



**Citation: Garisto v. Intact Insurance, 2024 ONLAT 22-003343/AABS**

**Licence Appeal Tribunal File Number: 22-003343/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:

**Gaspere Garisto**

**Applicant**

and

**Intact Insurance**

**Respondent**

## **DECISION**

**VICE-CHAIR:**

**Brett Todd**

**APPEARANCES:**

For the Applicant:

No Submissions Filed

For the Respondent:

Yann Grand-Clement, Counsel

**HEARD:**

**By way of written submissions**

## OVERVIEW

- [1] Gaspere Garisto (the “applicant”) was involved in an automobile accident on June 25, 2020 and sought benefits from Intact Insurance (“the respondent”) 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 and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] At a case conference held on January 18, 2023, the parties requested that Tribunal file numbers 22-002872/AABS and 22-003343/AABS be combined. In the resulting Case Conference Report and Order (“CCRO”) released March 17, 2023, file 22-002872/AABS was closed and all issues combined into file 22-003343/AABS.

## ISSUES

- [3] The issues in dispute are:
- i. Is the respondent (insurer) entitled to a repayment of \$2,114.29 relating to its payment of an income replacement benefit (“IRB”) during the period of October 26, 2020 to December 2, 2020?
  - ii. Is the respondent entitled to interest on any overdue payment of benefits?
- [4] In an email sent to the respondent and the Tribunal on August 16, 2023, the applicant advised that he was withdrawing his application and would not be proceeding with issues #1-10, #12, and #13 as listed in the CCRO dated March 17, 2023 that set this matter down for a videoconference hearing. This left only the issue of IRB repayment and interest in dispute. I have amended the issues here accordingly.
- [5] On August 22, 2023, the Tribunal released a Motion Order converting the format of the scheduled hearing from videoconference to written format. This came as the result of the respondent’s Notice of Motion (“NoM”) that was filed with the consent of the applicant on August 18, 2023.

## RESULT

- [6] The applicant shall repay IRB to the respondent in the amount of \$2,114.29, in accordance with s. 37(2)(e) of the *Schedule* and s. 52(1)(a). Interest is also applicable on this amount, pursuant to ss. 52(5) and (6) of the *Schedule*.

## ANALYSIS

### Proceeding with the Hearing in the Absence of the Applicant

- [7] I find that the Tribunal has met its reasonable notice obligations. Therefore, I am proceeding with this written hearing in the absence of the applicant.
- [8] Proceeding with a written hearing where a party fails to participate, under s. 7(2) of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 (“SPPA”), requires the Tribunal to be satisfied that the absent party received notice of the written hearing that complies with ss. 6(1) and 6(4) of the *SPPA*.
- [9] The applicant and his legal representative attended the case conference held regarding this application on January 18, 2023. The applicant’s legal representative was also in contact with the respondent and the Tribunal on August 16, 2023, when all of the applicant’s issues were withdrawn. In addition, the applicant consented to the change of the hearing format as of the NoM filed by the respondent on August 18, 2023.
- [10] In the Tribunal Motion Order that converted the format of the hearing, the written hearing date was set for October 20, 2023. Applicant’s submissions and evidence were scheduled to be filed 30 calendar days before the hearing date (September 20, 2023), with respondent submissions evidence due 14 calendar days before the hearing (October 6, 2023). Applicant reply submissions, if any, were due seven calendar days before the hearing (October 13, 2023).
- [11] The Tribunal sent a Notice of Written Hearing (“NoWH”) to both parties on September 14, 2023 confirming the hearing date and submissions timetable as detailed above. The NoWH included the provision that the Tribunal may make a decision without the participation of either or both of the parties and without further notice if submissions are not filed.
- [12] The applicant failed to file submissions for the hearing by September 20, 2023 or October 13, 2023, in accordance with the above timeline set in the Motion Order. According to Tribunal records, a reminder email was sent to both parties on November 2, 2023 regarding the applicant’s submissions. There is no indication that the applicant responded to this email, or that the applicant has been in contact with the Tribunal since August 2023.
- [13] The respondent filed its submissions on October 3, 2023, in accordance with the timeline as established in the Tribunal Motion Order.

- [14] There is no evidence that the applicant's address changed or was otherwise incorrect in Tribunal records. If the applicant's address differed from what was originally provided to the Tribunal, he had an obligation under Rule 4.4 of the Tribunal *Rules* to provide the correct address.
- [15] For the above reasons, I find that the applicant knew of this proceeding and chose not to participate. As a result, I am satisfied that the Tribunal has met its notice obligations pursuant to s. 7(2) of the *SPPA* and is in compliance with ss. 6(1) and 6(4) of the *SPPA*.

