

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

**Date: October 9, 2018**

**Tribunal File Number: 17-006632/AABS**

**Case Name: Amanda Williams vs. Aviva Insurance**

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:

**Applicant**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Brian Norris**

**APPEARANCES:**

For the Applicant: Victoria Gorbenko, Representative

For the Respondent: Patrick Baker, Counsel

**HEARD In writing on: July 9, 2018**

## OVERVIEW

- [1] The applicant, A.W., was injured in an automobile accident on July 8, 2015 and sought benefits from the respondent pursuant to Ontario Regulation 34/10, known as the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the “*Schedule*”). The respondent, Aviva Insurance Company of Canada, refused to pay for certain income replacement benefits (IRBs) and the applicant has applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “*Tribunal*”) for resolution of this dispute.

## ISSUES

- [2] The disputed claims in this hearing are:
- 1) Is the applicant entitled to receive a weekly income replacement benefit in the amount of \$400.00 per week for the period October 24, 2015 to April 1, 2017?
  - 2) Is the applicant entitled to interest on the overdue payment of benefits?

## RESULT

- [3] The applicant is not entitled to any IRBs beyond October 23, 2015.

## BACKGROUND

- [4] The applicant was driving a vehicle which was rear-ended while stopped at an intersection. The impact pushed the applicant’s vehicle forward, striking a third vehicle. The applicant visited a family physician a few days later and was diagnosed with sprain/strain-type injuries. The family physician, Dr. L. Anvari, completed a Disability Certificate dated July 13, 2015 which indicated the doctor did not consider the applicant to be unable to perform the essential employment tasks; however, it noted that the applicant was laid off.
- [5] The following day, July 14, 2015, the applicant attended at Mediwise Healthcare Solutions Inc. where Dr. A. Yu, chiropractor, completed a second Disability Certificate. Dr. Yu diagnosed the applicant with sprain/strain-type injuries as well as insomnia, anxiety, a concussion and post-concussion syndrome. The Disability Certificate completed by Dr. Yu indicated the applicant was unable to perform the essential employment tasks and indicated that the anticipated duration of the applicant’s injuries was 9-12 weeks.
- [6] The applicant applied for and received IRBs from the respondent until the benefit was stopped effective October 23, 2015. The stoppage was based on the recommendation contained in a multi-disciplinary insurer’s examination report dated October 14, 2015.

## INCOME REPLACEMENT BENEFITS

- [7] The applicant claims entitlement to IRBs for the period October 24, 2015 to April 1, 2017. The parties agree that the applicant was receiving benefits under the *Employment Insurance Act* (Canada) at the time of the accident and may qualify for IRBs in the event the applicant is found to be substantially unable to perform the essential tasks of employment as a result of the impairment, pursuant to section 5(1) of the *Schedule*.

### **The applicant's essential tasks of employment**

- [8] The applicant submits the essential tasks of the applicant's employment are occasional lifting, prolonged keyboarding and sitting at a computer station. This description does not differ greatly from the assessment by the respondent's assessor. The information provided by the respondent's assessor, Dr. P. Kominek, chiropractor, characterized the applicant's essential tasks as addressing calls from clients, completing projects such as website creation, addressing network calls, and preparing and presenting work initiatives to companies about once a month.
- [9] The only evidence relating to the applicant's essential tasks of employment is limited to the Functional Abilities Evaluation (FAE) and the Work Demands Analysis (WDA), both completed by Dr. Kominek, chiropractor, on behalf of the respondent. The FAE and WDA found that the applicant's essential tasks of employment are classified as sedentary work per the National Occupational Classification and Dictionary of Occupational Titles.
- [10] Based on the evidence before me, I must conclude that the applicant's essential tasks of employment are sedentary. Sedentary work includes occasionally exerting up to 10 pounds of force, sitting, and may involve walking or standing for brief periods of time.

### **The applicant's limitations**

- [11] The applicant claims to be unable to perform the essential tasks of employment for the following reasons:
- a decreased range of motion at the cervical spine;
  - an inability to meet the general squatting, bending, reaching, and standing requirements for an office manager position;
  - reduced lifting capacity;

- an inability to sit or stand for prolonged periods; and
- psychological impairments and cognitive symptoms.

