



Citation: Bedi v Economical Insurance Company, 2023 ONLAT 20-012799/AABS

Licence Appeal Tribunal File Number: 20-012799/AABS

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:

Saurabjit Bedi

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Janet Rowsell

APPEARANCES:

For the Applicant: Saurabjit Bedi, Applicant
Jeton Memeti, Paralegal

For the Respondent: Economical Insurance Company,
Lauren Kolarek, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Saurabjit Bedi, the applicant, was involved in an automobile accident on December 31, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Insurer, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The issues in dispute are:
- i. Are the applicant’s injuries predominantly minor as defined in s. 3 of the Schedule and therefore subject to treatment within the \$3,500.00 limit in the **Minor Injury Guideline (MIG)**?
 - ii. Is the applicant entitled to \$3,897.04 for chiropractic services, recommended by Alpha Physiotherapy in a treatment plan (OCF-18) dated July 30, 2020?
 - iii. Is the applicant entitled to \$2,460.00 for an orthopedic assessment, recommended by All Health Medical in a treatment plan (OCF-18) dated May 21, 2020?
 - iv. Is the respondent liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that the applicant sustained minor injuries as a result of the accident that are treatable within the MIG and that the MIG has been exhausted. Having determined that the applicant sustained minor injuries that are treatable within the MIG and understanding that the MIG limit has been exhausted, an analysis of whether the treatment and assessment plans in dispute are reasonable and necessary is not required. The amount of \$3449.25 has been paid by the respondent insurance company within the Minor Injury Guideline, however, in accordance with section 38(1)(a) of the Schedule, by reason of the amount remaining within the MIG being less than capable of covering any of the treatment plans in dispute, the amount remaining is not payable.

- [4] The applicant is not entitled to any treatment plans in dispute, as the MIG limits have been exhausted.
- [5] Given that there are no benefits owed, the applicant is not entitled to interest pursuant to s. 51 of the Schedule.
- [6] The respondent is not liable to pay an award under Regulation 664.
- [7] The application is dismissed.

ANALYSIS

Disputed Treatment Plans

- [8] Abhishek Gupta, Physiotherapist, prepared a treatment plan dated July 30, 2020, which describes the applicant's impairments to be addressed as malaise, fatigue, chronic sprain and strain of the thoracic spine, lumbar spine, sacroiliac joint, and whiplash associated disorders [WAD2] with complaint of neck pain with musculoskeletal signs. The goals of the treatment plan are pain reduction, increase in strength, and an increase in range of motion. The additional goals of the treatment plan are to return the applicant to the activities of normal living, modified work activities and returning the applicant to his pre-accident work activities. The duration proposed for treatment is eight weeks at a cost of \$3897.04. The treatment plan includes an active exercise program, laser therapy, massage therapy, and the preparation of a reassessment and disability certificate.
- [9] In the explanation of benefits (EOB) dated May 3, 2021, the respondent states that based on the IE assessment of Dr. James Kenneth Steward, General Physician, dated April 22, 2021, the applicant's injuries fall within the Minor Injury Guideline as there was no objective clinical finding of any ongoing accident-related impairment. In addition, the applicant reported no pre-existing conditions or injuries that would affect his recovery from accident-related soft tissue injuries. Dr. Steward opined that the applicant sustained cervical sprain/strain, and thoracolumbar sprain/strain injuries which resolved by the time of Dr. Steward's examination, well over one year and several months following the accident. Dr. Steward opined that no further facility-based chiropractic treatment, physiotherapy, or massage therapy was required.
- [10] Dr. Darrell Justice Ogilvie-Harris of All Health Medical, prepared a treatment plan dated May 21, 2020, which describes the applicant's impairments to be addressed as malaise and fatigue, injury of muscle and tendon at neck area,

sprain and strain of the thoracic spine, lumbar spine, sacroiliac joint, and whiplash associated disorders [WAD2] with complaint of neck pain with musculoskeletal signs. The goals of the treatment plan are pain reduction, increase in strength, and an increase in range of motion. The additional goals of the treatment plan are to return the applicant to the activities of normal living. The duration proposed for treatment is four weeks at a cost of \$2460.00. The treatment plan includes an assessment, preparation service, documentation support activity, and documentation support activity for claim form.