### **IRB Repayment**

- [16] I find that the respondent is entitled to the repayment of \$2,114.29 in IRB paid to the applicant from October 26, 2020 to December 2, 2020, due to the applicant's return to work. The respondent is also entitled to interest on this amount.

### ***Notice of repayment request***

- [17] I find that the respondent has satisfied the repayment notice requirements as specified in s. 52(2) of the *Schedule*.
- [18] The respondent is permitted to claim the repayment of IRB in certain situations and subject to certain conditions as established by the *Schedule*. Section 52 addresses repayments to an insurer, with s. 52(2) providing that an insurer must give an insured person notice of the amount that is required to be repaid.
- [19] In submissions, the respondent argues that a letter sent by the insurer to the applicant on March 18, 2021 constitutes proper notice under s. 52(2) of the *Schedule*. The respondent writes that this letter was sent within 12 months after the payment of the amount that was requested to be repaid; that it notified the applicant of the insurer's position regarding the reason for the termination of the IRB; that it detailed the period during which this amount was overpaid; and that it listed the amount that was overpaid and for which repayment was sought.
- [20] I agree. The insurer fulfilled its notice obligations in accordance with the *Schedule*.
- [21] First, the insurer sent correspondence to the applicant on December 14, 2020. It was noted in this letter that the applicant's legal representative had notified the insurer of the applicant's return to work on October 26, 2020. As such, the applicant was no longer eligible as of that date to continue to receive the \$400.00 in weekly IRB that the insurer had been paying.

- [22] Second, formal request for IRB repayment was sent by the insurer to the applicant on March 18, 2021. In this correspondence, the insurer noted the above facts and requested the repayment of \$2,114.29 in the IRB paid to the applicant from October 26, 2020 (the day that the applicant acknowledged returning to work) to December 2, 2020 (the day that the IRB was discontinued by the insurer).
- [23] As the notice sent on March 18, 2021 meets s. 52(2) of the *Schedule*, the respondent may seek repayment of IRB.

***Resumption of employment and IRB repayment***

- [24] I find that the applicant returned to work on October 26, 2020 and was ineligible to receive IRB after this date. As a result, the respondent is entitled to repayment of IRB in the total of \$2,114.29 that was paid to the applicant between October 26, 2020 and December 2, 2020, the date that IRB was terminated, plus interest.
- [25] Section 37(2) of the *Schedule* details that an insurer shall not discontinue the payment of a specified benefit to an insured person unless a number of factors are met. Section 37(2)(e) establishes one of these factors as being the insured person's resumption of "his or her pre-accident employment duties."
- [26] Section 52 of the *Schedule* addresses repayments to an insurer. Section 52(1)(a) mandates that an insured person is liable to such repayment "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."
- [27] The respondent submits that IRB in the quantum of \$400.00 was paid weekly to the applicant from July 2, 2020 until December 2, 2020 as a result of injuries that he sustained in the subject accident. It further notes that the applicant was working full time as a production supervisor at Marsan Foods at the time of the accident.
- [28] As noted above, the respondent also submits that the applicant's legal counsel sent an email to the insurer on November 27, 2020 confirming that he had returned to his place of employment on October 26, 2020. This email, a copy of which the respondent included in its submissions, notes the return to work at modified duties/hours and at full pay, and asks the insurer to "[k]indly calculate IRB overpayment (if any)."
- [29] Given the above, the respondent argues that it is entitled to the repayment of the IRB paid between October 26, 2020 and December 2, 2020.

[30] In the absence of any submissions from the applicant, I accept the position of the respondent. The applicant's own legal representative confirmed his return to work as of October 26, 2020 and requested that the insurer calculate the amount of overpaid IRB, if any. It is self-evident that this meets the criteria established by 37(2)(e) of the *Schedule*, in that the applicant clearly returned to his place of employment while continuing to accept IRB payments. This then triggers the repayment of IRB, pursuant to s. 52(1)(a), as the overpayment was the result of the misrepresentation of the applicant regarding his failure to promptly notify the insurer of his return to work.

[31] As a result, the respondent is entitled to the repayment of \$2,114.29 in IRB paid to the applicant from October 26, 2020 to December 2, 2020, plus interest.

### **ORDER**

[32] The applicant is ordered to repay \$2,114.29 in IRB to the respondent, pursuant to s. 37(2)(e) and s. 52(1)(a) of the *Schedule*. Interest is applicable, in accordance with ss. 52(5) and (6) of the *Schedule*.

**Released:** January 10, 2024



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**Brett Todd**  
**Vice-Chair**