



Tribunals Ontario

Licence Appeal
Tribunal

Tribunaux décisionnels Ontario

Tribunal d'appel en matière de
permis

Citation: Anderson v Definity Insurance Company, 2026 ONLAT 26-000273/AABS

File Number: 26-000273/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:

Aaron Anderson

Applicant

and

Definity Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: **Nadia Mauro, Member**

APPEARANCES:

For the Applicant: **Michael Pilienci, Paralegal**

For the Respondent: **Kayly Machado, Counsel**

HEARD: **by written submission**

OVERVIEW

[1] Aaron Anderson, the applicant, was involved in an automobile accident on August 19, 2024, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “*Schedule*”). Per the respondent, Definity Insurance Company, adjuster’s log notes, the applicant was operating his vehicle on highway 403 when another vehicle attempted to overtake him and struck the applicant’s vehicle on the left side. The applicant claims to have sustained acute memory loss, cognitive disruptions, and severe emotional distress as a result of the accident.

[2] The applicant was denied benefits on the basis that he failed to submit his application for benefits (OCF-1) within the timeline prescribed by section 32(5) of the *Schedule*. He applied to the Licence Appeal Tribunal (“the Tribunal”) for resolution of the dispute.

[3] The parties participated in a case conference on May 4, 2026, and a written hearing on the substantive issues in dispute has been scheduled for November 6, 2026. As part of its case conference summary, the respondent raised a preliminary issue based on section 32(5), which the Tribunal ordered to be heard in-writing in advance of the substantive issues hearing.

PRELIMINARY ISSUE IN DISPUTE

[4] The preliminary issue in dispute is:

1. Is the applicant barred from proceeding with their claim for benefits as they failed to submit the application for benefits (OCF-1) within the time prescribed in section 32(5) of the *Schedule*?

RESULT

[5] The applicant is barred from proceeding with his application.

ANALYSIS

Background

[6] On August 19, 2024, the applicant was involved in a motor vehicle accident. On August 22, 2024, the applicant reported accident-related injuries to the property damage adjuster and consented to communication by email.

[7] On August 29, 2024, the respondent provided the Application for Accident Benefits (“OCF-1”) package via email. The email correspondence also advised that the OCF-1 was required within 30 days, and if not provided, the respondent would close the applicant’s file.

[8] On September 24, 2024, the respondent followed up with the applicant with respect to the OCF-1 via email correspondence. It appears from the evidence and submissions that the applicant did not respond to the respondent adjuster’s email.

[9] On January 7, 2025, the applicant called the respondent to re-open his claim.

[10] On February 12, 2025, the respondent re-sent the OCF-1 via email correspondence and again advised the applicant that the OCF-1 would be required within 30 days.

[11] The applicant submitted the OCF-1 six months later on August 21, 2025.

[12] On September 5, 2025, the respondent sent letter correspondence to the applicant asking for a reasonable explanation for the delay.

[13] On September 16, 2025, the applicant provided the explanation for the late submission of the OCF-1, that being his “memory loss issues, stress, and pain and suffering due to the accident”.

[14] On October 16, 2025, the respondent denied the applicant's claim pursuant to s. 32(5) of the *Schedule*.

The Law

[15] Section 32(1) of the *Schedule* provides that a person who intends to apply for accident benefits shall notify the insurer of their intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day.

[16] Once an insurer receives notice of an applicant's intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 forms, a written explanation of benefits available, information to assist the person in applying for benefits and information on the election relating to income replacement benefits, non-earner benefits and caregiver benefits, if applicable. Pursuant to s. 32(5) of the *Schedule*, the applicant must then submit a completed and signed application for benefits to the insurer within 30 days after receiving the application forms.

[17] Section 34 of the *Schedule* states that "a person's failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation." The onus is on the applicant to establish a reasonable explanation for the delay.

[18] The interpretation of "reasonable explanation" is guided by *Horvath v. Allstate Company of Canada*, 2003 ONFSCDRS 92 (CanLII) ("*Horvath*") and reiterated by the Tribunal in *K.H. v. Northbridge General Insurance Company*, 2019 CanLII 101613 (ON LAT) ("*K.H.*"). 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.

