

**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: 18-012427/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:

Olakunle Rufai

Applicant

and

Unifund Assurance Company

Respondent

MOTION ORDER

Order made by:

Ian Maedel, Adjudicator

Date of Order:

April 6, 2020

Appearances:

For the Applicant:

Olakunle Rufai, Applicant

Zoe Meditskos, Paralegal

Aline Avanessy, Counsel

For the Respondent:

Paul Omeziri, Counsel

Motion Hearing conducted via teleconference April 6, 2020

OVERVIEW

- [1] The applicant was injured in an automobile accident on July 5, 2017 and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 ("Schedule").
- [2] The applicant filed an application before the Licence Appeal Tribunal – Automobile Accident Benefits Service ("Tribunal") on December 18, 2018.
- [3] The most recent case conference was held on October 30, 2019 before Vice Chair White. A combination hearing was set, with written submissions prior to an in-person cross-examination of the adjuster scheduled for March 23, 2020.
- [4] The issues in dispute are income replacement benefits, interest, and an award pursuant to Ontario Regulation 664.

MOTION

- [5] The respondent filed a Notice of Motion dated March 16, 2020, and sought the following relief:
 - i. An order quashing the summons for Mr. Pincivero, Adjuster;
 - ii. An order adjourning the in-person hearing and converting the matter to a written hearing.
- [6] The respondent submits the summons should be quashed as an abuse of process, as the adjuster will not be able to provide evidence relevant to the proceeding. The respondent submits the only issue in dispute is whether the applicant had a reasonable explanation for failing to attend the insurer's examination. The adjuster will not have any evidence to provide in relation to this narrow issue. Given the further climate relating to the Covid-19 outbreak, the respondent requests this matter be converted into a written hearing, as there would be little prejudice to the applicant.
- [7] The applicant submits there is no abuse of process and the summons should stand. This is not a fishing expedition, but the adjuster has relevant and direct knowledge of the continued assessment of this matter. The applicant submits only the adjuster can speak to the decision-making behind the denial of the income replacement benefit and decisions to schedule duplicative insurer's examination. The applicant further submits that the parties discussed the format of the hearing and the in-person cross-examination was agreed to by the parties on consent.

RELIEF

- [8] The respondent's motion to quash the summons is denied.
- [9] I have reviewed the submissions provided by the parties and the pinpoint reference to paragraphs 15, 16, 42-44 of the respondent's hearing submissions. This additional reference was provided by respondent counsel during the Motion Hearing. Following the Motion Hearing, I was provided a copy of the applicant's written motion submissions and was able to review them prior to drafting this order.
- [10] As per Rule 8.2 of the Common Rules of Practice & Procedure, the applicant is entitled to summons a witness once it has provided the Tribunal with a brief description of the anticipated evidence. This is a low bar and witnesses are generally added if a party can satisfy this low threshold. It is the practice of the Tribunal to require a party requesting a summons for a witness not listed in the Case Conference Order to bring a motion with service on the opposing party. This practice does not convey any rights on the opposing party to challenge the issuance of a summons.
- [11] Section 12(1)(b) of the Statutory Powers and Procedure Act speaks to the issuance of a summons to produce evidence... relevant to the subject-matter of the proceeding and admissible at the hearing.
- [12] The previous Case Conference Report and Order specify an in-person portion of the hearing was set on consent of the parties for the purposes of cross-examination of the adjuster and re-examination. Similarly, the issues in dispute are framed as income replacement benefits, interest, and an award pursuant to Ontario Regulation 664. The narrow issue of whether the applicant had a reasonable explanation for failing to attend an insurer's examination is not listed as an issue in dispute. Nor has there been a subsequent request to amend the previous Report or Order.
- [13] Given the issues in dispute as framed in the Conference Report and Order, I am not prepared to vacate the summons directing Mr. Pincivero to attend for the purposes of cross-examination. This witness is the adjuster assigned to the file and will have unique knowledge of the continued assessment of the file and the reasons for scheduling insurer examinations. This evidence may be relevant to the issues in dispute, particularly the claim for an award pursuant to s. 10 of Ontario Regulation 664.
- [14] It is important to note that this form of hearing was set on consent of the parties. The respondent agreed to the format of the hearing at the case conference. Again, there has been no request to amend or otherwise change the content of the previous Order. I see no reason to change or vary the format of the hearing which was set as a result of the discussions between the parties as the case conference.

- [15] **Due to the current Covid-19 pandemic, the in-person portion of the hearing set for March 23, 2020 was vacated.**
- [16] The respondent motion to convert this into a written or teleconference hearing is denied. The in-person portion of the hearing shall proceed as anticipated following the case conference. The applicant shall conduct cross-examination of the adjuster, followed by a brief re-examination by the respondent.
- [17] **A case conference shall be scheduled for June 8, 2020 at 9:00 am via teleconference.** The purpose of this case conference is case management. The parties shall be prepared to set a date for the in-person portion of the hearing at this time. The Tribunal shall provide the parties with a new Notice of Case Conference that includes the teleconference information.
- [18] Except for the provisions contained in this order, all previous orders made by the Tribunal remain in full force and effect.

OTHER PROCEDURAL MATTERS:

- [19] If the parties resolve the issues in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

Released: April 7, 2020



Ian Maedel, Adjudicator