



Citation: Lee v. Allstate Insurance, 2025 ONLAT 23-011136/AABS

Licence Appeal Tribunal File Number: 23-011136/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:

Jea Gu Lee

Applicant

and

Allstate Insurance

Respondent

DECISION

ADJUDICATOR: **Laura Goulet**

APPEARANCES:

For the Applicant: Jun Ki Lee, Counsel

For the Respondent: Sonya Katrycz, Counsel

HEARD: **By way of written submissions**

OVERVIEW

- [1] Jea Gu Lee, the applicant, was involved in an automobile accident on November 12, 2021, 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, Allstate Insurance, and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The issues in dispute are:
- i. Is the applicant entitled to an income replacement benefit (“IRB”) in the amount of \$400 per week from March 3, 2022, to April 31, 2022?
 - ii. Is the applicant entitled to an IRB in the amount of \$400 per week from September 5, 2022, to April 31, 2023?
 - iii. Is the applicant entitled to \$2,200.00 for a psychiatric assessment, proposed by Prime Medical Management Inc. in an OCF-18/ treatment plan (“treatment plan”) dated July 28, 2023?
 - iv. Is the applicant entitled to \$2,030.00 for acupuncture and high frequency treatment, proposed by BUBU Acupuncture Clinic in an OCF-6 faxed to the respondent on November 24, 2021?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant is not entitled to an IRB.
- [4] The applicant is not entitled to the treatment plan or the OCF-6.
- [5] The applicant is not entitled to interest.

ANALYSIS

The applicant is not entitled to an income replacement benefit

- [6] The applicant has not established on a balance of probabilities that he meets the test for an IRB.

- [7] To receive payment for an IRB under s. 5(1) of the *Schedule*, the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of that employment. The applicant must identify the essential tasks of their employment, which tasks they are unable to perform and to what extent they are unable to perform them. The applicant bears the burden of proving, on a balance of probabilities, that they meet the test.
- [8] The applicant submits that he is entitled to an IRB due to his substantial inability to perform the essential tasks of his employment resulting from the knee impairment he sustained in the accident. The applicant further submits that he was unable to work as a personal support worker (“PSW”) in a government-funded co-op from March 3 to April 30, 2022, and from his work with the Canadian Armed Forces from September 5, 2022 to April 30, 2023 due to these injuries.
- [9] The applicant submits that he experienced significant pain in his left knee the day after the accident. The applicant further submits that he currently experiences daily pain in multiple areas of his body, including his left knee. He submits that the left knee pain is constant, with intensity ranging from 6.5 to 10 out of 10, and the pain is aggravated by prolonged walking or standing, squatting, kneeling, and navigating stairs.
- [10] To support his position, the applicant refers to the following medical evidence:
- i. An ultrasound of the left knee dated March 18, 2022, which resulted in an assessment of left knee joint effusion with fluid in the suprapatellar recess.
 - ii. A report dated September 22, 2022 by Dr. Justin Chang, physician, that the applicant had a stress fracture of the proximal medial tibia.
 - iii. An Advanced X-Ray Analysis Report by Dr. Amir Owliaei, chiropractor, dated October 27, 2023, diagnosing the following accident-related injuries:
 - (i) Cervical spine: loss of cervical lordosis and extra weight due to forward head posture (approximately 7.80 lbs. of extra weight and force placed on the spine and spinal tissues, i.e. discs, muscles, nerves, facet joints, etc.); and

(ii) Lumbar spine: pelvic misalignment and severe loss of lumbar lordosis.

iv. A July 7, 2023 clinical note by Dr. Salar Fallahian who noted in his clinical notes and records (“CNRs”) that the applicant’s left tibia fracture is not healing properly.

- [11] The applicant also relies on the OCF-3 dated November 30, 2021, completed by Peter Wu, physiotherapist, and the OCF-3 dated March 23, 2023, completed by Dr. Jiyeh Joo, physician, indicating that the applicant was substantially unable to perform the essential tasks of his employment at the time of the accident, as a direct result of the accident and within 104 weeks of it.
- [12] The applicant submits that Dr. Owliaei confirmed that due to a chronic pain diagnosis, and due to his accident-related injuries and impairments, the applicant suffers a substantial inability to carry on a normal life. The applicant did not direct me to evidence of a chronic pain diagnosis, and I did not see such an opinion in Dr. Owliaei’s Advanced X-Ray Analysis Report. In this report, Dr. Owliaei indicates that he recommends for the applicant to use caution while at work and to continue working on modified duties (as he has been) to reduce the likelihood of aggravating and/or re-injuring his injured tissues.
- [13] The applicant also relies on the opinion of Dr. Atih Seif, psychiatrist, who assessed the applicant on September 6, 2023 and concluded that his condition has impacted his ability to complete and engage in the essential tasks of his pre-accident employment as a direct result of the accident.
- [14] The applicant submits that on May 1, 2022, he began military training with the Canadian Armed Forces, however, due to ongoing knee issues, he was granted a medical exemption from physically demanding activities such as marching, jumping, and squatting. He further submits that despite these accommodations, he was unable to perform regular military duties from September 5, 2022, onwards, after which he met the minimum requirement of attending classes three hours per week but remained exempt from physical duties. The applicant did not put into evidence any documentation to substantiate this.
- [15] The applicant further submits that as of March 23, 2023, he remained unable to return to full duty work, restricted from heavy lifting and any intense physical activities in terms of duration, type, intensity, or frequency.
- [16] The applicant also submits that he has required the use of a knee brace and other medical interventions, which is noted in the OCF-3 completed by Dr. Joo.