[19] There is no dispute that the applicant complied with his s. 32(1) obligations to notify the respondent of the accident when he reported the accident-related injuries on August 22, 2024.

Did the respondent comply with s. 32(2)?

[20] The applicant submits that respondent had actual notice of the accident and bodily injuries from the outset, however, rather than fulfilling its proactive regulatory obligation pursuant to *Hussein v. Intact Insurance Company*, 2025 ONSC 842 (CanLII) (“*Hussein*”), it remained entirely passive. The applicant takes the position that the respondent is legally barred from transforming its own passivity into a shield to escape coverage.

[21] The respondent takes the position that the applicant’s reliance on *Hussein* is misplaced as *Hussein* speaks to the insurer’s obligation to make inquiries as to whether the applicant intends to claim accident benefits pursuant to s. 32(1) of the *Schedule*. The respondent submits that, in any event, it complied with its obligations under s. 32(2) by directing the claim to the accident benefits team and providing the application forms twice.

[22] I find that the applicant was advised by the adjuster directly that he needed to complete the OCF-1 and was provided a copy of the forms on two occasions via email correspondence, August 29, 2024 and February 12, 2025.

[23] I find that email correspondence sent to the applicant from the respondent adjuster on August 29, 2024 is clear, indicating, "Should you not return your completed Application package within 30 days, we will close your file." I also find the email correspondence includes a written explanation of the benefits available, information to assist the applicant in applying for the benefits, and includes a hyperlink to the Financial Services Regulatory Authority of Ontario should the applicant want to learn more about available benefits. The adjuster's log notes also support that one month after the initial application was sent, on September 24, 2024, the respondent adjuster followed up with the applicant asking if he had begun treatment and advised it had not received a completed OCF-1. There is no indication in the adjuster's log notes that the applicant responded to this email, nor did the applicant tender any evidence to support that he responded. I also find that email correspondence from the respondent's adjuster to the applicant on February 12, 2025 again provides a copy of the OCF-1 and indicates that, should he not return a completed package, his file would be closed. In my view, this was sufficient to discharge the insurer's obligation in accordance with s. 32(2) of the *Schedule*.

[24] Accordingly, I find that the respondent was compliant with its obligations under s. 32(2). Given that the applicant did not submit his application until August 21, 2025, approximately six-months after the second OCF-1 was provided, I find that he did not comply with the time limit specified in s. 32(5).

Does the applicant have a reasonable explanation for the delay?

[25] The applicant submits that the minor delay in submitting the OCF-1 did not arise from bad faith, intentional non-compliance, or an attempt to subvert the procedural rules. Rather it was a direct consequence of the applicant's post-accident cognitive difficulties, memory impairment, severe pain, limited educational background, and understandable

confusion navigating a complex “multi-jurisdictional Uber insurance structure” while injured. The applicant also submits that he underwent treatment at Upper James Wellness Clinic and an OCF-23 was submitted prior to when the OCF-1 was “administratively” submitted. The applicant further relies on the clinical notes and records (“CNRs”) of St. Joseph’s Hospital in support of his “acute memory loss, cognitive disruptions, and severe emotional distress” which impaired his capacity to organize legal documentation, manage complex administrative forms, and track technical deadlines.

[26] The respondent submits that the applicant was provided the OCF-1 on two separate occasions, yet he did not submit the completed OCF-1 within 30 days of receiving either package as required by s. 32(5) of the *Schedule*. The respondent takes the position that the applicant’s explanation is not credible or worthy of belief because the explanation is vague, unsupported by medical evidence, and insufficient to explain the significant delay.

[27] I disagree with the applicant’s position that this was a minor delay. The applicant submitted the OCF-1 over a year after the accident occurred and the applicant has not directed me to evidence to support that he submitted an OCF-23 prior to the completion of the OCF-1. The sign-in sheets of Upper James Wellness Clinic begin on August 12, 2025 which I find to be nearly one-year post accident, and ten days prior to when the OCF-1 was submitted to the respondent for consideration. Adjuster log notes indicate that both the OCF-1 and OCF-23 were received by the respondent on the same day, August 26, 2025.

