Safety, Licensing Appeals and Standards Tribunals Ontario
Licence Appeal Tribunal

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Ontario

Date: 2017-05-15
Tribunal File Number: 17-000043/AABS
Case Name: 17-000043 v Unifund Assurance Company

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:

M. O.

Applicant

and

Unifund Assurance Company

Respondent

COST DECISION

Adjudicator: Anna Truong

Appearances: Lisa Bishop, Counsel for the Applicant

Katherine E. Kolnhofer, Counsel for the Respondent

Heard in writing on: March 31, 2017

OVERVIEW

[1] This decision stems from a cost motion that the respondent made at the Case Conference held before me on March 9, 2017. The applicant was involved in an automobile accident on November 1, 2014, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "*Schedule*"), which were denied by the respondent.

[2] The applicant disagreed with the respondent's decision to deny benefits and submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") on September 26, 2016. A Case Conference ("CC") was conducted on December 22, 2016 at 9:00 a.m. on the first application, Tribunal File Number 16-002957, in front of another Adjudicator. At that CC, the applicant withdrew her application.

[3] On December 22, 2016 at 1:37 p.m., a few hours after the first CC had been concluded, the applicant made a second application, Tribunal File Number 17-000043, with a single issue in dispute: the physiotherapy Treatment and Assessment Plan (OCF-18) dated January 28, 2015 by Prime Health Care in the amount of $3,327.81. This was also an issue in dispute on the first application.

[4] A CC was conducted on March 9, 2017 for the second application. At this CC, I was advised by the parties of the history of the file and what occurred at the previous CC. I was advised that at the first CC, the respondent had raised the issue of non-attendance at an Insurer's Examination ("IE"), which prompted the applicant to withdraw the application. I was advised that the applicant had agreed to attend an IE and the respondent had agreed to reschedule it. Subsequent to the first CC, the respondent rescheduled the IE, but the applicant failed to attend.

[5] At the CC on March 9, 2017, the respondent again raised the issue of non-attendance. After some discussions, the applicant once again withdrew her application agreeing to attend the IE. The respondent requested costs. I ordered the parties to submit cost submissions in writing.

ISSUE TO BE DECIDED

[6] The following is the issue to be decided:

1. Is the respondent entitled to costs pursuant to Rule 19 of the *Licence Appeal Tribunal Rules of Practice and Procedure*?

RESULT

[7] Based on the totality of the evidence before me, I find that the respondent is entitled to costs of the proceeding in the amount of $500.

ANALYSIS

[8] The *Licence Appeal Tribunal Rules of Practice and Procedure* (the "Rules") include a provision in Rule 19.1 for parties to request costs of the proceeding, if they believe that the other party has acted unreasonably, frivolously, vexatiously, or in bad faith. Rule 19.4 further sets out the requirements for that request, which must include the reasons for the request and the particulars of the alleged conduct.

[9] The respondent has asked for costs in this proceeding. It has alleged the applicant's conduct to be unreasonable, frivolous, vexatious and in bad faith. Furthermore, it has set out the reasons for the request and the particulars of the applicant's conduct. Specifically, the applicant's failure to attend the IEs and the applicant's withdrawal and resubmission of her application.

[10] The applicant's submissions argue the merit of the case and did not provide me with any submissions with respect to costs.

[11] The purpose of Rule 19.1 is to deter conduct by parties that is unreasonable, frivolous, vexatious, or in bad faith. This is a high bar for conduct to attract a cost award, and an exceptional remedy. In this case, that bar has been met. The applicant's second application to the Tribunal was frivolous, vexatious and unreasonable. Nothing had changed in the few hours between the applicant withdrawing the first application and submitting the second application. This is an abuse of process and it undermines the Tribunal's purpose, which is to provide efficient and effective dispute resolution.

[12] When an applicant makes an application to the Tribunal, it utilises a great amount of resources and should not be made lightly. Parties should not apply to the Tribunal until their file is ready to proceed. Not only did the applicant abuse the Tribunal's process, she undermined the accident benefits process by not attending the rescheduled IE. While this did not factor into my determination of costs, the applicant should have known that non-attendance at an IE would bar her from making an application to the Tribunal as this was the same reason she withdrew her application at the first CC. Knowing that, the applicant should not have made her second application. Therefore, the second application was frivolous, vexatious and unreasonable and the respondent is entitled to costs.

[13] Since I have found that the respondent is entitled to costs, I must now determine the quantum. The respondent requested $5,000 and provided a bill of costs. As I

mentioned above, the purpose of Rule 19.1 is to deter particular conduct in a proceeding. Given an award of costs is not meant to be an assessment of the actual costs a party has had to incur as a result of defending a claim, an award of $5,000 would be inappropriate in this circumstance.

[14] In bringing the second application which I find to be frivolous, vexatious, and unreasonable, the applicant's behaviour interfered with the Tribunal's ability to carry out a fair and efficient process and the respondent suffered prejudice as a result. As a consequence of the applicant's conduct, the respondent only had to incur extra costs in defending the second application. Given that the issue in dispute in the second application was included in the first application, the respondent had already incurred the bulk of its costs defending the issue in the first application. The greatest expenditure the Respondent incurred in defending the second application would be the time spent attending and preparing for the second Case Conference. This should be nominal given that the Respondent had already defended the same issue.

[15] Taking into account the circumstances including the conduct of the applicant, the prejudice suffered by the respondent and the impact on the Tribunal process, I find that $500 is adequate. Therefore, I award the respondent $500 for the frivolous, vexatious and unreasonable conduct of the applicant.

CONCLUSION

[16] For the reasons outlined above, I find that the respondent is entitled to costs of the proceeding in the amount of $500.

Released: May 15, 2017

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Anna Truong, Adjudicator