



Citation: Aviva Insurance Canada v. Subramaniam, 2024 ONLAT 22-000874/AABS

Licence Appeal Tribunal File Number: 22-000874/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:

Aviva Insurance Canada

Applicant

and

Suranthiran Subramaniam

Respondent

DECISION

VICE-CHAIR: Brett Todd

APPEARANCES:

For the Applicant: Sonya M. Katrycz, Counsel

For the Respondent: No Submissions Filed

HEARD: By way of written submissions

OVERVIEW

- [1] Suranthiran Subramaniam (the “respondent”) was involved in an automobile accident on October 30, 2018 and sought benefits from Aviva Insurance Canada (“the applicant”) pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The applicant paid income replacement benefits (“IRB”) to the respondent following the accident that it alleges were made in error due to the wilful misrepresentation and fraud of the respondent. The applicant applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) to seek a repayment order regarding the total amount of this IRB.

ISSUES

- [3] The issues in dispute are:
1. Is the applicant (insurer) entitled to a repayment of \$48,628.57 relating to its payment of IRB from November 6, 2018 to March 5, 2021?
 2. Is the applicant entitled to interest on the repayment of benefits?

RESULT

- [4] The respondent is ordered to repay \$48,628.57 in IRB to the applicant due to wilful misrepresentation and fraud, pursuant to s. 52(1)(a) of the *Schedule*. Interest is also applicable, in accordance with ss. 52(5) and (6) of the *Schedule*.

ANALYSIS

Proceeding with the Hearing in the Absence of the Respondent

- [5] I find that the Tribunal has met its reasonable notice obligations. Therefore, I am proceeding with this written hearing in the absence of the respondent.
- [6] 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*.
- [7] The respondent attended both case conferences that were held with regard to this application on December 7, 2022 and March 8, 2023. The first case conference was adjourned as a result of language issues between the

respondent, who was representing himself, and the Tamil language interpreter. The second case conference proceeded without apparent issue, although the respondent continued to proceed as self-represented.

- [8] As a result of the March 8, 2023 case conference, a Case Conference Report and Order (“CCRO”) was issued on March 15, 2023 that identified the issues in dispute as noted above and set the matter down for a written hearing. This CCRO also established a timeline for both parties regarding productions and submissions. On April 25, 2023, the Tribunal sent a Notice of Written Hearing (“NoWH”) to the parties that set a written hearing date of December 15, 2023.
- [9] The timeline established by the CCRO and the NoWH required the applicant’s submissions to be filed by November 15, 2023 and the respondent’s submissions to be filed by December 1, 2023. Applicant reply submissions, if any, were due by December 8, 2023.
- [10] In addition, the respondent participated as a self-represented party in a Tribunal Motion Order hearing held on June 30, 2023. This hearing was scheduled as a result of a Notice of Motion (“NoM”) filed by the applicant on June 16, 2023 seeking an order requiring the respondent to provide his employment information and authorizations for productions relating to the IRB repayment issue in dispute. These documents had also been requested during the case conference on March 8, 2023 and were noted in the CCRO dated March 15, 2023.
- [11] In a Tribunal Motion Order dated July 4, 2023, the respondent was ordered to provide information regarding all employers that he had worked for since October 30, 2015, and authorizations to obtain relevant files from the Canada Revenue Agency (“CRA”), Ontario Disability Support Program (“ODSP”), Canada Pension Plan (“CPP”), Canada Emergency Response Benefit (“CERB”), and Employment Insurance (“EI”) from 2015 to present. All were to be provided to the applicant within 10 days of the order.
- [12] Based on Tribunal records, the respondent failed to respond to this order. He also failed to file submissions in accordance with the deadline set by the CCRO and the NoWH. The applicant filed its submissions dated November 13, 2023.
- [13] Given the record of the respondent’s participation in two case conferences and the Motion Order hearing detailed above, it is apparent that the respondent knew of this proceeding and chose not to participate.
- [14] Although interpretation issues were noted in the CCRO resulted from the first case conference on December 7, 2022, the respondent continued to proceed as

a self-represented party. According to the Tribunal records before me, the respondent did not at any point request additional accommodation, note that he was seeking legal representation or considering obtaining legal representation, or request other/different language services other than the interpretation provided in each of the case conferences. Lastly, while there was no interpreter during the Motion Order hearing on June 30, 2023, it is noted in the resulting order that the respondent agreed to proceed with that hearing without an interpreter.

