitious disorder or malingering. He suggested it was more likely that Mr. Hussaini suffered from a particular form of factitious disorder, known as a Ganser Syndrome. He explained that it is a "psychosis of approximations...[it is] well-described in the psychiatric literature and

characterized by bizarre and approximate answers in a manner which clearly implies that the individual was fully aware of the correct response in the first place.” He stated that in a true case of Ganser’s syndrome, the individual is unconsciously motivated to give false answers, and it therefore qualifies as a psychiatric illness. By contrast, an individual who is malingering lies consciously and deliberately. In his report, Dr. Margulies opined that Mr. Hussaini was “markedly impaired as a result of his Ganser Syndrome.” In part because he was (falsely) told that Mr. Hussaini had been working and in good health pre-accident, in marked contrast to his status at the time of the examination, Dr. Margulies concluded that the accident had likely led to his condition.

Further light was shed when Dr. Margulies testified at the hearing. During cross-examination, his attention was drawn to various statements Mr. Hussaini had made since the accident. Some were to Halifax, in which he detailed his work history before the accident. Other statements were made while he was being examined for discovery in May 1996, wherein he described his past history, injuries from the accident, and the chronology of his treatment and attempts at recovery. Mr. Hussaini’s evidence at this hearing was also described to Dr. Margulies. Dr. Margulies commented that those statements were far more precise and reliable than the ones he had been given by Mr. Hussaini. He noted that they were inconsistent with a true Ganser’s syndrome, where one should consistently find “approximate answers” each time Mr. Hussaini was examined. This, along with the information that Mr. Hussaini had lied about his pre-accident employment and medical condition, caused him to seriously doubt that this was a legitimate case of Ganser’s syndrome. Dr. Margulies suggested that this was more likely to be a case of malingering.

I find the timing of Dr. Margulies’ original assessment significant; by then, Mr. Hussaini had been caught lying on several depositions, regarding both his pre-accident medical history and his employment history. I agree with the Insurer that “as his ruse unravelled, so did he.” As people began to confront Mr. Hussaini with the discrepancies in his story, he became increasingly unintelligible. I find that he adopted an air of confusion in order to mask his deceit, and not

because of any genuine cognitive or psychological impairment. It was that mask that he brought with him to Dr. Margulies, who had been retained by his (then) counsel to support his case.

The Insurer filed numerous medical opinions suggesting that Mr. Hussaini had grossly exaggerated his complaints and was not disabled from either employment or everyday tasks. Several opinions, including those provided by the DACs, were based on assessments done in the presence of an Urdu interpreter. I have not discussed the majority of them, as I find that Mr. Hussaini has failed to advance any reliable evidence to support his claims. Simply put, there was little case for the Insurer to meet.

However, in light of Dr. Margulies' speculation regarding the true nature of Mr. Hussaini's difficulties, I find telling the results of neuropsychological testing conducted by Total Rehabilitation management in December 1995:

Mr. Hussaini did not pass a test designed to detect the presence of non-organic factors affecting test performance. The test was later translated into Urdu and in presented in an easier format. He was required to copy some elementary information in Urdu and then reproduce it from memory. His score did not improve over the English version he had worked at earlier in the day. **His performance on this test was similar to that of individuals who consciously or unconsciously wish to appear impaired. He failed a task that all but the most severely brain damaged or retarded patients perform easily.** His performance suggested questionable motivation or the likelihood that functional overlay was affecting this results.[emphasis added]

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.

Repayment:

I have found that Mr. Hussaini was not entitled to any benefits because he does not satisfy any of the criteria under sections 7 (IRBs), 36 (medical benefits) and 40 (rehabilitation benefits). Halifax seeks repayment of all benefits paid to Mr. Hussaini, on the basis that they were obtained through fraudulent misrepresentation. These include:

- IRB's of \$31,722
- medical expenses (including transportation and medication) of \$31,574
- rehabilitation and case management services of \$6,157

In order to secure a repayment under section 70, the Insurer must prove that an applicant recovered benefits through "error, wilful misrepresentation or fraud." I have found that Mr. Hussaini recovered IRBs from Halifax by lying about his employment status, his medical history, and his outstanding claim for benefits from an earlier accident. Consequently, Mr. Hussaini is obliged to repay Halifax all the IRBs he received, plus interest.

The question of medical expenses is somewhat more difficult. Even in cases involving fraud, certain medical expenses may be warranted. Although in this case I have grave doubts about how many of these benefits were reasonable and necessary, Halifax has not established that they were *all* obtained through fraud or misrepresentation. Nor has it offered any analysis on how a percentage allocation might be made. However modest his injuries, it is plausible that Mr. Hussaini required some medical intervention. Without more detailed submissions on how to distinguish the legitimate medical expenses from the fraudulent ones, I find Halifax has not met the onus required by section 70 to justify an order for repayment of medical expenses.

The rehabilitation and case management services is yet a different matter. I accept Halifax's assertion that the entire rehabilitation program was designed to return him to employment which, it turned out, had not existed for several years. It was not until approximately two years after the accident that Halifax discovered that Mr. Hussaini had not only been unemployed for several years but was also disabled from a previous accident. Through his deceit, Mr. Hussaini caused Halifax to expend needless monies on a baseless rehabilitation program. He must therefore repay that expense, plus interest.

EXPENSES:

Halifax seeks its expenses of the hearing. As the Application for Arbitration was filed after November 1, 1996, I have discretion to order Mr. Hussaini to pay the Insurer's expenses. In this case, I do not hesitate to do so. Mr. Hussaini not only fabricated many essential elements of his claim, he also caused the Insurer and the medical system to devote extensive time, effort and money to his "recovery."

Mr. Hussaini achieved this deceit through careful orchestration. He had family members pretend to be his employers. He sought treatment from different doctors for each accident. He hired separate lawyers for each accident. Until these parallel tracks converged, he succeeded in manipulating both the legal and medical systems. When he was finally caught, he feigned a psychiatric disorder in order to mask his deceit. In the process, he wasted enormous resources that could have otherwise been devoted to deserving claimants.

For the same reasons, I have no hesitation in ordering Mr. Hussaini to pay Halifax's assessment fee of \$3,000 under subsection 282(11.2) of the *Act*, which provides for such orders where the Arbitrator finds that the insured "commenced an arbitration that was frivolous, vexatious or an

abuse of process.” I find that the application for arbitration in this case was frivolous and an abuse of process.

Deena Baltman
Arbitrator

August 13, 1999

Date

BETWEEN:

SYED OBAIDULLA HUSSAINI

Applicant

and

HALIFAX INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mr. Hussaini's claim for benefits is dismissed.
2. Mr. Hussaini is obliged repay Halifax the sum of \$37,879, plus interest.
3. Mr. Hussaini is denied his expenses of the hearing. Halifax is entitled to recover its expenses of the arbitration and its assessment fee.

Deena Baltman
Arbitrator

August 13, 1999

Date