



**Citation: The Personal Insurance Company v. Beason, 2023 ONLAT
21-006574/AABS**

Licence Appeal Tribunal File Number: 21-006574/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:

The Personal Insurance Company

Applicant

and

Burcel Beason

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Maia Abbas, Counsel

For the Respondent: No submissions

HEARD: By way of written submissions

OVERVIEW

- [1] Burcel Beason (“Beason”) was involved in an automobile accident on February 4, 2017 and sought benefits from The Personal Insurance Company (“the Personal”) pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “*Schedule*”).
- [2] The Personal paid income replacement benefits (“IRBs”) to Beason following the accident. However, the Personal claims that payments for IRBs were made due to misrepresentations made by Beason, or as a result of an error, and requests that Beason repay the benefits. Beason refused to repay the benefits as requested and the Personal applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues in dispute are:
- i. Is the Personal entitled to a repayment of IRBs from Beason in the amount of \$60,984.73?
 - ii. Is the Personal entitled to interest on the overdue payment of benefits pursuant to section 52(5) of the *Schedule*?

RESULT

- [4] I find that the Personal is entitled to a repayment of IRBs from Beason in the amount of \$60,984.73 plus interest pursuant to section 52(2) of the *Schedule*.

BACKGROUND

- [5] The Parties participated in a case conference but were unable to resolve the dispute. On consent, the issues in dispute were ordered to this hearing in writing. The details, including deadlines for written submissions, were outlined in the Case Conference Report and Order dated December 9, 2021.
- [6] The Personal provided written submissions for the hearing in accordance with the timelines prescribed by the Tribunal. Beason never made any written submissions for the hearing.
- [7] Nevertheless, I am satisfied that Beason was aware of the hearing and chose not to participate in it. Beason was provided notice of the case conference and notice

of the hearing via email. I infer from Beason's participation in the case conference that he received the notice of case conference delivered via email. Beason has provided no alternative means for communication since the case conference. As a result, I conclude that he received proper notice of the hearing.

ANALYSIS

- [8] The Personal is permitted to claim a repayment of benefits in certain situations and subject to certain conditions.
- [9] Section 52(1)(a) of the *Schedule* provides that Beason is liable to repay The Personal any benefit paid to Beason as a result of wilful misrepresentation or fraud. Section 52(1)(b) provides that Beason is liable to repay The Personal any IRBs that were paid to Beason if he was disqualified from receiving IRBs.
- [10] Section 52(2) of the *Schedule* provides that The Personal must give Beason notice of the amount that is required to be repaid.
- [11] Section 52(3) limits The Personal's repayment claim to 12 months from the notice described in section 52(2) unless the overpayment is due to wilful misrepresentation or fraud.

Wilful Misrepresentation

- [12] I find that Beason committed an act of wilful misrepresentation when he claimed IRBs during a period that he continued to work.
- [13] Beason initiated a claim for IRBs at a time when he was working. Beason submitted an Application for Accident Benefits dated February 27, 2017, Disability Certificates dated March 1 and August 29, 2017, and employment confirmation forms dated April 12 and August 3, 2017. In all the documents, the Applicant indicated that he was unable to work as a result of the subject accident.
- [14] However, Beason's T4 statement for the year 2017 clearly indicates that he made employment income at one of his two employers that is commensurate with full-time hours, at the rate noted in his paystubs for the four weeks prior to the accident. The T4 statement lists Beason's employer, which signifies that it paid remuneration to Beason. There is no other reason why an employer would report to the Federal Government that it paid remuneration to an employee. The T4 statement holds considerable weight because it is a government document filed by an employer and it is required to be accurate for tax collection purposes – there is no benefit to the employer for falsely reporting an employee's income. Beason never filed tax returns for the years 2017 and 2018 and never provided

an alternative reason explaining why his employer would report that it paid taxable income to him. To-date, Beason has made no attempt to explain the discrepancy between his reports to The Personal and his tax documents.

- [15] Beason has failed to produce any of his post-accident paystubs, or a return-to-work date, and I draw an adverse inference as a result. At the case conference, Beason agreed to produce the records but failed to do so. I infer from this that disclosing this information would be detrimental to Beason's case and therefore draw an adverse inference.
- [16] I find that Beason's repeated inaccurate reports to various assessors demonstrates a willingness to mislead The Personal. As noted above, Beason submitted claims forms indicating that he was unable to work as a result of the accident. Beason continuously reported to insurer's examination ("IE") assessors and his own healthcare providers that he never engaged in any employment following the accident. The following reports documented the Applicant stating that he never returned to any employment: Dr. M. Sapienza, neuropsychologist, IE report dated April 29, 2017; Dr. S. Esmail, neurologist, IE report dated May 10, 2017; Dr. E. English, orthopaedic surgeon, dated May 25, 2017; P. Kedar, occupational therapist, report dated August 26, 2017; J. Ford, occupational therapist, IE report dated November 5, 2017; Dr. S. Dharamshi, physician, IE report dated May 9, 2019; Dr. J. Jeffries, psychiatrist, IE report dated May 9, 2019; and the R. Billet, Canadian Certified Vocational Evaluator, IE report dated May 9, 2019.
- [17] I conclude from the evidence that Beason returned to full-time employment at one of his two employers following the accident. However, he continued to advise The Personal and his healthcare providers that he was unable to work. I conclude that the sole purpose of misrepresenting his employment status was for Beason to receive IRBs at a time when he is not entitled to the benefit. Instead of addressing his actions at this hearing, he made the choice to not participate and failed to file written submissions. As a result, The Personal's evidence and submissions are unrefuted and prevail.

Notice

- [18] I find that The Personal has satisfied the notice requirements outlined in section 52 of the *Schedule*.
- [19] As indicated earlier, section 52(2) of the *Schedule* provides that The Personal must give Beason notice of the amount that he is required to repay. The Personal provided notice on March 19, 2020 that it sought an overpayment of \$35,775.76

and requested additional information from Beason to clarify whether the amount should be amended. Beason never provided the information and The Personal revised its request to \$60,984.73 in a letter dated June 3, 2021, representing a full repayment of IRBs paid to Beason, to-date.

- [20] I find that the notice dated June 3, 2021 is compliant with the *Schedule*. The notice provided to Beason unequivocally requests a full repayment of IRBs paid to-date, in the amount of \$60,984.73.
- [21] The Personal's entitlement to a repayment is not limited to 12 months because Beason wilfully misrepresented his employment status while collecting IRBs. Beason's tax documents clearly demonstrate that he was employed and earned income on a full-time basis following the accident, at a time where he collected IRBs.
- [22] I find that Beason knew or ought to have known that he was misrepresenting his employment status while collecting IRBs. The Personal's letter dated August 17, 2017 approved Beason's claim for IRBs. The letter also states that "in accordance with section 52 of the Statutory Accident Benefits Scheduled, in the event of a benefit overpayment you will be responsible to pay The Personal Insurance the overpayment amount". Beason was advised that he would be responsible for an overpayment, yet he continued to work post-accident while he collected IRBs.

Interest

- [23] Interest applies to the overdue repayment of benefits, pursuant to section 52(5) of the *Schedule*. Having concluded that The Personal is entitled to a repayment of benefits in the amount of \$60,984.73, it follows that it is entitled to interest is payable pursuant to the bank rate as per in sections 52(5) and 52(6) of the *Schedule*.

ORDER

- [24] Beason is ordered to repay IRBs to The Personal in the amount of \$60,984.73, plus interest pursuant to section 52(5) and 52(6) of the *Schedule*.

Released: July 18, 2023

**Brian Norris
Adjudicator**