

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

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



Tribunal File Number: 18-011887/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:

Rebar Hussein

Applicant

and

Wawanesa Insurance

Respondent

MOTION ORDER

Order made by:

Terry Hunter, Vice Chair

Date of Order:

August 2, 2019

Appearances:

For the Applicant:

Zeitoun Vaezzadeh, Counsel

For the Respondent:

Kathleen O'Hara, Counsel

Heard By Teleconference:

May 29, 2019

OVERVIEW

- [1] The applicant was injured in an automobile accident on **Tuesday, August 23, 2016**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal") which was served and filed in August of 2017 and assigned Tribunal File Number 17-005570/AABS. The Insurer's Response dated September 25, 2017 advised the respondent was pursuing a claim for overpayment.
- [3] Numerous case conferences were convened after the 2017 Application was filed resulting in an agreement to schedule a preliminary issue hearing to determine the following issues:
 - i. Was the applicant involved in an accident as defined by section 3 of the Schedule?
 - ii. Did the applicant misrepresent material facts about his accident benefits claim under Section 53 of the Schedule?
 - iii. Is the applicant liable to repay the respondent \$5,906.16 in benefits he received from the respondent if the applicant is found not to be involved in an accident?
 - iv. Is either party entitled to costs?
- [4] The preliminary issue hearing was scheduled for April 2018. On April 5, 2018 the applicant brought a motion to add witnesses to the hearing. The motion was granted on April 10, 2018 without input from the respondent. On April 11, 2018 the respondent filed a Request for a Reconsideration. The hearing was adjourned pending the reconsideration.
- [5] On September 11, 2018 the parties were advised the reconsideration was granted and reasons would follow.
- [6] On September 20, 2018 counsel for the applicant served a Notice of Withdrawal for Application Number 17-005570/AABS.
- [7] November 30, 2018 the applicant filed a new Application 18-011887/AABS raising many of the issues in the withdrawn application.
- [8] On February 6, 2019, the parties were advised by an administrative letter that the Tribunal File Number 17-005570 had been closed.
- [9] On April 10, 2019 a case conference was held for both File Number 17-

005570/AABS and 18-011887/AABS. The Case Conference Adjudicator advised the parties the Tribunal File 17-005570 was closed and the reasons for the Reconsideration would not be released. In fact, the Reconsideration Decision was not drafted, and the reasons do not exist.

[10] The respondent has brought a further application to LAT, File No. 19-004947, on the same grounds advanced in its Response to Application in Tribunal File Number 17-005570.

MOTION

[11] On April 26, 2019, the respondent filed a Notice of Motion requesting that the Tribunal;

- i. Order that Tribunal File Number 17-005570 remains open, or is re-opened, with respect to the repayment claimed by the respondent.
- ii. An order that the procedural decisions, including the Reconsideration Decision, continue to apply to the issues addressed in Tribunal File No. 17-005570.
- iii. An order for costs.

[12] The applicant did not consent to the motion.

RESULT

[13] Issue i: The respondent's motion is granted. Tribunal File 17-005570 is re-opened.

[14] Issue ii: The Reconsideration Decision does not exist and will not be completed. Any other procedural orders that are relevant still apply.

[15] Issue iii: There is no order for costs to either party.

REASONS

[16] The passage of time for which the Tribunal is partially responsible has resolved some of the issues. 17-005570/AABS was not closed by order of the Tribunal. It was administratively closed without consideration of the respondent's claim for repayment. It has been Tribunal practice that where a file has been administratively closed it only requires a request to re-open. The closure letter of February 6, 2019 was addressed to the applicant and copied to the respondent. It is apparent to me the Case Management Officer did not appreciate that the respondent had an active repayment issue. I am prepared to re-open File 17-005570 although it may not have any practical impact as the parties have filed subsequent applications dealing with the issues in File 17-005570.

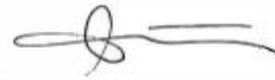
[17] I have no authority to require the completion of the Reconsideration. The reconsideration was based on the prejudice to the respondent when witnesses were added on the eve of the hearing. That prejudice must surely be resolved given the time that has elapsed. The test for any evidence or witness is relevance and if due to a late request a party is prejudiced that is resolved through the granting of additional time.

[18] I have two responses to the requests for costs. First, there are several Tribunal decisions, including reconsiderations, which hold a withdrawal on the eve of hearing does not attract a cost award. Second, much of the difficulty has been the result of Tribunal actions and neither party should be penalized as a result.

OTHER PROCEDURAL MATTERS

[19] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

Date of Issue: August 16, 2019



**Terry Hunter
Vice Chair**

