



**Citation: Lam v. Allstate Insurance Company, 2024 ONLAT
23-012844/AABS-PI**

Licence Appeal Tribunal File Number: 23-012844/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:

Tan Yeung Lam

Applicant

and

Allstate Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: Kate Grieves

APPEARANCES:

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Jodie Therrien, Counsel

Heard: By Way of Written Submissions

OVERVIEW

- [1] Tan Yeung Lam (“the applicant”) was involved in an accident on September 4, 2020 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 Allstate Insurance Company (“the respondent”) 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 his claim for income replacement benefits (“IRBs”) because he failed to dispute the denial within the 2-year limitation period?

RESULT

- [3] The applicant is statute barred from proceeding with his claim for income replacement benefits pursuant to section 56 of the *Schedule*.

PROCEDURAL ISSUE

- [4] The respondent submits that the applicant’s submissions on the preliminary issue should be struck because they were filed late.
- [5] According to the case conference report and order the applicant’s submissions were due on 28 calendar days after the case conference, held on April 16, 2024, meaning they were due on May 14, 2024. The applicant’s submissions were filed by email at 11:51 p.m. on May 14. Pursuant to Rule 6.5 of the Licence Appeal Tribunal Rules, 2023, the submissions are therefore deemed to be filed the next day that was not a holiday, that being May 15, 2024.
- [6] I agree with the respondent, the submissions were technically filed late, and timelines are important and should be adhered to by all parties. However, Rule 3.1 requires a liberal interpretation of the rules to facilitate a fair, open and accessible process and allow effective participation by all parties. Further, I’m not persuaded that the respondent was prejudiced by receiving the submissions late. The respondent could have requested additional time to prepare its reply submissions if it had been prejudiced. I have considered all of the submissions filed.

ANALYSIS

- [7] The limitation period for accident benefits claims is set out in section 56 of the *Schedule*. It states that applications to dispute the denial of a benefit shall be commenced within two years after the insurer's refusal to pay the benefit.
- [8] The respondent submits that there was a clear and unequivocal denial of the non-earner benefits on August 30, 2021, triggering the limitation period, and the applicant did not appeal the denial within two years. The respondent submits that the application was filed 57 days late, on October 26, 2023.
- [9] The applicant acknowledges that he filed his application to the Tribunal more than two years after the respondent's denial. The applicant also does not dispute the sufficiency of the respondent's denials. However, the applicant submits that the respondent's denial of the IRBs was October 21, 2021, and therefore his application is only five days late. The applicant submits that he has followed all procedural obligations such as providing documentation to the insurer, and that a "slight extension" of the limitation period would not prejudice the respondent.
- [10] The applicant submits that the Tribunal should use its discretion to extend the time for filing the appeal pursuant to section 7 of the *Licence Appeal Tribunal Act* ("*LAT Act*") which states:
- Despite any limitation of time fixed by or under any Act for the giving of any notice requiring a hearing by the Tribunal or an appeal from a decision or order of the Tribunal under section 11 or any other Act, if the Tribunal is satisfied that there are reasonable grounds for applying for the extension and for granting relief, it may,
- (a) extend the time for giving the notice either before or after the expiration of the limitation of time so limited; and
- (b) give the directions that it considers proper as a result of extending the time.
- [11] The Divisional Court set out the factors to consider in making this determination in *Manuel v. Registrar, Motor Vehicle Dealers Act, 2002*, 2012 ONSC 1492 (CanLII) ("*Manuel*"):
1. The existence of a *bona fide* intention to appeal within the appeal period;
 2. The length of the delay;
 3. Prejudice to the other party; and

4. The merits of the appeal.

- [12] The four *Manuel* factors are not strict elements of a test that must each be met in order to grant an extension of time, but rather they act as a guide to determining the just decision in each case. Statutory limitation periods are to be given effect except in circumstances where a strict application of the time limit would work an injustice. The onus is on the applicant to satisfy me that the justice of the case favours an extension of time to file the application.

The benefits were denied on October 21, 2021

- [13] Approximately ten months after the accident, the applicant submitted his initial application for accident benefits and a completed disability certificate.
- [14] The respondent submits that the IRBs were first denied by an explanation of benefits dated August 30, 2021. I find that this was not a clear and unequivocal denial of the IRB. The letter notes the date of the accident, that the applicant was reportedly unable to return to his employment as of April 2021, that there was no mention of the accident to the family doctor for several months, and at that point, approximately one year post accident, it believed that he was capable of returning to work. The letter indicates “as such we will be proceeding to a section 44 insurer’s examination to determine your initial entitlement to an income replacement benefit”. Nowhere in the letter does the respondent advise that the applicant was not entitled to the IRBs, or that no benefits are payable, just that an assessment was required to determine his initial entitlement. I find that the limitation period was not triggered by this letter, as it was not a clear and unequivocal denial of the benefits.
- [15] Following the insurer’s examination, the respondent sent an explanation of benefits dated October 21, 2021. I find that this letter was a clear and unequivocal denial of the IRB. It clearly states the medical and other reasons for the denial based on the findings of the orthopaedic surgeon, that the applicant reported that he did not take any time off work, that he did not suffer a substantial inability to perform the essential tasks of his pre-accident employment, and therefore is not eligible for the IRBs. I find that the limitation period was triggered by this clear and unequivocal denial.

The application was not filed within the limitation period

- [16] The limitation period was triggered on October 21, 2021. This application to the to the Tribunal was filed on October 26, 2023. The application therefore missed the limitation period by five days.

Section 7 of the Licence Tribunal Act

- [17] Pursuant to section 7 the *Licence Appeal Tribunal Act* the Tribunal has statutory discretion to extend the two-year limitation period based on four factors: a bona fide intention to appeal within the limitation period; the length of the delay; prejudice to the other party; and the merits of the appeal.
- [18] While the applicant referred to this section and the four factors he made very few submissions on why I should exercise my discretion to extend the limitation period. He did not engage with all of the factors, or explain how they applied to his case.
- [19] The applicant made no submissions about the existence of a bona fide intention to appeal the denial within the limitation period. The applicant has not provided any explanation for having missed the limitation period. He submits that a short delay of a few days is not unduly significant and does not prejudice the insurer. He submits that the prejudice and merits of the claim warrant greater weight as they are “the most important” but does not explain how or why they are more important than the other factors. The applicant submits that the merits of the claim are important, yet does not address how the merits of his claim justify an extension. I note that according to the orthopaedic assessment report of Dr. Safir, the applicant reported that he returned to work after the accident without taking time off, suggesting there may be little merit to his IRB claim. I agree that there is likely little prejudice to the respondent with such a short delay. However, given the lack of submissions on his intention to appeal within the limitation period or even the merits of his appeal, I find that he has not met his burden to establish why the justice of the case warrants an extension.
- [20] Having considered the evidence before me, I find that the applicant has not met his onus to establish that the justice of the case favours an extension of time to file the application. Accordingly, I decline to use the Tribunal’s discretion to extend the limitation period under section 7 of the *LAT Act*.

ORDER

- [21] The applicant is statute barred from proceeding with his application for income replacement benefits pursuant to section 56 as it was commenced more than two years after a valid denial from the respondent.
- [22] The application is dismissed.

Released: June 18, 2024

**Kate Grieves
Adjudicator**