



Citation: Paul v. Pembridge Insurance, 2025 ONLAT 23-015314/AABS

Licence Appeal Tribunal File Number: 23-015314/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:

Rajinder Paul

Applicant

and

Pembridge Insurance

Respondent

DECISION

ADJUDICATOR: **Rasha El Sissi**

APPEARANCES:

For the Applicant: Simran Nahal, Counsel

For the Respondent: Evan Argentino, Counsel

HEARD: **By way of written submissions**

OVERVIEW

- [1] Rajinder Paul, the applicant, was involved in an automobile accident on July 9, 2022, 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, Pembroke 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. Are the applicant’s injuries predominantly minor as defined in section 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (“MIG”) limit?
 - ii. Is the applicant entitled to \$1,989.96 for physiotherapy, proposed by Liruma Rehab Centre in a treatment plan/OCF-18 (“treatment plan”) submitted April 21, 2023?
 - iii. Is the applicant entitled to \$2,530.00 for a psychological assessment, proposed by Complete Rehab Centre in a treatment plan submitted July 11, 2023?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?

Procedural Issue

- [3] The applicant submits that the following issue is also in dispute and remains to be resolved: “Is the respondent liable to pay an award under section 10 of Reg. 664 because it unreasonably withheld or delayed payments of benefits?” The applicant made submissions on a section 10 award in his written submissions.
- [4] The respondent submits that the case conference report and order (“CCRO”) released on May 6, 2024, does not include a claim for a section 10 award. The respondent states that it did not provide consent after the date of the case conference for the applicant to add this issue. The respondent submits that to add a section 10 award to the issues in dispute to be resolved would be procedurally unfair.
- [5] The applicant did not make any reply, as was his right.

[6] I note that entitlement to an award was identified by the applicant as an issue in dispute in the applicant's application to the Tribunal for dispute resolution, dated December 18, 2023. I further note that the case conference summaries of the applicant and respondent, as well as the CCRO itself, did not discuss that any issues were withdrawn or settled. The applicant did not take any steps with the Tribunal after the CCRO was released to address this difference. The applicant did not provide an explanation in his submissions.

[7] Therefore, I decline to add the issue to the issues in dispute in this hearing.

RESULT

[8] I find that:

- i. The applicant's injuries are predominantly minor and therefore subject to treatment within the \$3,500.00 limit of the MIG; and
- ii. The applicant is not entitled to the treatment plans in dispute or interest.

ANALYSIS

MIG

[9] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured sustains impairments that are predominantly a minor injury. Section 3(1) defines a "minor injury" as "one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury."

[10] The applicant may be removed from the MIG if he can establish his accident-related injuries fall outside of the MIG or, under section 18(2), that he has a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal recovery if he is kept within the MIG. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.

[11] To demonstrate he should be removed from the MIG, the applicant must show he sustained chronic pain with functional impairment that is more than sequelae from his accident-related injuries. The Tribunal has held that chronic pain syndrome, or pain that is a severe, debilitating condition distinct from ongoing or recurring pain, qualifies as chronic pain.

- [12] The applicant submits that he should be removed from the MIG on the basis that he sustained physical injuries that are more than minor injuries, as well as a psychological impairment, as a result of the accident.

Physical injuries as a result of the accident are predominantly minor

- [13] I find that the applicant has not established, on a balance of probabilities, that he sustained physical injuries that fall outside of the MIG, as a result of the accident.
- [14] The applicant relies on an OCF-3 of Dr. Melissa Boodhram, chiropractor, dated September 1, 2022. Dr. Boodhram diagnosed the applicant with headaches, injury of muscle and tendon at neck level, injury of muscle and tendon at thorax level, injury of muscle and tendon of abdomen, lower back and pelvis, sprain and strain of shoulder joint, and muscle strain.
- [15] I find that the injuries diagnosed by Dr. Boodhram do not remove the applicant from the MIG because they are predominantly sprains and strains, and soft tissue injuries, that all fall within the definition of “minor injury” under the *Schedule*.
- [16] The applicant also relies on the Clinical Notes and Records (“CNR”) of Dr. Abdelsaied to establish his claim that he should be removed from the MIG because he sustained physical injuries that are more than minor injuries, as a result of the accident.
- [17] After the accident, Dr. Abdelsaied's CNR document numerous consultations by the applicant for pain in multiple body parts, commencing on November 17, 2022. Over the course of these visits, the doctor assessed the applicant with mechanical back pain, neck and back muscle spasm, cervical disc disease, shoulder strain and similar ailments. The doctor ordered diagnostic tests that showed, in summary, cervical stenosis, degenerative changes in the lumbar spine, a subacromial spur, biceps tenosynovitis, and a partial interstitial tear involving the subscapularis tendon footplate.
- [18] I find that the applicant has not met his onus to establish that the assessments and diagnoses of Dr. Abdelsaied are sufficient to remove him from the MIG.
- [19] The applicant has not pointed to objective medical evidence that his injuries of cervical stenosis, degenerative changes in the lumbar spine, a subacromial spur and biceps tenosynovitis are related to the accident.
- [20] I note that the injuries are either predominantly sprains and strains in nature, which would fall into the definition of a “minor injury” if accident-related or are

non-accident-related degenerative issues (such as spinal stenosis, bone spur and degenerative disc changes).