- [11] In the explanation of benefits dated May 28, 2020, the respondent denied the treatment and assessment plan by Dr. Darrell Justice Ogilvie-Harris, in the amount of \$2,460.00, on the basis that the respondent had not received medical evidence of the applicant's pre-existing conditions that would potentially remove the applicant's injuries from limitation to the MIG. The applicant was advised of forthcoming insurer's examinations and the applicant was sent notice of insurer's medical examination by correspondence dated August 12, 2020.
- [12] The applicant submits that before the accident he was athletically active and more involved in household responsibilities. However, post-accident the injuries sustained prevent the applicant from his former level of participation. The applicant submits that by reason of his being a police constable, it was "difficult" and "uncommon" to describe accident-related injuries to his family physician Dr. Gurpreet Dhillon without elaboration. The applicant does not explain why as a police officer, he can not directly communicate his injuries or illness in the same way any other patient in need of medical care. The applicant does not explain why he is unqualified as a police constable to describe the effects of the accident to his family physician or speak openly to his primary care physician regarding any injuries. I do not find that the applicant offers a reasonable explanation to account for the lack of information provided to his primary care physician relating to the effects of the accident, showing on a balance of probabilities that his injuries do not fit within the confines of the Minor Injury Guideline (MIG).

Pre-existing Injuries and the Existence of Non-Minor Injuries

- [13] The issue of whether the applicant sustained a minor injury as defined by section 3 of the Schedule must first be addressed before determining the reasonableness and necessity of the Treatment and Assessment Plans.
- [14] In accordance with section 3 of the Schedule, "minor injury" is defined as one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae.

Section 18(1) of the Schedule states that the sum of benefits payable under medical and rehabilitation benefits is limited to \$3,500 if the person sustains impairments that are predominantly a minor injury. Section 18(2) states that the \$3,500 limit does not apply if the insured person “provides compelling evidence... the insured person has a pre-existing medical condition that will prevent the insured person from achieving maximum medical recovery from the minor injury if he is subject to the \$3,500 limit.”

- [15] In the event that the applicant’s injuries fall within the definition of minor injuries, the applicant can be removed from the MIG in accordance with section 18(2) of the Schedule. The applicant must meet all three of the following requirements in order to be removed from the MIG under this section:
- a. He has a pre-existing medical condition;
 - b. The pre-existing medical condition was documented by a health practitioner before the accident; and
 - c. The person’s treating health practitioner determines and provides compelling evidence that the pre-existing condition will prevent maximal recovery from the minor injury if the person is subject to the \$3500.00 limit under the MIG.
- [16] The Tribunal has also determined that chronic pain with functional limitations or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant to demonstrate on a balance of probabilities that their injuries are not minor, or they have a pre-existing condition that would prevent maximal recovery within the MIG.
- [17] The applicant described the circumstances of the accident to Dr. James Kenneth Steward, General Physician, for the purpose of an IE physician’s assessment dated April 22, 2021. The applicant stated to Dr. James Kenneth Steward that he was a seat-belted driver, stopped in traffic at the time of the accident; that he did not lose consciousness and, there was minimal damage to his vehicle. Police, fire and emergency services arrived on the scene, however, the applicant described to Dr. James Kenneth Steward that he was not assessed by paramedics, and he refused transportation to the hospital.
- [18] The applicant did not seek medical attention from his family physician following the accident. The applicant described to Dr. James Kenneth Steward attending a walk-in clinic the day following the accident, however, no record from a walk-in clinic has been provided in evidence. The applicant stated to Dr. James Kenneth

Steward, that he went to a physician at a walk-in clinic describing a headache and being advised to take Tylenol for pain. The applicant went to his family physician Dr. Gurpreet Dhillon on January 10, 2020. The clinical record dated January 10, 2020, by Dr. Dhillon states the applicant did not mention or reference in any manner the event of the accident nor make any accident-related complaint. There is no record of any subsequent appointments with the family physician Dr. G. Dhillon in the year 2020 with reference to the motor vehicle accident or any injuries experienced by the applicant. There is no compelling medical evidence from the applicant's treating health practitioner Dr. G. Dhillon showing the applicant is prevented from achieving maximal recovery from minor injuries if the applicant is subject to the \$3500.00 limit under the MIG