- [15] It is apparent that there were no communication issues between the Tribunal and the respondent, due to his attendance at the events noted above. Tribunal records also indicate that he replied to Tribunal emails. Regardless, if there were any communication issues regarding the respondent's contact information that are not apparent in what is before me, I note that Rule 4.4 of this Tribunal's *Rules* mandates that a party must notify the Tribunal in writing of changes to contact information.
- [16] Tribunal records also do not indicate any request from the respondent to change the format from a written hearing.
- [17] 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*. Therefore, I may proceed with this hearing.

IRB Repayment

Notice of repayment request

- [18] I find that the applicant has satisfied the repayment notice requirements as specified in ss. 52(2) and 52(3) of the *Schedule*.
- [19] An insurer is permitted to claim the repayment of IRB in certain situations and subject to certain conditions as established by the *Schedule*. Section 52(2) provides that an insurer must give an insured person notice of the amount that is required to be repaid. Section 52(3) mandates that such notice be provided within 12 months of the payment of the amount that is to be repaid, unless the amount was originally paid as a result of wilful misrepresentation or fraud.
- [20] The applicant submits that a letter sent by Aviva to the respondent on November 10, 2021 meets the notice requirements of s. 52. This letter—which was followed by an additional eight repayment request notices sent between December 13, 2021 and March 13, 2023—identified the amount of the IRB required to be repaid and that the insurer was seeking this repayment as the benefit had been paid in

error due to the respondent's wilful misrepresentation and/or fraud. The applicant further submits that the IRB repayment period should not be limited to 12 months as established in s. 52(3) due to the respondent wilfully misrepresenting his employment status.

[21] As noted above, the respondent has not provided submissions.

[22] I agree with the applicant. The November 10, 2021 letter is compliant with the repayment notice provisions provided in s. 52 of the *Schedule*. The 12-month notice provision of s. 52(3) does not apply here, as I also find that the respondent has committed wilful misrepresentation and fraud (see below) with regard to his not informing the applicant about continuing to work while claiming IRB.

[23] Accordingly, the applicant may seek repayment of IRB from the respondent.

Wilful misrepresentation of work status and IRB repayment

[24] I find that the applicant is entitled to the repayment of \$48,628.57 in IRB that was paid to the respondent from November 6, 2018 to March 5, 2021, as a result of the respondent's wilful misrepresentation and fraud. The applicant is also entitled to interest on this amount.

[25] Section 52(1)(a) of the *Schedule* establishes that an insured person is liable to repay the insurer any benefit "paid as the 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."

[26] The applicant submits that IRB was paid to the respondent beginning with a retroactive payment of \$5,028.97 on January 23, 2019 that covered the time period from November 6, 2018 to February 1, 2019. Following this, IRB was paid at a quantum of \$800.00 bi-weekly starting on February 4, 2019. IRB was terminated on March 5, 2021 following a February 23, 2019 multidisciplinary insurer's examination ("IE") assessment report in which four assessors found that the respondent did not meet the test for IRB. A total of \$48,628.57 was paid in IRB during the November 6, 2018 to March 5, 2021 time period.

[27] The applicant now alleges that the entirety of this IRB was paid due to the wilful misrepresentation and fraud of the respondent, who misled his insurer and continued to work during the time he was receiving this benefit. The applicant submits that information about the respondent's work status came to it during preparation for a Tribunal videoconference hearing regarding the same subject accident that was set for April 11-14, 2022 under file 21-014741/AABS.

