Citation: Munnings v. Geico Insurance Company, 2023 ONLAT 22-014063/AABS-PI

Licence Appeal Tribunal File Number: 22-014063/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:

Neddrea Munnings

Applicant

and

Geico Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: **Tavlin Kaur**

APPEARANCES:

For the Applicant: Alim Ramji, Counsel

For the Respondent: Michael Blinick, Counsel

Heard by way of written submissions

OVERVIEW

[1] The applicant, Neddrea Munnings, was involved in an automobile accident on November 19, 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, Geico Insurance Company ("Geico"), and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

PRELIMINARY ISSUE

[2] The Case Conference Report and Order ("CCR/O") dated August 21, 2023 lists the following preliminary issue: Whether the applicant is barred from proceeding to a hearing as they failed to notify the respondent of the circumstances giving rise to a claim for benefits in accordance with section 280(2) of the *Insurance Act*, R.S.O 1990.

[3] I find that given the wording of section 280(2) of the *Insurance Act*, the question stated in the CCR/O is unclear. I reviewed the parties' submissions to see if they would help clarify the question to be decided. Based on the wording of section 280(2) and the parties' submissions, I am satisfied that the question to be decided is whether the Tribunal has the jurisdiction to adjudicate this application under section 280(2) of the Insurance Act. As such, my analysis will focus on this question.

RESULT

[4] The Tribunal does not have the jurisdiction to adjudicate this matter.

ANALYSIS

Background

[5] The applicant is a citizen of the United States of America. She was involved in an accident in Windsor, Ontario on November 19, 2021. In December 2022, the applicant filed an Application by an Injured Person for Auto Insurance Dispute Resolution Under the Insurance Act (the "Application"). She sought $20,000 for other expenses. The applicant did not submit any of the proposed expenses to the respondent prior to filing the application with the Tribunal.

Parties' positions

[6] The respondent submits that Section 280(2) of the *Insurance Act* is clear that there needs to be a dispute for either an insured person or an insurer to have

authority to apply to the Tribunal for dispute resolution. The evidentiary onus is on the applicant to prove that an application for the benefits in dispute was made to the respondent and that a decision was rendered prior to filing an application with the Tribunal. To date, the applicant has provided no evidence to show that she submitted the expenses being claimed prior to filing the application.

[7] The applicant submits that she did not submit the OCF-6 expense prior to filing an application for the expenses in the amount of $20,000.00 because she believed that the respondent's comments in the letter dated July 20, 2022 amounted to a denial of any further expenses.

The Law

[8] Section 280(2) of the *Insurance Act* states that the insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1). Subsection (1) refers to disputes regarding an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled. If there is no denial, then there is no dispute. Once there is a denial, then there is a dispute and as per section 280(2) of the *Insurance Act*, the applicant can apply to the Tribunal to resolve the dispute.

[9] Based on my review of this file, I find that the respondent did not receive the OCF-6 before the application was filed with the Tribunal. In fact, it was not submitted to the respondent until a few days prior to the case conference. The respondent stated that, "the insurer has yet to deny entitlement to the expense being sought." I have reviewed the respondent's evidence brief and note that there were multiple correspondences sent to the applicant's counsel from the respondent's counsel seeking clarification regarding the applicant's claim. I note that the respondent was unable to properly respond to her claim for benefits because she failed to specify the specific benefit that she is claiming entitlement to and because she failed to establish that the specific benefits were properly submitted to the respondent. Therefore, there was no denial of the OCF-6 when the case conference took place on August 18, 2023.

[10] Moreover, I am not persuaded by the applicant's position. First, submissions are not evidence. The applicant did not file an affidavit to substantiate her position. Second, the letter dated July 20, 2022 is not in relation to the OCF-6 submitted a few days before the case conference. In my view, the letter does not suggest that she would be precluded from bringing further treatment plans or expense forms. Third, the respondent has a duty to adjust the file in good faith. Therefore, if the applicant had submitted the OCF-6, the respondent would have had to review it and provide a response as to whether or not they

would approve the expenses. A new denial letter would have been issued if the respondent did not agree to pay it. The denial from July 20, 2022 does not apply to the OCF-6.

[11] In my view, there is no denial of the OCF-6. Therefore, the Tribunal does not have the jurisdiction to adjudicate this matter. As such, the applicant cannot proceed to the substantive issue hearing.

COSTS

[12] Rule 19.1 of the *Common Rules of Practice and Procedure* ("*Rules*") states that where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith, that party may make a request to the Tribunal for costs.

[13] Section 19.5 of the *Rules* outlines the relevant factors which should be considered by the Tribunal when determining whether to order costs and the amount of costs to be awarded, which include the seriousness of the misconduct; whether the conduct was in breach of a direction or order issued by the Tribunal, whether or not a party's behaviour interfered with the Tribunal's ability to carry out a fair, efficient, and effective process; prejudice to other parties; and the potential impact an order for costs would have on individuals accessing the Tribunal system. Section 19.6 allows for a maximum of $1,000.00 for each full day of attendance at a motion, case conference or hearing.

[14] The respondent is seeking costs in the amount of $4,000.00. The respondent submits that the applicant's unreasonable behaviour in continuing to advance this has unnecessarily resulted in the respondent incurring costs that it ought not to have bear. The respondent states, that "this matter ought to be characterized similarly in that the applicant has been notified of the impropriety of the filing the LAT Application prior to providing the expenses being claimed to the Insurer for consideration and the Insurer has provided the Applicant with countless opportunities to withdraw the LAT Application, but the Applicant has nonetheless decided to proceed with the subject dispute notwithstanding the impropriety."

[15] The applicant submits that she did not act unreasonably, frivolously, vexatiously or in bad faith and nor is there any evidence to support this assertion.

[16] Rule 19.2 allows a party to make a written request for costs at a hearing or at any time before a decision is released. Therefore, the respondent's request for costs is properly before me.

[17] In my view, while the applicant's initial conduct is excusable because she was self-represented, the fact that she continued to advance her claim after retaining legal representation was unreasonable. I note that there were multiple correspondences between counsel regarding the issues with this claim. The applicant refused to withdraw the claim despite the fact that there was no denial.

[18] The respondent has not provided the Tribunal with evidence that quantifies the amount that they are seeking in costs. I find that the respondent is entitled to costs in the amount of $1,000.00 against the applicant because they had to attend the case conference on August 18, 2023.

ORDER

[19] The Tribunal does not have the jurisdiction to adjudicate this application. The Tribunal will vacate the hearing date for the substantive issue hearing scheduled for March 5, 2024.

[20] It is ordered that the applicant must pay the respondent $1,000.00 in costs.

Released: December 13, 2023

Tavlin Kaur
Adjudicator