



Appeal P96-000006

OFFICE OF THE DIRECTOR OF ARBITRATIONS

YIANNAKIS ODYSSEOS

Appellant

and

CUMIS GENERAL INSURANCE COMPANY

Respondent

BEFORE: David R. Draper, Director's Delegate

COUNSEL: Yiannakis Odysseos (representing himself)
Thomas Hanrahan (for CUMIS)

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 September 22, 1995, is confirmed.
2. No appeal expenses are payable.

David R. Draper
Director's Delegate

January 17, 1997

REASONS FOR DECISION

I. NATURE OF THE APPEAL

This is an appeal by Yiannakis Odysseos from an arbitration decision, dated September 22, 1995, denying him additional benefits under Ontario Regulation 672, *Statutory Accident Benefits Schedule - Accidents Before January 1, 1994* (“the *Schedule*”).

II. BACKGROUND

Mr. Odysseos was injured in an automobile accident on July 29, 1992. As a result, he received weekly income benefits from CUMIS General Insurance Company (“CUMIS”) at the minimum rate of \$185.60 under section 12 of the *Schedule*. His weekly income benefits continued until December 16, 1992, when CUMIS stopped paying on the basis that he was not substantially unable to perform the essential tasks of his occupation as a self-employed owner of a pizza business.

The dispute went to arbitration on a number of issues. The arbitrator described them as follows:

1. Is Mr. Odysseos entitled to weekly income benefits under section 12 of the *Schedule* from December 16, 1992 and ongoing and, if he is entitled, what is the amount of weekly benefit?
2. Is Mr. Odysseos entitled to payment of wages and benefits for extra employees he hired after the accident?
3. Is Mr. Odysseos entitled to travel expenses pursuant to section 6 of the *Schedule*?
4. Is the Insurer entitled to a repayment of benefits paid?
5. Was the issue of weekly income benefit settled by a lump sum payment of \$4,000?

The arbitration hearing took place over two days. Mr. Odysseos' represented himself and was the only witness. The parties filed 33 exhibits. In his decision, dated September 22, 1995, the arbitrator rejected all of Mr. Odysseos' claims for additional benefits. He also rejected CUMIS' claims that the issue of weekly income benefits was settled, and that Mr. Odysseos should be required to repay some of the benefits he received.

Mr. Odysseos appealed the arbitrator's rejection of his claims. CUMIS did not appeal. The issues on appeal, therefore, are whether the arbitrator erred in concluding that Mr. Odysseos:

- is not entitled to weekly income benefits after December 16, 1992.
- was not entitled to weekly income benefits of more than \$185.60 per week.
- is not entitled to the wages and benefits paid to employees hired after the accident.
- is not entitled to travel expenses.

After reviewing the material filed in the appeal, I decided that it would proceed on the record without an oral hearing. The parties were invited to make additional written submissions in light of this ruling, but nothing further was received.

III. ANALYSIS

It is well established that my role on appeal is not to second-guess the arbitrator's assessment of the evidence. He had the advantage of hearing Mr. Odysseos' testimony and could evaluate the other evidence in light of it. The arbitration hearing was not recorded and, therefore, no transcript is available. Because the arbitrator was in a better position to assess the evidence, his decision should not be disturbed unless it is shown that he made an error resulting in an injustice, or there was no evidence capable of supporting his findings.

For the following reasons, I agree with CUMIS' submission that Mr. Odysseos is simply asking me to reconsider the evidence and reach a different conclusion. He does not allege any specific errors, nor do I find any. Further, my review of the record satisfies me that there was ample evidence to support the arbitrator's findings.

A. Weekly Income Benefits - Entitlement

CUMIS stopped paying weekly income benefits on December 16, 1992. After reviewing Mr. Odysseos' testimony, the medical reports and the surveillance evidence, the arbitrator concluded as follows:

I am satisfied that immediately after the accident Mr. Odysseos was unable to perform the essential tasks of his employment. However, the surveillance videotape demonstrates that Mr. Odysseos could make and deliver pizzas without any indication of pain, disability or restriction. On the basis of the medical evidence suggesting or stating that Mr. Odysseos exaggerates his symptoms and in the absence of any credible evidence that Mr. Odysseos could not work 80 hours per week, I am satisfied that the videotape fairly represents Mr. Odysseos' ability to perform the essential tasks of his employment for an 80 hour week. Accordingly, Mr. Odysseos has failed to establish that he is entitled to weekly income benefits beyond October 7, 1992, the date the surveillance was conducted.

[p.13]

Although he found that Mr. Odysseos' entitlement ended two months before his weekly income benefits were terminated, the arbitrator did not order him to make a repayment. Mr. Odysseos does not point to any particular error in the arbitration decision, but asks me to review his doctors' reports and reach my own opinion. As stated above, that is not my role. There was ample medical evidence to support the arbitrator's findings. He also properly assessed the medical evidence in light of other evidence, particularly the surveillance evidence and his evaluation of Mr. Odysseos' credibility.

