



**Licence Appeal Tribunal File Number: 21-005622/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Winston McKnight**

**Applicant**

and

**Certas Home and Auto**

**Respondent**

**MOTION ORDER**

**ADJUDICATOR:** **Ludmilla Jarda**

**APPEARANCES:**

For the Applicant: Savannah Chorney, Counsel

For the Respondent: Meredith Harper, Counsel (Did Not Attend)  
Nathan Fabiano, Counsel

**Motion heard by** **August 30, 2022**  
**Teleconference:**

## **BACKGROUND**

- [1] The applicant was injured in an automobile accident on **September 4, 2019**, and sought benefits pursuant to the Statutory Accident Benefits Schedule – Effective September 1, 2010 (“Schedule”).
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [3] A case conference took place on **April 26, 2022** with Adjudicator Anita John.
- [4] The issues in dispute are whether the applicant is entitled to income replacement benefits, attendant care benefits, medical and rehabilitation benefits, an award, and interest.
- [5] A 5-day videoconference hearing was scheduled for January 16-20, 2023.

## **MOTION**

- [6] On August 10, 2022, the respondent filed a Notice of Motion requesting the following relief:
  - a. An order for productions; and
  - b. Costs of the motion.
- [7] The respondent requested that the productions be provided within thirty (30) days.
- [8] The applicant opposed the respondent’s motion and sought to have it dismissed.

## **RESULT**

- [9] The respondent’s motion is partially granted.

### **Request for Productions**

- [10] In accordance with Adjudicator John’s Case Conference Report and Order dated April 26, 2022, the applicant was required, among other things, to provide the following productions by no later than June 27, 2022<sup>1</sup>:
  - a. Complete ODSP Disability file;

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<sup>1</sup> According to the Case Conference Report and Order, the applicant’s productions were due by no later than 60 days after the case conference. Given that the case conference was held on April 26, 2022, the productions would have been due on June 25, 2022. However, since June 25, 2022 is a Saturday (holiday), pursuant to Rule 5.2, the production deadline was June 27, 2022.

- b. Complete CPP Disability file;
- c. Particulars of settlement with Sun Life;
- d. All employment files, T4 slips, ROEs, from three years pre-accident to date; and
- e. Updated medical records.

- [11] The respondent submitted that the above referenced productions remained outstanding despite the production deadline, and they moved to compel the applicant to produce the outstanding productions within 30 days. The respondent relied on Rule 9.1 of the Tribunal's Common Rules of Practice and Procedure ("Rules") which provides that the Tribunal may at any stage in a proceeding order any party to provide such further particulars or disclosure as the Tribunal considers necessary for a full and satisfactory understanding of the issues in the proceedings. They also relied on Rule 9.3 which provides that a party may seek an order from the Tribunal at any stage of the proceeding ordering a party to disclose any documents or things that the Tribunal considers relevant to the issues in dispute.
- [12] The respondent further submitted that the applicant had not provided any proof that best efforts were made to obtain the requested productions.
- [13] The applicant submitted that he attempted to comply with the production order and made the following requests:
- a. On June 3, 2022, the applicant requested the ODSP file. He sent a follow up urgent request on August 15, 2022. To date, he has not received the ODSP file.
  - b. On August 5, 2022, the applicant requested the CPP file. To date, he has not received the CPP file.
  - c. On March 25, 2022, the applicant requested the Sun Life file. He sent a follow up urgent request on August 15, 2022. To date, he has not received the Sun Life file.
  - d. On March 25, 2022, the applicant requested his employment records from Garland Commercials Ranges Ltd. He sent a follow up urgent request on August 15, 2022. To date, he has not received his employment file.
- [14] The applicant further submitted that the respondent would not suffer prejudice as a result of the short delay in obtaining productions from third parties.
- [15] As per Rule 3.1, it is the Tribunal's mandate to facilitate a fair, open, and accessible process, to allow effective participation by all parties, and to ensure an efficient, proportional, and timely resolution of the merits of the proceedings

before the Tribunal. Further, as per section 2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“*SPPA*”), the Rules shall be liberally construed to secure the just, most expeditious, and cost-effective determination of every proceeding on its merits. Additionally, pursuant to section 25.0.1 of the *SPPA*, the Tribunal has the power to determine its own procedures and practices and may for that purpose make orders with respect to the procedures and practices that apply in any particular proceeding.

[16] While I appreciate that the applicant has experienced some delay in obtaining productions from third parties, Tribunal orders must be followed. As such, should the applicant’s non-compliance with productions persist, without the consent of the Tribunal, he may be precluded from relying on these productions as evidence pursuant to Rule 9.4.

[17] Nevertheless, as I am satisfied that the applicant has generally made a reasonable effort to obtain productions sought by the respondent, I will grant him an extension of time to comply with his disclosure obligations. Accordingly, the applicant shall provide the following documents to the respondent within 45 days of today’s motion hearing:

- a. Complete ODSP disability file;
- b. Complete CPP disability file;
- c. Particulars of settlement with Sun Life; and
- d. Employment records from Garland Commercials Ranges Ltd.

[18] With respect to the respondent’s request for all updated medical productions, the respondent was not in a position to provide particulars of this request. The applicant advise that he was willing to produce updated records but considering that the applicant had already produced voluminous medical records, the respondent would have to particularize their request for updated medical records. I agree with the applicant. In the absence of particulars, I find the respondent’s request overly broad, and I am not prepared to grant a further order relating to medical records at this time.

### **Request for Costs**

[19] The respondent seeks costs of this motion in the amount of \$500.00.

[20] Costs are a discretionary remedy imposed when a party has acted unreasonably, frivolously, vexatiously, or in bad faith pursuant to Rule 19. The Tribunal is also compelled to consider the criteria pursuant to Rule 19.5 in awarding costs, particularly relating to the seriousness of the misconduct, whether a party’s behaviour was in breach of a direction or order issued by the Tribunal, whether or not a party’s behaviour interfered with the Tribunal’s ability to carry out a fair, efficient, and effective process, prejudice to the other parties, and the impact an

order of costs would have on individuals accessing the Tribunal system.

- [21] The respondent submitted that the timetable was agreed upon at the case conference, and they should not have to bring a motion for compliance with a Tribunal order.
- [22] The applicant submitted that the respondent's request for costs was inappropriate. He denied that he acted unreasonably, frivolously, vexatiously, or in bad faith. Rather, the applicant made good faith efforts to produce the requested productions. Further, the applicant indicated that the respondent's decision to bring this motion without any prior communication with the applicant to ascertain the status of the productions request is, however, frivolous, vexatious, and in bad faith. Moreover, this motion was a complete waste of time, and the respondent's actions amount to sharp practice.
- [23] With respect to the applicant's comment regarding the lack of communication, the respondent submitted that it is not their responsibility to send reminder letters to the applicant to comply with their production obligations.
- [24] Based on the evidence and facts submitted, I am not persuaded that the applicant's conduct attracts an award for costs.

#### **OTHER PROCEDURAL MATTERS**

- [25] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**
- [26] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Released: August 31, 2022**



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**Ludmilla Jarda**  
**Adjudicator**