Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Raja v. Economical Mutual Insurance Company, 2025 ONLAT 24-008552/AABS-PI

Licence Appeal Tribunal File Number: 24-008552/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:

Khalid Raja

Applicant

and

Economical Mutual Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR:	**Kate Grieves**
APPEARANCES:	
For the Applicant:	Michael A. Yermus, Counsel
For the Respondent:	Karly Lyons, Counsel
Heard:	**By Way of Written Submissions**

OVERVIEW

[1] Khalid Raja (the "applicant") was involved in an accident on July 30, 2022, and sought benefits pursuant to the *Statutory Accident Benefits Schedule -- Effective September 1, 2010 (including amendments effective June 1, 2016)* ("*Schedule*"). The applicant was denied benefits by Economical Mutual Insurance Company (the "respondent") and applied to the Licence Appeal Tribunal -- Automobile Accident Benefits Service (the "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 to a hearing as the applicant failed to notify the respondent of the circumstances giving rise to a claim for benefits no later than the seventh day after the circumstances arose or as soon as practicable after that day?

RESULT

[3] The applicant is barred from proceeding to a hearing pursuant to section 55(1) as he failed to notify the respondent of the circumstances giving rise to a claim for benefits within the timelines prescribed in section 32(1) of the *Schedule.*

ANALYSIS

Background and Parties' Positions

[4] The applicant was involved in an accident on July 30, 2022 while driving an Uber. On July 31, 2022 the applicant notified the respondent that he was involved in an accident, and spoke with the adjuster. The adjuster's notes indicate that the applicant reported that he suffered no injuries. The applicant had several calls with the property damage adjuster, and his claim was eventually resolved.

[5] On September 27, 2023, the applicant notified the respondent of his intention to claim accident benefits by submitting a completed application for accident benefits (OCF-1).

[6] The respondent submits that the applicant has not complied with his obligations pursuant to section 32(1) of the *Schedule*, and has not provided a reasonable explanation for the delay.

[7] The applicant submits that his obligation to notify the respondent of his intention to claim accident benefits was met when he reported having been involved in the accident. In the alternative, the applicant submits that he provided a reasonable explanation for the delay by letter dated November 6, 2023, when he advised that he had reported injuries at the time he made the property damage claim.

[8] The applicant also now submits a second "reasonable explanation", that he contacted Uber and reported injuries but was told that he was not eligible for any benefits. He submits he was not aware of the requirement to notify the respondent of his intention to claim benefits, and was misled by Uber to believe that no benefits were available to him.

The Law

[9] Section 32(1) of the *Schedule* requires an insured person to inform an insurer of their intention to claim accident benefits within seven days of the accident, or as soon as practicable after.

[10] Section 34 states that if the insured person does not comply with the time limits, the insured person may still be entitled to benefits if they have a reasonable explanation for the delay.

[11] Pursuant to section 55(1)1, an insured person may not apply to the Tribunal if they have not notified the insurer of the circumstances giving rise to a benefit or has not submitted an application for the benefit within the times set out in the *Schedule.*

[12] The interpretation of "reasonable explanation" is guided by *Horvath and Allstate Insurance Company of Canada*, FSCO A02-000482, June 9, 2003, and was more recently reiterated in *K.H.* v. *Northbridge*, 2019 CanLII 101613 (ON LAT). The guiding principles are summarized as follows:

1. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed.

2. The onus is on the insured person to establish a "reasonable explanation".

3. Ignorance of the law alone is not a "reasonable explanation".

4. The test for "reasonable explanation" is both a subjective and objective test that should take account of both personal characteristics and a "reasonable person" standard.

5. The lack of prejudice to the insurer does not make an explanation automatically reasonable.

6. An assessment of reasonableness includes a balancing of prejudice to the insurer, hardship to the claimant and whether it is equitable to relieve against the consequences of the failure to comply with the time limit.

The applicant failed to comply with section 32(1)

[13] The accident occurred on July 30, 2022. The applicant submits that the requirements of section 32(1) were met when he reported having been involved in an accident the following day. A recent Divisional Court decision in *Hussein v. Intact Insurance Company,* 2025 ONSC 842 considered the consumer protection nature of the legislation and held that the insured had met his obligations under section 32(1) when he reported the accident the following day. However, the Divisional Court held that the insurer had an obligation to make further inquiry as to whether the insured was injured. Here the evidence supports a finding that the insurer inquired as to whether the applicant suffered injuries, and he reported none. This was sufficient to discharge the insurer's obligation in accordance with *Hussein*.

[14] The applicant submits that he reported having sustained injuries to the property damage adjuster during his initial contact with them on July 31, 2022. However, submissions alone are not evidence. It was incumbent on the applicant to serve and file an affidavit to that effect. The log notes indicate "injuries reported – no" and "severity level: L1 – no injuries". In the absence of any sworn testimony or evidence to the contrary, the evidence before me shows that the applicant did not report any injuries to the respondent.

[15] I find that the respondent has established that the applicant first gave notice of his intention to claim accident benefits on September 27, 2023 when he submitted a completed OCF-1.

The applicant has not provided a reasonable explanation for the delay

[16] The applicant submits that he was misled by Uber into believing that he had no benefits available to him. The first time the applicant advanced that explanation is with his written submissions on the preliminary issue, despite the fact that a reasonable explanation was expressly requested by the respondent and was provided by the applicant in a letter dated November 6, 2023. The letter makes no reference to having been misled by Uber or the respondent as to his entitlement to accident benefits.

[17] I am not persuaded that the applicant, who had qualified legal representation for over a year, would fail to mention this explanation prior to his submissions. The applicant has provided no evidence of his interactions with Uber. As noted above, submissions alone are not evidence. The applicant has not provided an affidavit attesting to this submission. As such I do not find his explanation credible.

[18] Given that I have found that the explanation is not worthy of belief, there is no requirement to assess the reasonableness of the explanation.

[19] The applicant is barred from proceeding to a hearing for failing to notify the respondent of the circumstances giving rise to a claim for benefits, in breach of section 32(1). He has not provided a reasonable explanation for the delay pursuant to section 34. Therefore, in accordance with section 55(1)1, I find that the applicant is barred from proceeding with his application.

ORDER

[20] The applicant is barred from proceeding with his application pursuant to section 55(1) of the *Schedule* for failure to comply with the time limits set out in section 32(1).

[21] The application is dismissed.

[22] The Tribunal shall vacate any date that has been scheduled for a substantive issue hearing. The Tribunal file will be closed.

Released: April 23, 2025

Kate Grieves
Adjudicator