- [12] The respondent recognizes the applicant's limitations with respect to lifting, squatting, and bending but takes the position that these are not the essential tasks of the applicant's employment. The respondent relies on the FAE report by Dr. Kominek, dated October 14, 2015, and submits Dr. Kominek concluded the limitations outlined by the applicant do not prevent the applicant from completing the essential tasks of employment namely, constant fingering and sitting, and frequent forward reaching and standing.
- [13] The respondent also provided an Orthopaedic Report from an assessment on August 27, 2015, which was completed by Dr. A. Sekyi-Otu, orthopaedic surgeon, and formed part of the comprehensive IRB assessment report. Dr. Sekyi-Otu found that the applicant engaged in self-limiting behaviour and concluded there were no musculoskeletal contraindications that would prevent the applicant from resuming the pre-accident tasks of employment.
- [14] I find the applicant is not entitled to the IRBs claimed for the following reasons.
- [15] First, the applicant's medical record does not contain any information confirming the disability as a result of the accident and as claimed by the applicant. The applicant's family physician's medical records, during the period which the applicant claims entitlement to IRBs, does not indicate back or neck pain or difficulty with prolonged sitting or standing, despite multiple visits. There is a recommendation for the applicant to avoid heavy lifting, however, the recommendation is as a result of a medical condition which is distinguishable from and unrelated to the accident. Further, the applicant's medical record indicates similar back and neck pain complaints prior to the accident and shows no sign the pain complaints were exacerbated by the subject accident.
- [16] Second, the applicant claims cognitive impairments as a result of psychological injuries. The impairments include: difficulty concentrating, slow reaction time, forgetfulness, and memory loss. The evidence highlighted by the applicant, the reports of Dr. A. Syed, psychologist, and Dr. I. Trofimova, psychologist, support diagnoses of several possible psychological injuries; however, the evidence does not support the applicant's claims that the psychological injuries are severe enough to impair the applicant's ability to complete the essential tasks of employment. Dr. Trofimova's report, commissioned by the applicant, only notes an interference on the applicant's functioning at work, in (the) household, in (the applicant's) personal and social life. Ultimately, the applicant has not presented any supporting opinion that the applicant is unable to work due to cognitive impairments as a result of a psychological injury. Whereas, the respondent

submits, and the evidence supports, that the applicant had the functionality after the accident to attend and complete a post-secondary school program.

- [17] Lastly, Dr. Syed's opinion is that, despite suffering from psychological distress, these injuries do not substantially impair the applicant's ability to work. As previously mentioned, the applicant's family physician's records and Dr. Trofimova's psychological assessment do little to address the applicant's ability to work and do not provide an opinion to counter Dr. Syed's opinion. The conclusion that the applicant is not significantly impaired as a result of psychological injuries is affirmed when considering the applicant, during the period in which IRBs are being claimed, was able to attend post-secondary education and obtain an Honours Diploma as a Community Services Worker.

### **Carpal Tunnel Syndrome**

- [18] The applicant also claims a disability due to increased carpal tunnel syndrome symptomology following the accident. The respondent recognizes a carpal tunnel syndrome diagnosis and submits the medical record shows the symptoms resolved by January 2016, inferring it did not significantly impair the applicant.
- [19] I find that there is no evidence to suggest the carpal tunnel syndrome impaired the applicant's ability to work. The medical record refers the applicant to use supportive wrist splints at night but does not include any recommendations to avoid any activities be it at the workplace or in the home.
- [20] In the event I am wrong and the carpal tunnel syndrome did disable the applicant, I find the disability is not as a result of the subject accident. The applicant's carpal tunnel syndrome was symptomatic prior to the accident and the medical record connected the increased symptomology to a medical condition which is distinguishable from and unrelated to the subject accident.

### **DECORUM IN SUBMISSIONS**

- [21] It is important for me to remind parties that submissions must employ a basic level of decorum. Inflammatory language and baseless assertions are not helpful nor are they welcome in any adjudication.

### **CONCLUSION**

- [22] The applicant is not entitled to any IRBs beyond October 23, 2015. No interest is payable because no payments are overdue. The Appeal is dismissed.

**Released: October 9, 2018**

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**Brian Norris, Adjudicator**