- [19] The applicant reported to the respondent, as set forth in the log notes, and, in addition, to Dr. James Kenneth Steward, that he was involved in a previous accident in the year 2014, however, the applicant denied suffering any pre-existing injury as a result of the previous accident. The applicant denied to Dr. James Kenneth Steward, as set forth in the IE assessment, any prior injury, illness or surgery. He denied any prior psychological issues or taking any prescription medication prior to the subject accident. In addition, the applicant denied taking any pain medication following the subject accident.
- [20] I find that the applicant has not provided compelling evidence to meet his onus demonstrating that he has a pre-existing medical condition which will prevent his maximal recovery if the applicant is subject to the \$3500.00 limit under the MIG. In addition, I find that the applicant has not met his onus to demonstrate that his injuries resulting from the accident are non-minor injuries. I find that the lack of objective medical evidence from the primary care physician following the accident does not support the applicant's submission that his injuries fall outside the Minor Injury Guideline.
- [21] I find that despite the applicant's submissions that his functionality was affected by the accident that the applicant made statements to Dr. James Kenneth Steward to the contrary, and the objective evidence shows that the applicant's functionality was not affected by the accident, beyond injuries sustained within the Minor Injury Guideline, that soon afterward resolved. According to the IE assessment of Dr. James Kenneth Steward and based on the applicant's failure to seek medical attention from his family physician subsequent to the accident, the applicant's injuries are objectively shown to be in the MIG. The applicant stated to Dr. James Kenneth Steward that he remained independent in his housekeeping tasks at the time of the IE assessment; that he returned to his full-time employment as a police officer three to four days subsequent to the

accident; and that, he resumed exercise and his physical activities without difficulty after pandemic restrictions and the event of the accident.

- [22] Dr. Steward states in his report that the applicant reported no prior medical conditions that would have affected his recovery from the accident-related soft tissue injuries. The objective medical evidence which I place evidentiary weight on is the IE assessment of Dr. James Kenneth Steward as described because it is corroborated by the information in the CNR's of the family physician, where the applicant fails to describe the accident occurring or having any effect on him.
- [23] In support of the finding that the applicant's injuries fall within the Minor Injury Guideline, I note that upon examination Dr. James Kenneth Steward found that the applicant had an active range of motion in his cervical spine, thoracic and lumbar spine. Dr. Steward opined that although the applicant initially sustained a cervical spine sprain/strain, and a thoracolumbar spine strain/ strain, it resolved at the time of the examination and that there were no objective clinical findings of any ongoing accident impairment. Dr. James Kenneth Steward opined that based on the information on file and his examination findings, that there was no compelling evidence of any pre-existing medical condition that would have resulted in any significant delay in the applicant achieving a full recovery from the accident related to soft tissue injuries if subject to the \$3500.00 limit under the MIG. In addition, as stated, there were no objective clinical findings of any ongoing accident impairment at the time of examination which would objectively show the applicant's injuries are not minor.

Chronic Pain Syndrome

- [24] Dr. D.J. Ogilvie-Harris, Orthopaedic Surgeon, prepared a section 25, Orthopaedic Assessment by means of a telephone consultation with the applicant as opposed to a videoconference. The report by Dr. D.J. Ogilvie-Harris is dated June 15, 2020, with the telephone assessment occurring with the applicant on June 1, 2020. Dr. Ogilvie-Harris did not review any diagnostic results. The medical documentation review, consisted of the OCF-3 dated January 16, 2023, and the OCF-23 dated February 23, 2020, in addition to the clinical notes and records of Dr. G. Dhillon. The records provided by Dr. G. Dhillon provide no indication of significant pre-existing musculoskeletal problems. Dr. D.J. Ogilvie-Harris describes completing a pain disability questionnaire, a central sensitization inventory, and the world health organization disability assessment schedule. Dr. D.J. Ogilvie-Harris opines that the applicant's functional scores, arrived at as a result of the telephone consultation, show that the applicant sustained soft tissue injuries to his neck and back directly as a

result of the accident in addition to mild pain-related functional limitations. In addition, that the applicant's central sensitization is in the mild category.