On appeal, Mr. Odysseos provided copies of some medical reports, highlighting a number of places where the doctors suggest possible explanations for his complaints that should be

investigated. He seems to believe that these diagnoses were confirmed. However, the results of the investigations were all negative. As observed by the arbitrator, Mr. Odysseos appears to have misinterpreted the advice provided by the doctors.

B. Weekly Income Benefits - Amount

At the arbitration hearing, CUMIS argued that Mr. Odysseos' post-accident income was sufficient to reduce his entitlement to zero. The arbitrator described Mr. Odysseos' financial records as "contrived, inconsistent, illogical and unreliable," concluding that he could not determine pre-accident or post-accident income with any accuracy. Instead of finding no entitlement, however, the arbitrator concluded that Mr. Odysseos was entitled to the minimum weekly amount of \$185.60, without any reduction for post-accident income, for the period from August 5, 1992 to October 7, 1992.

Mr. Odysseos maintains that he is entitled to \$800 per week. In his appeal submissions, he claims that he filed an unidentified form with CUMIS. This does not provide any assistance. He also sent a T4-1992 form and a Record of Employment both issued to his son, and a Goods and Services Tax Return dated February 1, 1993. I am not persuaded that these documents materially help the claim. Other than the Record of Employment, these documents were before the arbitrator. The arbitrator reviewed the financial documents, but agreed with Mr. Hrycko, the accountant retained by CUMIS, that the documents were unreliable and could not be used to calculate Mr. Odysseos' pre-accident income. There was ample evidence to support this finding and, therefore, I am not prepared to interfere.

C. Replacement Wages/Lost Hours

The arbitrator rejected Mr. Odysseos' claim that CUMIS should pay him for the replacement workers he hired because of the accident. On a factual basis, the arbitrator was not persuaded that Mr. Odysseos relied on replacement workers after the accident any more than he did before

the accident. Further, he found that Mr. Odysseos failed to establish the hours worked by others, or that he either paid them or owed them any wages. This was a factual finding based on the arbitrator's assessment of the evidence. I find no basis for interfering.

Mr. Odysseos claimed that his son worked at the store after the accident, but he did not appear in the surveillance videotape. In his appeal submissions, Mr. Odysseos states that the surveillance was done at a time when his son was not at the store, although he came back later in the week. It appears to me, however, that the arbitrator was presented with this explanation. At page 12 of his decision, he refers to a letter from Mr. Odysseos' son stating that he did not work during the week the surveillance was done. The arbitrator found this explanation implausible and unsupported by any reliable evidence. In my opinion, the arbitrator provided a reasonable basis for his assessment.

The arbitrator also held that even if Mr. Odysseos had to hire replacement workers to keep his business open, those expenses are "not compensable under the *Schedule* except to the extent that it reduces the section 15 deduction for post-accident income or unless it can be described as an expense under section 6(1)(f)"¹ relating to his treatment or rehabilitation. That interpretation was recently accepted in the appeal decision in *Oliveira and Zurich Insurance Company*, (OIC P-002691, September 12, 1996). I was not given any reason to question that interpretation.

D. Travel Expenses

At the arbitration hearing, Mr. Odysseos claimed that he had to travel to physiotherapy and should be reimbursed for his expenses. The arbitrator rejected this claim because it was never made to the insurer. Further, "there was no evidence of the provider of the treatment, dates of

¹ Arbitration decision, page 17.

treatment, distances travelled, mode of transportation, calculation of expense or whether the expense was reasonable.”²

In his appeal, Mr. Odysseos does not suggest that he made a claim to the insurer for travel expenses, or that the arbitrator ignored any evidence presented to him. Instead, he sent a handwritten list of expenses apparently from trips to visit various doctors. This list does not provide a sufficient basis for granting the claim, particularly considering the arbitrator's findings about the credibility of Mr. Odysseos' other financial records. More importantly, the claim must be presented to the insurer before it can be pursued through the dispute resolution process.

IV. APPEAL EXPENSES

Mr. Odysseos did not specifically claim his appeal expenses. Even if he had, however, this is not an appropriate case for expenses. In his appeal, Mr. Odysseos did not raise any clear error, but simply disagreed with the outcome. Previous decisions have held that appeal expenses generally will not be awarded where that is the case. I see no reason to follow a different approach here.

V. INSURER'S ASSESSMENT

CUMIS submits that Mr. Odysseos should be ordered to pay its assessment fee of \$500.

According to section 284(5) of the *Insurance Act*, section 282(11.2) applies to appeals. Section 282(11.2) provides:

282. -(11.2) If an insured person commences an arbitration that, in the opinion of the arbitrator, is **frivolous, vexatious or an abuse of process, the arbitrator may award an amount to be paid by the insured person to the insurer that does not exceed the amount assessed against the insurer in respect of the arbitration under section 14. [emphasis added]**

² Arbitration decision, page 18.

Although this appeal was probably misguided, I am not convinced that it was “frivolous, vexatious or an abuse of process,” as required by the legislation. Therefore, Mr. Odysseos is not required to pay CUMIS its assessment.

January 17, 1997

David R. Draper
Director's Delegate