



Citation: Ozdemir v. Economical Mutual Insurance Company 2024 ONLAT 23-002000/AABS-PI

Licence Appeal Tribunal File Number: 23-002000/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:

Ozkan Ozdemir

Applicant

and

Economical Mutual Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: Ulana Pahuta

APPEARANCES:

For the Applicant: Purva Vaidya, Counsel

For the Respondent: Branson Wong, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Ozkan Ozdemir, the applicant, was involved in an automobile accident on November 9, 2020, 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, Economical Mutual Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issue to be decided is:
- i. Is the applicant barred from proceeding with their claim for benefits as they failed to submit the application for benefits (OCF-1) within the time prescribed by the *Schedule*?

RESULT

- [3] The applicant is statute-barred from proceeding with his application.

ANALYSIS

Law

- [4] Section 32(1) of the *Schedule* provides that a person who intends to apply for accident benefits shall notify the insurer of their intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day.
- [5] Once an insurer receives notice of an applicant’s intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 forms, a written explanation of the benefits available, information to assist the person in applying for benefits and information on the election relating to the specified benefits, if applicable (s. 32(2)). Pursuant to section 32(5) of the *Schedule*, the applicant must then submit a completed and signed application for benefits to the respondent within 30 days after receiving the forms.
- [6] Section 34 of the *Schedule* states that “a person’s failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation.” The onus is on the applicant to establish a reasonable explanation for the delay. The interpretation of “reasonable

explanation” is guided by *Horvath and Allstate Insurance Company of Canada*, 2003 ONFSCDRS 92 (CanLII), and was more recently reiterated in *K.H. vs Northbridge*, 2019 CanLII 101613 (ON LAT). The guiding principles are summarized as follows:

- a. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed.
- b. The onus is on the insured person to establish a “reasonable explanation.”
- c. Ignorance of the law alone is not a “reasonable explanation”.
- d. The test for “reasonable explanation” is both a subjective and objective test that should take account of both personal characteristics and a “reasonable person” standard.
- e. The lack of prejudice to the insurer does not make an explanation automatically reasonable.
- f. An assessment of reasonableness includes a balancing of prejudice to the insurer, hardship to the claimant and whether it is equitable to relieve against the consequences of the failure to comply with the time limit.

Background and Parties’ Positions

- [7] The applicant was involved in an accident on November 9, 2020. On April 15, 2021, he notified the respondent of his intention to seek accident benefits, by submitting an OCF-1. By way of letter dated April 28, 2021 the respondent notified the applicant that the OCF-1 was incomplete and stipulated a deadline of May 28, 2021 to provide the completed OCF-1.
- [8] On June 2, 2021 the respondent sent a second letter reiterating its request to provide a completed OCF-1 and requesting that the applicant provide a reasonable explanation for the delay in submitting an application. A third letter was sent to the applicant on June 15, 2021 requesting the completed OCF-1, setting a deadline of July 15, 2021, and specifying that the failure to return the form could result in his right to claim benefits being forfeited under s. 32(5) of the *Schedule*.
- [9] The June 15, 2021 letter was returned to sender, so on July 6, 2021 the respondent sent a new letter again advising the applicant of his incomplete OCF-

1 and setting out potential consequences for failure to provide the completed OCF-1.

- [10] The respondent submits that despite its numerous requests, the applicant has not provided a completed OCF-1 to date or a reasonable explanation for the delay. It further argues that the applicant contravened the timelines in s. 32(1) of the *Schedule*, as he failed to notify the respondent of his intention to seek accident benefits within seven days, or as soon as practicable thereafter. Given that the applicant submitted his incomplete OCF-1 on April 15, 2021 (more than five months post-accident), the respondent submits that the applicant is well-outside the timeline specified in the *Schedule*.
- [11] The applicant does not dispute that he first provided his OCF-1 to the respondent on April 15, 2021, and that he has not submitted an updated OCF-1. However, he argues that he has a reasonable explanation for the delay, pursuant to s. 34 of the *Schedule*. The applicant submits that he was delayed in both applying for accident benefits and providing the completed OCF-1, as he did not “know his rights” regarding the accident, and had caught COVID after the accident as well. He further submits that he had changed residences and counsel and was suffering from “severe injuries” during this period. Finally, the applicant argues that the respondent was non-compliant with s. 32(2) of the *Schedule*.

Did the applicant fail to comply with the timelines stipulated in s. 32 of the Schedule?

