



Citation: Gore Mutual Insurance Company v. Mohamed, 2023 ONLAT 22-001612/AABS

Licence Appeal Tribunal File Number: 22-001612/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:

Gore Mutual Insurance Company

Applicant

and

Sarri Mohamed

Respondent

DECISION

ADJUDICATOR: Lyndra Griffith

APPEARANCES:

For the Applicant: Gore Mutual Insurance Company, Applicant
Jonathan Schrieder, Counsel

For the Respondent: Sarri Mohamed, Not Present

Court Reporter: Corey Salazar

HEARD: by Videoconference: May 31, 2023

OVERVIEW

- [1] Sarri Mohamed, the respondent, alleged that he was involved in an automobile accident on December 15, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] Gore Mutual Insurance Company, the applicant, paid benefits to the respondent, but later determined that the respondent wilfully misrepresented information in his Employer’s Confirmation Form (OCF-2). The applicant terminated the respondent’s entitlement to income replacement benefits (IRBs) and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues to be decided in the hearing are:
1. Is the applicant entitled to a repayment in the amount of \$11,954.22 relating to its payment of IRB, for the period of December 14, 2019 to February 1, 2021?
 2. Is the applicant entitled to interest on the amount to be repaid?

RESULT

- [4] I find that the applicant:
1. Is entitled to a repayment of IRBs in the amount of \$11,954.22.
 2. Is entitled to interest on the amount to be repaid.

ANALYSIS

Background

- [5] On February 1, 2021 the applicant sent the respondent a letter stating that it came to its attention that the IRB was obtained by material misrepresentation as the OCF-2 was forged. The respondent requested repayment in full of \$11,954.22 by March 8, 2021. The applicant notified the respondent that if it did not receive the repayment in full by the specified date, it would be seeking interest at the bank rate on any unpaid portion in accordance with s.52(5) and (6) of the *Schedule*. Additionally, pursuant to s. 53(1) the applicant took the position that the respondent willfully misrepresented material facts with respect to the

application for which the benefit was paid. The applicant advised that the IRBs were being terminated.

The Respondent materially misrepresented the facts in his OCF-2

- [6] Pursuant to s. 53 of the *Schedule*, an insurer may terminate the payment of benefits to or on behalf of an insured person, (a) if the insured person has wilfully misrepresented material facts with respect to the application for the benefit; and (b) if the insurer provides the insured person with a notice setting out the reasons for the termination. O. Reg. 34/10, s. 53.
- [7] The applicant submits that the respondent materially misrepresented the information on his OCF-2 dated January 9, 2020, for the following reasons: The name of his employer had a spelling error, the tax identification number was incorrect, the Human Resources Coordinator's information was fabricated and the last day he worked was incorrect.
- [8] An Investigation Report was completed by Senior SIU Investigator Gordon Scott on November 24, 2020. Mr. Scott met with Tonya Watchorn, Human Resource Health and Wellness Coordinator, and her colleague, Christine Jurchuck, at Mitchell Plastics, the respondent's employer. They confirmed that the respondent notified them that he was involved in an accident on December 16, 2019 but that he was fit to work. The respondent worked from December 16-20, 2019 and the plant closed for the Christmas holidays from December 20, 2019 to January 3, 2020. They stated that the OCF-2 submitted by the respondent was fabricated. The OCF-2 lists Jordan Hall as the HR Coordinator and they confirmed that there is no employee named Jordan Hall at Mitchell Plastics. They further clarified that they do not use the title of HR Coordinator in their corporate terminology. They confirmed that the corporate tax number listed on the OCF-2 does not belong to Mitchell Plastics. They noted that the address listed on the OCF-2 was different from the one they had on file. They confirmed that the salary information listed on the OCF-2 was correct along with the respondent's name and signature. They reported that the respondent asked for a six (6) month leave of absence without pay which they granted so that he could visit his family in Sudan. They confirmed that his last day of work was January 6, 2020, and not December 13, 2019, as indicated on his OCF-2. They confirmed that the respondent left the country for several months and had trouble re-entering the country due to Covid-19 restrictions. The last time the respondent communicated with the applicant was on September 25, 2020, and the respondent's employer confirmed that he never returned to work.