- [21] The respondent submits, and I agree, that the applicant's partial interstitial tear involving the subscapularis tendon footplate, is not sufficient to remove the applicant from the MIG. I find that such an injury falls within the definition of a minor injury, which requires a full tear for removal from the MIG.
- [22] I also note that the applicant did not make any submissions or present any evidence about a documented pre-existing injury or that he sustained chronic pain with functional impairment as a result of the accident.
- [23] Therefore, I am not persuaded, on a balance of probabilities and considering the totality of the evidence, that the applicant's accident-related physical injuries remove him from the MIG.

Psychological impairments as a result of the accident

- [24] I find that the applicant's accident-related psychological symptoms do not warrant removing him from the MIG.
- [25] The applicant submits that he complained to Dr. Abdelsaied of nightmares of the accident, low mood and thoughts of self-harm, as noted in the CNR entry on November 17, 2022, when he first reported the accident. The doctor diagnosed the applicant with "PTSD."
- [26] The applicant submits that Dr. Abdelsaied prescribed him the anxiety medication Escitalopram. I note from the CNR of Dr. Abdelsaied and the applicant's prescription summary, that this prescription was made a year after the accident, on August 1, 2023. There is nothing in the CNR of Dr. Abdelsaied that suggests that Escitalopram was prescribed for psychological symptoms stemming from the accident. Rather, the applicant's reports of anxiety on August 1, 2023 appeared to stem from other health concerns he was experiencing that were unrelated to the accident.
- [27] I note that the OCF-3 dated November 21, 2024 signed by Dr. Abdelsaied is consistent with my findings. It indicates that the applicant's injuries from the subject accident are mechanical back pain, lower neck pain and bilateral shoulder pain. The doctor did not indicate that there were any psychological injuries from the accident at that time. The doctor also checked "N/A" or "No" to all questions about the employment and functional impacts of these injuries.

- [28] The respondent submits that one psychological complaint and diagnosis by Dr. Abdelsaied, without a referral or recommendation for psychological treatment, is insufficient to establish a psychological condition that should remove the applicant from the MIG.
- [29] I agree that a single CNR entry of accident-related psychological symptoms is not sufficient to warrant removal from the MIG on psychological grounds, particularly in the period immediately after the accident and where further psychological complaints were not made until much later.
- [30] The applicant also relies on a section 25 psychological assessment report dated July 9, 2024, supervised by Dr. Jacqueline Brunshaw, psychologist. Dr. Brunshaw diagnosed the applicant with Adjustment Disorder with Anxiety; Major Depressive Disorder; and Specific Phobia, Situational Type (Vehicular). I note this assessment was issued two years after the accident.
- [31] The respondent submits that no weight should be assigned to this psychological assessment because the notations of the applicant's subjective reports are inconsistent with the CNR of Dr. Abdelsaied, including the OCF-3 he signed. The respondent submits that Dr. Abdelsaied's CNR should be preferred because they are objective and concurrent.
- [32] I note that the applicant discussed thoughts of self-harm with the interviewing psychologist. The assessment report states that the applicant said that he does not know why he is experiencing these thoughts. Without diminishing their seriousness, I note that the applicant did not connect them to the accident.
- [33] The assessment was also based on an analysis of the applicant's tests scores in seven psychological tests administered by the psychologist. The report states that the results appear to indicate that he is experiencing depression, anxiety, somatic pain, vehicular anxiety and post-traumatic distress.
- [34] On the totality of the evidence, I am not persuaded that the psychological impairments diagnosed by Dr. Brunshaw two years after the accident are supported by the objective medical evidence. I prefer the evidence of Dr. Abdelsaied's CNR because they are contemporaneous with both the accident and the date of the psychological assessment.
- [35] In sum, on a balance of probabilities, I find that the applicant's accident-related psychological symptoms do not warrant removing the applicant from the MIG.

Treatment Plans

- [36] As I find that the applicant's accident-related injuries are predominantly minor, these injuries are subject to treatment within the MIG limit. Therefore, it is not necessary for me to consider whether the treatment plans in dispute are reasonable and necessary.

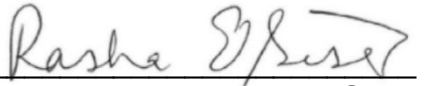
Interest

- [37] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. As no payments of benefits are overdue, the applicant is not entitled to any interest.

ORDER

- [38] For the above reasons, I find:
- i. The applicant's injuries are predominantly minor and therefore subject to treatment within the \$3,500.00 limit of the MIG; and
 - ii. The applicant is not entitled to the treatment plans in dispute or interest.

Released: October 3, 2025



Rasha El Sissi
Adjudicator