- [28] That application, which was initiated by Mr. Subramaniam, involved a dispute over entitlement to attendant care, treatment plans, and the discontinuation of IRB noted above (which was added as an issue at the case conference held on May 31, 2021, as noted in the resulting CCRO dated June 2, 2021). This application was withdrawn by Mr. Subramaniam on November 1, 2021. According to the applicant's submissions for this matter, the withdrawal took place shortly after surveillance video was served on Mr. Subramaniam's former legal counsel that showed him working in April, May, June, and July 2021.
- [29] Following the resolution of that application, the insurer then filed its own application with the Tribunal that resulted in this written hearing with the sole issue being the repayment of IRB paid to Mr. Subramaniam.
- [30] As detailed in paragraphs 10-12, the respondent was twice ordered by the Tribunal to provide information relevant to the IRB issue and failed to do so. In submissions, the applicant notes that over a dozen attempts were made between December 7, 2022 and June 9, 2023 to secure the respondent's authorizations for these documents, including the respondent's CRA, ODSP, CPP, CERB, and EI records.
- [31] All resulted in failure, according to the applicant. The applicant claims that the respondent provided the wrong information; he did not properly sign the authorizations and/or did not have them witnessed; and he did not reply at all to 11 reminder emails sent between March 23, 2023 and June 9, 2023.
- [32] Further, the respondent refused to sign a Canada Revenue Agency authorization on July 17, 2023 when the applicant sent an investigator to his home to facilitate the signing of these documents. According to the applicant's submissions, the authorizations that the respondent did sign on that day produced no records. Two authorizations sent to past employers of the respondent were returned to sender, and the other one resulted in a phone call from the alleged employer who informed the applicant that it had no record of the respondent's employment.
- [33] As a result of the non-compliance detailed above, the applicant argues that an adverse inference should be drawn with regard to the IRB repayment dispute, alleging that the respondent has been "evasive and uncooperative in providing the particulars of his post-accident employment." It relies on *The Personal Insurance Company v. Beason*, 2023 CanLII 65775 (ON LAT) ("*Beason*"), a Tribunal decision in which an adverse inference was drawn as a result of the respondent failing to provide post-accident pay stubs or a return to work date.

- [34] In addition, the applicant references two surveillance reports completed by Intrepid Investigations dated May 22, 2021 and July 7, 2021. The first report involved surveillance conducted over 11 days between April 26, 2021 and May 21, 2021; the second report involved surveillance conducted on six consecutive days between June 28, 2021 and July 3, 2021.
- [35] Each extensive report details the respondent working as a manual labourer at York Manufacturing Services in North York, ON and at Alta Rossa Ristorante in Vaughan, ON. Video stills show the respondent dumping garbage into dumpsters, hauling various items, and using hand-carts. He was observed and filmed while working on 13 days in total during the surveillance periods, including during every day he was observed from June 28, 2021 to July 3, 2021.
- [36] For the above reasons, the applicant seeks a Tribunal decision ordering the respondent to repay IRB in the full amount of \$48,628.57.
- [37] As already noted, the respondent has not filed submissions for this hearing.
- [38] Given the aforementioned, well-substantiated argument of the applicant and the respondent's non-participation in this hearing, I agree fully with the applicant.
- [39] I draw an adverse inference from the respondent's continued failure to produce any employment, CRA tax records, or other information that would have detailed his pre- and post-accident job status and income.
- [40] I concur with the applicant regarding *Beason*, which involved a similar situation. As in that matter, the respondent's conduct here also demonstrates a willingness to mislead his insurer. This respondent's conduct is arguably more noteworthy. He avoided any and all attempts to provide the information sought despite multiple Tribunal orders and the applicant's thorough efforts to make it easy on the respondent to sign the authorization forms—which included sending someone to the respondent's front door with the papers in hand.
- [41] As a result, I infer that the respondent's conduct indicates that the disclosure of employment and income information would be detrimental to his case. This inference is bolstered by the Intrepid Investigations surveillance reports. Although these reports document the respondent working only after the period during which the applicant is seeking repayment of IRB, they further support the inference that the respondent was being evasive regarding his employment and income documentation because it could reveal that he was working while claiming IRB.

[42] In addition, the respondent's disputing the termination of this IRB as part of his application with the Tribunal in the withdrawn file 21-014741/AABS indicates a further willingness to mislead his insurer about his work status. The surveillance reports clearly show the respondent working during the period when he was actively disputing the termination of his IRB at the Tribunal, again demonstrating his readiness to commit wilful misrepresentation regarding this benefit by not disclosing that he was working.

[43] For the above reasons, the applicant is entitled to the repayment of \$48,628.57 in IRB that was paid to the respondent from November 6, 2018 to March 5, 2021, as a result of the respondent's wilful misrepresentation and fraud regarding his work status. The applicant is also entitled to interest on this amount.

ORDER

[44] The respondent is ordered to repay \$48,628.57 in IRB to the applicant due to wilful misrepresentation and fraud, pursuant to s. 52(1)(a) of the *Schedule*. Interest is also applicable, in accordance with ss. 52(5) and (6) of the *Schedule*.

Released: March 18, 2024



Brett Todd
Vice-Chair