- [25] Dr. D.J. Ogilvie-Harris does opine that the applicant's injuries require treatment outside the MIG limit of \$3500.00 and that the applicant has chronic pain syndrome without reference to the tests nor an explanation regarding how he reached that conclusion. Dr. D.J. Ogilvie-Harris does not explain how he arrived at the opinion that the applicant has chronic pain syndrome and why the applicant's injuries can not be treated within the limits of the MIG after characterizing the injuries as soft tissue injuries. I place greater probative weight on the IE physician's assessment of Dr. James Kenneth Steward, General Physician, as Dr. Steward physically examined the applicant on April 9, 2021, and interviewed the applicant in person as opposed to over the telephone as was the case with Dr. Ogilvie's assessment. In addition, Dr. James Kenneth Steward reviewed the report of Dr. Ogilvie among other medical documentation. I find Dr. Steward's findings more reliable noting omissions in Dr. D.J. Ogilvie-Harris's report including no mention of the previous motor vehicle accident in 2014. Although Dr. D.J. Ogilvie-Harris elsewhere characterizes the applicant having mild pain-related functional limitations, his medical opinion respecting chronic pain syndrome is not corroborated in the CNR's of the family physician.
- [26] The applicant submits that the psychological injuries described in Dr. D.J. Ogilvie-Harris' report and the diagnosis of chronic pain syndrome, meet the burden of showing that the applicant can not reach maximal recovery within the MIG. However, as stated, the applicant stated that he had no functional limitations to Dr. James Kenneth Steward for the purpose of Dr. Steward's IE assessment. As stated, the applicant resumed his full-time employment as a Police Officer three to four days following the accident and when examined by Dr. James Kenneth Steward in April 2021, the applicant stated that he had resumed his recreational activities without being affected by accident-related injuries. In addition, the applicant stated that he was able to support his family with household tasks without impairment following the accident.

Psychological Impairments

- [27] As submitted by the respondent, Dr. D.J. Ogilvie-Harris is not qualified to opine on matters of Psychology or diagnose a psychological condition. In all cases, the burden of proof lies with the applicant to demonstrate on a balance of probabilities that his injuries are not minor, or they have a pre-existing condition that would prevent maximal recovery within the MIG. I find that the applicant has failed to meet his burden of demonstrating a diagnosis of chronic pain syndrome

based on Dr. D.J. Ogilvie-Harris's report. In addition, Dr. D.J. Ogilvie-Harris opinion is later contradicted by his characterization of the applicant sustaining soft tissue injuries with mild pain-related functional limitations and central sensitization in the mild category. The applicant has provided insufficient medical evidence that his injuries are not minor or that he has a pre-existing condition that precludes maximal medical recovery within the MIG.

- [28] For the reasons stated, I prefer the evidence in the physician's IE assessment of Dr. James Kenneth Steward dated April 22, 2021, to the opinions offered in the section 25 orthopaedic assessment of Dr. D.J. Ogilvie-Harris dated June 15, 2020. Significantly, the applicant has not provided compelling medical evidence that his physical injuries are not minor and precluded from maximal medical recovery within the MIG. In addition, the applicant has failed to meet his burden by showing that he experiences chronic pain syndrome based on any functional limitations. In addition, the applicant has failed to show evidence of psychological injuries experienced as a result of the accident.

TREATMENT PLANS, INTEREST, AWARD

- [29] Having determined that the applicant sustained minor injuries that are treatable within the MIG and understanding that the MIG limit has been exhausted, an analysis of whether the treatment and assessment plans in dispute are reasonable and necessary is not required. The amount of \$3449.25 has been paid by the respondent insurance company within the Minor Injury Guideline, however, in accordance with section 38(1)(a) of the Schedule, by reason of the amount remaining within the MIG being less than capable of covering any of the treatment plans in dispute, the amount remaining is not payable.
- [30] As no benefits are payable, it follows that no benefits are overdue. Therefore, interest does not apply pursuant to s. 51.
- [31] Similarly, where no benefits are payable, it follows that the respondent did not unreasonably withhold or delay the payment of benefits to justify an award under s. 10 of Reg. 664.

ORDER

- [32] I find that the applicant sustained minor injuries as a result of the accident that are treatable within the MIG and that the MIG has been exhausted.
- [33] The applicant is not entitled to any treatment plans in dispute, as the MIG limits have been exhausted.

[34] Given that there are no benefits owed, the applicant is not entitled to interest pursuant to s. 51 of the Schedule.

[35] The respondent is not liable to pay an award under Regulation 664.

[36] The application dismissed.

Released: July 19, 2023



Janet Rowsell
Adjudicator