

LICENCE APPEAL
TRIBUNAL

TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS



Safety, Licensing Appeals and
Standards Tribunals Ontario

Tribunaux de la sécurité, des appels
en matière de permis et des normes
Ontario

Tribunal File Number: 17-004389/AABS

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of
the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits

Between:



Applicant

and

Aviva General Insurance

Respondent

Motion Order

Order made by: Terry Hunter, Vice Chair

Appearances: Raj Bhogal, Counsel for the applicant

Jason Frost, Counsel for the respondent

Date of Order: February 6, 2018

Overview

1. The applicant was injured in a motor vehicle accident on August 10, 2015 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*.
2. The applicant brought an application before the Licence Appeal Tribunal – Automobile Accident Benefits Service and the parties participated in case conferences resulting in an Order dated November 15, 2017, setting terms and guidelines for a written hearing to take place on February 15, 2017. The issue in dispute is whether the applicant is entitled to an income replacement benefit.

3. The Case Conference Adjudicator in the Order of November 15, 2017 made 21 separate production orders of the applicant to produce or provide evidence of best efforts to produce the listed productions. Best efforts were agreed to mean the party requesting production from a third party would send a minimum of two separate requests for the production and a copy of the request would be sent to the opposing party. The applicant was to use best efforts to provide the productions to the respondent by January 12, 2018.
4. The respondent brought a motion on January 12, 2018, for an adjournment of the hearing on the basis of the applicant's failure to use best efforts in delivering the productions as ordered by Adjudicator Gottfried in her Order dated November 15, 2017. A motion hearing was held on January 22, 2018 by teleconference to hear the respondent's motion.

Position of the Parties

5. The respondent reviewed the individual production requests. It was the respondent's position that many of the requested productions were not completed by the applicant or if requests were made they were made after the production deadline of January 12, 2018 which was evidence that best efforts had not been made. The respondent took the position at the motion hearing the lack of productions prejudices the respondent's ability to complete an updated accounting report to defend the claim for income replacement benefits. Accordingly a fair hearing on the merits is not possible. The respondent requests new production, submission and hearing dates to cure the prejudice.
6. The applicant on the motion takes the position that best efforts have been established. The applicant reviewed the production order and made specific reference to their efforts to fulfill the production order. The applicant takes the position that adjourning the hearing and the submission dates would prejudice the applicant by delaying the resolution of his claim.


Analysis and Reasons

7. I will not review each of the 21 productions ordered by Adjudicator Gottfried and the applicant's efforts to meet them. Some examples are illustrative of the applicant's effort. The respondent requested the accident benefit file from a January 4, 2017 accident, the applicant's first request for the file was January 16, 2018 and second request was January 19, 2018. Both requests were after

the production deadline of January 12, 2018. The respondent requested in the November 15, 2017 Order a copy of the applicant's passport. The applicant advised during the motion hearing the passport will be provided soon. I find there were a sufficient number of instances where best efforts as defined in the order were not made or they were after the production deadline of January 12, 2018 all of which would impair the respondent's ability to respond to the applicant's case. The respondent would not be able to meet the timeline of February 2, 2018 for the delivery of its evidence and submissions to the applicant.

8. The applicant maintains they will suffer prejudice if the hearing is delayed. I find that the applicant's failure to meet the terms of the November 15, 2017 Order accounts for the delay if the matter is adjourned.
9. When a party demonstrates it has suffered prejudice due to the failure to produce or the lateness of the production by the opposing party it is normal for the Tribunal to cure the prejudice by extending timelines.
10. I therefore order the following:
 - Production of the items listed in Paragraph [10] of the Order of November 15, 2017 by **February 28, 2018**.
 - Delivery of the respondent's accounting report to the applicant by **March 28, 2018**.
 - Applicant's submission due by **April 6, 2018**.
 - Respondent's submission due by **April 16, 2018**.
 - Reply if any due **April 23, 2018**.
 - Written Hearing **April 24, 2018**.
11. The respondent claims cost of the motion in the amount of \$500.00. The claim for costs will be left to the hearing adjudicator.

Released February 6th, 2018


Terry Hunter, Vice Chair