- [17] The applicant refers to an OCF-2 dated December 14, 2021, indicating his income for the four weeks prior to the accident. The applicant does not indicate to which employer the OCF-2 relates, nor did he put the OCF-2 into evidence.
- [18] The respondent submits that the applicant was employed as a cook at Moxie's prior to the accident and that his employment file indicates that he quit working there on October 29, 2021, three weeks before the accident. The respondent further submits that although the applicant contends he worked as a PSW before the accident, he has not provided an employment file or OCF-2 from that employer. The respondent further submits that, at some point after the accident, the applicant joined the military as a paid service member; however, he has not provided the respondent with the first half of the military file.
- [19] The respondent submits that the applicant did not report left knee pain when he attended the hospital the day after the accident, or when he attended to see his family physician on December 1, 2021. The respondent submits that the applicant did not visit his family doctor again until March 17, 2022, and that he did not mention the accident at the appointment but reported that left knee pain began suddenly while he was walking. The respondent also submits that an x-ray of the left knee was entirely normal. The respondent did not put any CNRs into evidence to substantiate its submissions. The applicant did not submit a reply to the respondent's submissions.
- [20] The respondent submits that the applicant stopped working again on September 5, 2022, ten months after the accident and after nine months of working full time as a PSW and in the military. The respondent further submits that despite the fact that left knee pain was not a post-accident complaint, and the fact that on March 17, 2022, the applicant told his doctor that the pain began while he was walking, the applicant attributes his time off work beginning September 5, 2022 to the accident of November 12, 2021. The respondent argues that there is no medical foundation for this contention.
- [21] The respondent further submits that the portion of the military records produced conspicuously begin once the applicant was returning to duties in August of 2022, and therefore the respondent was not provided with information regarding when he first started working with the military and what event led him to take time off and return in August 2022. The respondent argues that an adverse inference should be drawn that it is far more likely that the late-appearing knee injury was caused by military engagement or by walking, than by the accident that occurred five months prior to his first complaint.

- [22] The respondent further submits that despite repeated requests, it has not received the required information to determine if the applicant is eligible for an IRB. The respondent argues that the applicant has not provided any documentation corroborating whether he was off work during the periods in dispute as a result of the accident, or that his income had diminished during these periods as a result of the accident, and that both periods in dispute follow his left knee injury, which was reported five months after the accident and following the start of his military career.
- [23] The respondent also refers to the applicant's Notices of Assessment ("NOAs"), indicating that they show consistent earnings in 2021, 2022, and 2023, despite the applicant's claim for an IRB. I note that the NOAs indicate a total income of \$37,255.00 for 2020, \$36,373 for 2021, \$21,960.00 for 2022, and \$35,816.00 for 2023.
- [24] I place little weight on Dr. Seif's opinion as this assessment was conducted on September 6, 2023, well after the period in dispute relating to the IRB, i.e., between March 3, 2022, and April 31, 2023.
- [25] The applicant did not put into evidence an OCF-2 from Moxie's or from his employer for his work as a PSW. I also note that the Record of Employment from Moxie's that was put into evidence by the applicant indicates a "pay period ending date" of November 2, 2021, which is prior to the accident. As such, I find that the applicant has not demonstrated that he was employed at Moxie's at the time of the accident.
- [26] The applicant's submissions indicate that due to his knee pain, he was unable to continue to work as a PSW starting in early March 2022. The applicant did not put into evidence any CNRs indicating that he complained of left knee pain as a result of the accident. The first indication of a knee injury is an ultrasound of the left knee dated March 18, 2022, four months after the accident. During this time, according to the applicant's submissions, he was working as a PSW.
- [27] Further, I find that the applicant did not put into evidence any documentation to identify the essential tasks of his employment as a PSW or with the military, which tasks he was unable to perform, and to what extent he was unable to perform them.
- [28] The applicant's Notices of Assessment ("NOAs"), indicate that he had consistent earnings in 2021, 2022, and 2023. I also note that the applicant has not provided documentation corroborating whether he was off work during the periods in

dispute as a result of the accident, or that his income had diminished during these periods as a result of the accident.