- [12] I find that the applicant did not notify the respondent of his intention to apply for accident benefits within seven days, or as soon as practicable, as required by s. 32(1) of the *Schedule*. Nor has the applicant submitted a completed OCF-1 as required by s. 32(5) of the *Schedule*.
- [13] The applicant submitted his OCF-1 to the respondent more than five months after the accident. I agree with the respondent that this is well-outside the seven day, or as soon as practicable, timeline specified in s. 32(1) of the *Schedule*. Further, the respondent notified the applicant multiple times that the OCF-1 was incomplete and that portions of the OCF-1 had been left blank, including the Part 3 detailing the accident and identifying the health professional seen after the accident, Part 4 regarding insurance information, Part 8 specifying employment and income and Part 9 regarding income from a disability plan.
- [14] Although I find that the applicant was non-compliant with s. 32 of the *Schedule*, the applicant submits that he has a reasonable explanation for the delay pursuant to s.34.

The applicant has not established a reasonable explanation for the delay

- [15] I find that the applicant has not provided a credible explanation for his delay in both notifying the respondent of his intention to pursue accident benefits and submitting a completed OCF-1.
- [16] In his June 2021 Statutory Declaration, the applicant stated that the reason he delayed in notifying the respondent, was because he did not know his rights regarding the accident, and that he had caught COVID after the accident. However, I agree with the respondent that *Horvath* provides that ignorance of the law alone is not a reasonable excuse. Further, the applicant has provided no medical evidence to substantiate his claim that he was restricted in notifying the respondent or submitting his completed application, due to COVID.
- [17] The applicant similarly asserts in his submissions that he was delayed due to “severe” injuries that impacted him physically and psychologically. However, the only medical evidence the applicant provides in support of his claim, is the hospital records from the day of the accident, and a copy of an OCF-18 for a psychological assessment. I agree with the respondent that the hospital records do not substantiate severe physical injuries which would warrant the five month delay in notifying the respondent, and the two and a half year delay in completing the OCF-1.
- [18] With respect to purported psychological impairments, the applicant solely relies on a pre-screening interview summary conducted by a psychotherapist, which was based on the applicant’s self-reports without any psychological testing. No medical evidence supporting any psychological symptoms or a psychological impairment has been tendered by the applicant. In his submissions, the applicant argues that since the substantive issues are not being addressed at this preliminary hearing, the Tribunal is “not being called upon to scrutinize medical evidence”. While I agree with the applicant that the substantive issues are not in dispute in this hearing, if the applicant is arguing that his inability to comply with s. 32 of the *Schedule* was due to his severe injuries, the onus is on the applicant to substantiate this claim with evidence. The applicant has not met this onus.
- [19] Finally, the applicant submits that his change in residence and counsel were also a cause of his delay. However, no evidence or specific submissions were provided by the applicant to show how a change in residence caused the five month and two and a half year delay. While I accept that the respondent’s June 2, 2021 letter was returned due to the applicant’s change in address, the respondent sent a follow-up letter to the correct address soon afterwards. Moreover, I note the respondent’s submissions that the letter was only

undelivered, because the applicant did not notify the respondent of his change in address. Further, the applicant has not provided any evidence to substantiate his claim that the delay was due to a change in representation.

- [20] For the foregoing reasons I find that the applicant has not provided a reason that is credible or worthy of belief for the delay in providing a completed OCF-1 or in notifying the respondent of his intention to apply for accident benefits.

The applicant has not established that the respondent was non-compliant with s. 32(2) of the Schedule

- [21] In the alternative, the applicant submits that the respondent's correspondence did not comply with s. 32(2) of the *Schedule*. Section 32(2) provides that once an insurer receives notice of an applicant's intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 forms, a written explanation of the benefits available, information to assist the person in applying for benefits and information on the election relating to the specified benefits, if applicable.
- [22] From my review of the April 19, 2021 correspondence sent soon after the applicant notified the respondent of his intention to apply for benefits, it clearly complies with s. 32(2) of the *Schedule*. The applicable OCF forms were provided to the applicant, along with a summary of basic accident benefits which detailed what benefits the applicant could be eligible for and how to apply. The applicant has not provided any specific submissions as to how the respondent was non-compliant with s. 32(2). I do not agree with the applicant that the respondent's communication was terse, vague or ambiguous.

Section 55

- [23] Pursuant to s. 55(1)1 of the *Schedule*, an insured person shall not apply to the Tribunal under subsection 280(2) of the *Insurance Act* if the insured person has not notified the insurer of the circumstances giving rise to a claim for a benefit or has not submitted an application for the benefit within the times prescribed in s. 32.
- [24] As outlined above, I find that the applicant did not notify the respondent of the accident or submit his completed OCF-1 within the timelines prescribed by the *Schedule* and has not provided a reasonable explanation for the delay. Accordingly, I find that the applicant is statute-barred from proceeding with his application before the Tribunal.

CONCLUSION AND ORDER

[25] The applicant is barred by s. 55(1)1 of the *Schedule* from proceeding with his application. The application is dismissed. The Tribunal shall vacate any date that has been scheduled for the substantive issue hearing.

Released: February 21, 2024

Ulana Pahuta
Adjudicator