- [9] Ashley Rodrigues, an occupant in the vehicle during the accident, completed an Unlisted Operator Questionnaire dated January 10, 2020 and she listed the same address that the respondent listed on his OCF-2. The driver of the vehicle, Jermain Hall, also completed an Unlisted Operator Questionnaire dated January 2, 2020, but he did not list the respondent as a passenger in the vehicle at the time of the accident.
- [10] Mr. Scott concluded that the respondent clearly submitted a forged OCF-2 to the applicant in order to fraudulently obtain accident benefits while he was on a leave of absence from his employer and out of the country. He further concluded that this is a clear-cut case of Fraud Over \$5,000.00 and Uttering Fraudulent Documents contrary to the *Criminal Code of Canada*. Mr. Scott recommended that the matter be reported to the police.
- [11] Katie Walter, an adjuster for the applicant, testified that the police were contacted with respect to this forged OCF-2 and the investigation remains ongoing.
- [12] The respondent did not participate in the scheduled case conference and did not attend the hearing or file any written submissions. The applicant submits that although the Tribunal could make an adverse inference for the respondent not calling any witnesses such as Jordan Hall, the Tribunal need not make an adverse inference in this case because reviewing the available documents should be sufficient to decide in its favour. The applicant requests that the Tribunal order repayment of the IRBs as a result of the respondent's willful misrepresentation.
- [13] In light of the evidence, and the lack of any contradicting evidence from the respondent, the applicant has proven on a balance of probabilities that the respondent materially misrepresented the information on his OCF-2 dated January 9, 2020. He never notified his employer that he was injured due to the accident and fabricated this OCF-2 to obtain accident benefits. I am satisfied that the OCF-2 submitted by the respondent was forged by the respondent. In the Employer Information section of the OCF-2, the name of his employer is written without an "s" the same way it is spelled on the respondent's Application for Accident Benefits (OCF-1), according to his employer's Human Resources department, the tax identification number provided is incorrect and the employer's contact person's name and signature were fabricated. The respondent also misrepresented the last day he worked, which was incorrect on the form. It seems abundantly clear that the purpose of this material misrepresentation was to obtain IRBs when the respondent was on a leave of absence to travel. As a result of the respondent's material representation, the

applicant was permitted to terminate the respondent's IRBs in accordance with s. 53 of the *Schedule* when the applicant provided the respondent notice setting out the reasons for the termination on February 1, 2021.

The respondent shall repay IRBs to the applicant.

[14] I find that the applicant is entitled to a repayment of the IRBs paid to-date.

[15] Having determined that the applicant is permitted to terminate the respondent's IRBs pursuant to s.53, it follows that the applicant is permitted to seek repayment of the IRBs paid, pursuant to s.52 of the *Schedule*.

[16] Pursuant to s. 52 (1) of the *Schedule* Subject to subsection (3), a person is liable to repay to the insurer,

(a) any benefit described in this Regulation that is paid to the person as a result of an error on the part of the insurer, the insured person or any other person, or as a result of wilful misrepresentation or fraud;

(2) If a person is liable to repay an amount to an insurer under this section,

(a) the insurer shall give the person notice of the amount that is required to be repaid

(3) If the notice required under subsection (2) is not given within 12 months after the payment of the amount that is to be repaid, the person to whom the notice would have been given ceases to be liable to repay the amount unless it was originally paid to the person as a result of wilful misrepresentation or fraud. O. Reg. 34/10, s. 52 (3).

(4) An insurer that has given a notice referred to in clause (2) (b) may obtain repayment in the manner described in the notice. O. Reg. 34/10, s. 52 (4).

(5) The insurer may charge interest on the outstanding balance of the amount to be repaid for the period starting on the 15th day after the notice is given under subsection (2) and ending on the day repayment is received in full, calculated at the bank rate in effect on the 15th day after the notice under subsection (2) is given. O. Reg. 34/10, s. 52 (5).

(6) In subsection (5),

“bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to

the banks listed in Schedule I to the Bank Act (Canada). O. Reg. 34/10, s. 52 (6).

- [17] Having found that the applicant rightfully terminated the respondent's IRBs, it follows that it is also entitled to seek repayment of those benefits paid.
- [18] To claim repayment, the applicant must notify the respondent of the amount he is required to repay, pursuant to s. 52(2)(a). The time provision in s. 52(3) does not apply in the respondent's situation, as he is disentitled from receiving IRBs due to a material misrepresentation.
- [19] I find that the applicant is entitled to a repayment of IRBs because it satisfied the criteria in s. 52 by way of letter dated February 1, 2021, a copy was also faxed to the respondent's counsel of record at the time and another letter was sent to the respondent on July 9, 2021. The notice refers to s. 52, requests that the respondent repay \$11,954.22 in IRBs paid to-date and advised that interest may be charged on overdue payments.
- [20] Considering the above, I find that the applicant has satisfied the notice criteria in s. 52 of the *Schedule*. As a result, the respondent is liable to repay the applicant the amount of \$11,954.22.
- [21] Having found that the applicant is entitled to a repayment of benefits paid, it follows that it is entitled to interest on the repayment of benefits pursuant to s. 52(5) of the *Schedule*.

INTEREST

- [22] Interest applies pursuant to s. 52(1)(a) of the *Schedule* because the applicant paid IRBs to the respondent as a result of wilful misrepresentation.

ORDER

- [23] I find that the applicant:
3. Is entitled to a repayment of IRBs in the amount of \$11,954.22.
 4. Is entitled to interest on the amount to be repaid.

[24] The respondent, Sarri Mohamed is therefore required to repay the applicant \$11,954.22 plus interest.

Released: July 7, 2023

A handwritten signature in black ink, appearing to read 'Lyndra Griffith', is positioned above a horizontal line. The signature is written in a cursive style.

Lyndra Griffith
Adjudicator