- [29] For these reasons, I find that the applicant has not established on a balance of probabilities that he suffered a substantial inability to perform the essential tasks of his employment during the periods of March 3, 2022 to April 31, 2022 and from September 5, 2022, to April 31, 2023.
- [30] It is the applicant's burden and based on the evidence before me I find he has not established entitlement to an IRB.

The applicant is not entitled to the treatment plan for a psychiatric assessment

- [31] The applicant has not established on a balance of probabilities that the treatment plan for a psychiatric assessment is reasonable and necessary.
- [32] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.
- [33] The purpose of an assessment is to determine whether a condition exists. For an insured, they bear the onus to demonstrate that there are grounds on which to believe that a condition exists that would warrant further investigation by way of an assessment.
- [34] The treatment plan was proposed by Dr. Owliaei. The goals of the plan are to determine if there are accident-related psychiatric impairments, and to obtain guidance and direction on the best course of action and/or intervention needed.
- [35] In support of his position, the applicant refers to Dr. Seif's Psychiatric Assessment Report dated September 13, 2023. Dr. Seif reviewed CNRs and medical documents and administered five psychiatric/psychosocial tests. As a result of the accident, Dr. Seif diagnosed the applicant with Major Depressive Disorder, Single Episode, in the moderate range, with Anxious Distress, Somatic Symptom Disorder with predominant pain, in the persistent range, at severe levels, and Specific Phobia, situational type - vehicular.
- [36] The applicant also relies on Dr. Fallahian's CNRs where he noted on July 7, 2023 that the applicant is still experiencing symptoms of PTSD and depression.

- [37] The applicant submits that, since the accident, he has reported symptoms of depression and anxiety resulting in social withdrawal, decreased motivation and irritability, straining his relationship with his wife. The applicant further submits that he experiences significant anxiety while driving, characterized by heightened fear, hypervigilance, and physical symptoms like increased heart rate and sweating, as well as diminished self esteem and independence.
- [38] The respondent points out that there are no notations of any psychological complaints in the CNRs of the applicant's family physician, Dr. Jiyeh Joo.
- [39] Although the applicant makes submissions with respect to his psychological symptoms since the accident, submissions are not evidence. Dr. Fallahian's CNRs are dated over one year and seven months after the accident, and Dr. Seif's diagnoses were made almost one year and ten months after the accident. The applicant does not direct me to evidence of any psychological complaints to a treatment provider because of the accident prior to July 2023, which is a significant gap of time from the accident date of November 12, 2021.
- [40] For these reasons, I find that the applicant has not met his onus to demonstrate that there are grounds on which to believe that a condition exists as a result of the accident that would warrant further investigation by way of an assessment. Therefore, he is not entitled to the treatment plan in dispute.

The applicant is not entitled to the OCF-6 for acupuncture and high frequency treatment

- [41] The applicant is not entitled to the OCF-6 in dispute because it was incurred before he submitted a treatment plan.
- [42] Although the issue in dispute states that the OCF-6 was faxed on November 24, 2021, the OCF-6 that was put into evidence by the applicant is dated July 25, 2023, and it indicates that it was faxed to the respondent on July 25, 2023. The OCF-6 contains services for acupuncture and high frequency treatment that were provided between March and October 2022.
- [43] The applicant submits that the OCF-6 is both reasonable and necessary because his serious injuries from the accident require ongoing medical treatment.
- [44] The respondent submits that the OCF-6 refers to incurred, ambiguous treatment that may be experimental in nature. The respondent argues that the applicant has not explained the nature of the "high frequency treatment." The respondent further submits that the OCF-6 is not payable because the treatment was not

proposed by OCF-18, and it was unable to assess the reasonableness and necessity of the treatment before it was incurred, pursuant to s. 38(2) of the *Schedule*.

- [45] Section 38(2) sets out that the insurer is not liable to pay an expense that was incurred before the insured person submits a treatment plan.
- [46] Since the services for acupuncture and high frequency treatment on the OCF-6 were provided between March and October 2022, and the OCF-6 was submitted after the expenses were incurred, and not submitted with a treatment plan, the OCF-6 is not payable, pursuant to s. 38(2).
- [47] For these reasons, the applicant is not entitled to the OCF-6 in dispute.


Interest

- [48] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Since there are no overdue payments, no interest is ordered.

ORDER

- [49] For the above reasons, I find:
- i. The applicant is not entitled to an IRB.
 - ii. The applicant is not entitled to the treatment plan or the OCF-6.
 - iii. The applicant is not entitled to interest.
 - iv. The application is dismissed.

Released: May 30, 2025



Laura Goulet
Adjudicator