[28] While the applicant reported to the clinicians at Bonavista Medical Hamilton (“Bonavista”) on September 16, 2024 that he experienced slight pain behind the neck and mild dizziness after the accident, the CNR of Dr. Samina Shaikh of the same date states that the applicant did not sustain a head injury or bruises and the applicant continued to work post-accident. Dr. Shaikh advised the applicant to check with his insurance company regarding any necessary forms. Despite being advised by his treating practitioner to follow up with his insurance company, and the respondent adjuster following up with the applicant on September 24, 2024 for the OCF-1 and to

inquire if he had begun any treatment, the adjuster's log notes indicate that the applicant did not contact the respondent again until January 7, 2025.

[29] I also find that the evidence is unsupportive of "cognitive difficulties, memory impairment, and severe pain" as a result of the accident. A CNR of Dr. Mays Al-Mahdawi of Bonavista dated December 18, 2024 indicates that the applicant complained of ongoing accident-related neck pain. Dr. Al-Mahdawi reported that the applicant's neck pain is "way better than before and aggravated with certain movement". Dr. Al-Mahdawi also reported no dizziness, no headache, no change in vision, and subsequently opined neck muscular pain post-accident. Dr. Al-Mahdawi does not opine on any accident-related cognitive, memory, or emotional impairment. The CNRs of Bonavista indicate that the applicant did not return until August 2025 where he again complained of accident-related neck pain. I find that the CNRs of Bonavista are in general devoid of a medical opinion that speaks to accident-related cognitive impairment, acute memory loss, or emotional distress. I also find that intermittent complaints of neck pain do not support that the applicant sustained 'severe pain' such that it prevented him from complying with the timelines prescribed by the *Schedule*.

[30] What is more, on September 17, 2025, the applicant presented to Bonavista with complaints with respect to a subsequent motor vehicle accident that had occurred on September 15, 2025. The CNRs of St. Joseph's Healthcare Hamilton ("St. Joseph's") indicate that the applicant presented to the emergency department as a result of the second motor vehicle accident for concussion symptoms on September 17, 2025. A CT scan was performed on the same day and confirmed "no acute intracranial findings". The CNRs of St. Joseph's indicate that the applicant presented to the emergency department again on September 18, 2025 after sustaining a hit to the back of the head. The CNRs of St. Joseph's are silent with respect to the applicant's alleged accident-related cognitive and memory impairments. I also find that the CNRs of St. Joseph's Hospital are unrelated to the subject accident and do not speak to or opine on the applicant's alleged accident-related injuries.

[31] I find that the reference to the applicant's alleged impairments to be vague. The applicant's submissions also do not explain why it took an additional six months to submit the OCF-1 after receiving it for the second time in February 2025. It is long established that submissions are not evidence. In my view, simply alluding to vague impairments that are unsupported by the medical evidence and stating that these impairments "impaired his capacity to organize legal documentation, manage complex administrative forms, and track technical deadlines" without engaging with why it prevented him from complying with the timelines prescribed by the *Schedule* is insufficient. I also find that there are no CNRs from Bonavista, Upper James Wellness Clinic, or St. Joseph's Hospital during this time that would speak to the delay from a medical perspective.

[32] Given the foregoing, I do not find that the applicant's explanation is credible or worthy of belief, therefore, there is no need to assess the reasonableness of the explanation because the first principle of K.H. is a threshold that must be met in order to engage the other principles. It is incumbent upon the applicant to provide evidence that supports his position. In my view, he has not.

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

CONCLUSION AND ORDER

[34] The applicant failed to submit the application for benefits (OCF-1) within the time prescribed in the *Schedule*.

[35] The applicant is barred from proceeding with his application pursuant to s. 55(1) of the *Schedule*.

[36] The application is dismissed, and the substantive issue hearing date is vacated.

Released: September 22, 2026

A handwritten signature in black ink, appearing to read 'Nadia Mauro', is positioned above a horizontal line.

Nadia Mauro
Member