

**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: 18-008774/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:

**N.V.**

**Applicant**

and

**Allstate Insurance Company of Canada**

**Respondent**

**PRELIMINARY ISSUE DECISION**

**PANEL: Jesse A. Boyce, Adjudicator**

**APPEARANCES:**

For the Applicant: Ryan Naimark

For the Respondent: Sophia Chaudri

**HEARD: In Writing on: December 18, 2019**

## OVERVIEW

- [1] N.V. was injured in a motor vehicle accident on September 30, 2015. N.V. sought benefits from the respondent, Allstate, pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*<sup>1</sup> (the “*Schedule*”). Allstate paid income replacement benefits (“IRB”) to N.V. following the accident but later terminated the IRBs on December 30, 2015 when N.V. returned to work. More than two years later, N.V. sought reinstatement of the IRBs. Allstate denied the IRBs. N.V. applied to the Tribunal for resolution of the dispute, and Allstate raised the preliminary issue giving rise to this hearing.

## PRELIMINARY ISSUE

- [2] The following preliminary issue was raised by Allstate:
- i. Should the applicant be barred from proceeding with his application for IRBs because the limitation period for applying under s. 56 of the *Schedule* had expired?

## RESULT

- [3] I find that N.V. is statute-barred from proceeding with his claim for IRBs as he failed to commence his application within two years after a valid denial by Allstate.

## ANALYSIS

### *Allstate’s denials and Smith v. Co-operators*

- [4] It is important to first determine whether Allstate’s notice of denial was proper in accordance with the principles outlined in *Smith v. Co-Operators General Insurance Company*.<sup>2</sup> N.V. argues that the denial notice was deficient because it did not state the medical or other reasons why the IRB was terminated and was not clear and unequivocal notice to him as an unsophisticated person. Allstate argues the opposite. *Smith* states that notices of refusal to pay benefits must contain straightforward and clear language, must be directed towards an unsophisticated person, must outline the dispute resolution process and the relevant time limits that govern the process, and must provide valid medical or other reasons for the denial. If an insurer’s notice to an insured does meet these basic requirements within certain timelines prescribed by the *Schedule*, the denial is invalid, and the two-year limitation period under the *Insurance Act* is not triggered.
- [5] Based on my review of Explanation of Benefits from December 2015, I find that Allstate’s denial was proper and in accordance with the *Schedule*’s requirements and the principals of *Smith*. Further, I find that the notices of refusal to pay benefits

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<sup>1</sup> O. Reg. 34/10.

<sup>2</sup> 2002 SCC 30, at para 14.

provided by Allstate contained very straightforward and clear language (including the December 30, 2015 date when N.V.'s IRB would terminate), was certainly directed towards an unsophisticated person (i.e., the language is simple, well-spaced, clearly states "Not Eligible," and I also note N.V. had counsel when it was received), it outlined the dispute resolution process (i.e., the standard form outlining the options is attached), stated the relevant time limits that govern the process (i.e., the two-year warning notice is bolded and prominent) and provided a valid "other" reason for the denial (i.e., the notice literally states the IRB was being terminated because N.V. returned to work on December 2, 2015).

- [6] In submissions, N.V. argues that the notice was unclear and did not provide medical and other reasons. In my view, terminating an IRB because an applicant returned to work is a perfectly valid "other" reason that does not require a medical component. N.V.'s return to work is not disputed. If N.V. could work and chose to return to work, he was no longer entitled to an IRB by his own actions. Allstate does not have to conjure or fabricate a medical reason to justify N.V.'s decision simply to satisfy *Smith*. Further, and to be frank, I am not sure how the notice could have been any clearer. Accordingly, I reject N.V.'s arguments that the notice was somehow equivocal or not directed to him as an unsophisticated person.
- [7] In a similar vein, and contrary to N.V.'s position, I find Allstate's Explanation of Benefits dated July 30, 2018 was also clear and unequivocal. In submissions, N.V. opines: "why would the Respondent be requesting further records as they relate to IRB entitlement if they already clearly and unequivocally denied the benefits in their December 30, 2015 EOB?" To me, the answer is obvious: when N.V. notified Allstate that he stopped working on July 1, 2018, Allstate was required to adjust its file and collect more information. On July 19, 2018, Allstate then asked, pursuant to s. 33 of the *Schedule*, for N.V. to provide information on his employment, whether his stoppage was a result of the accident, and if he would be seeking IRB. N.V. allegedly never replied. Allstate then advised N.V. that its position on his entitlement to IRB remained unchanged and directed him to its denial from December 2015. On the facts, this correspondence is not controversial or improper. Further, I agree with Allstate that this second refusal did not start a new limitation period, nor did it extend or somehow cloud the existing one that began in December 2015.
- [8] On September 28, 2018, following Allstate's second refusal, N.V. submitted an application to the Tribunal disputing his continued entitlement to IRBs. His application was submitted 10 months after the two-year limitation had elapsed. Other than his submission that the notices did not meet the requirements of *Smith*, N.V. offers no real excuse for the delay.

### *Section 7 of the LAT Act*

- [9] Section 7 of the *LAT Act* affords the Tribunal statutory discretion to extend the time for commencing a proceeding in certain circumstances if it is satisfied that there are reasonable grounds for applying for the extension and for granting relief.

The Tribunal considers four factors: the existence of a bona fide intention to appeal within the appeal period; the length of the delay; prejudice to the other party; and the merits of the appeal.

- [10] While N.V. did reference s. 7 in his materials, he did not actually offer any substantive submissions on the four factors or why an extension of time would be reasonable. Allstate did, arguing that it would be prejudiced if the claims were to proceed because it could have responded to the litigation in a different manner, including, but not limited to, obtaining additional reports as necessary and at the relevant time, obtaining concurrent documentation for consideration or to obtain addendum reports and obtaining surveillance contemporaneously with the benefits N.V. sought.
- [11] I agree with Allstate. It is N.V.'s burden to prove that an extension under s. 7 is reasonable but he provided no substantive submissions. In any event, I find the overall delay of 10 months is excessive and N.V. has offered no compelling excuse for the delay, especially considering N.V. was represented by counsel when the denials were received and throughout the limitation period. Further, since there is no evidence that N.V. complied with Allstate's s. 33 requests for further information related to the benefit he is seeking, I find he has not demonstrated that there is merit to his appeal. On balance, I decline to extend the limitation period under s. 7.

## **CONCLUSION**

- [12] I find Allstate provided N.V. with a valid denial of his IRB in December 2015. The denial was clear and unequivocal and provided N.V. with the requisite information to determine whether to dispute the denial while also triggering the limitation period. N.V. did not appeal the denial within the two-year limitation period. N.V. did not meet his onus to justify extending the limitation period under s. 7.
- [13] Accordingly, pursuant to s. 56, N.V. is statute-barred from proceeding with his application for IRB at the Tribunal. The parties shall contact the Tribunal to schedule a case conference in order to determine how to proceed.

**Released: January 6, 2020**



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**Jesse A. Boyce, Adjudicator**