



Citation: Chen vs. Economical Insurance, 2023 ONLAT 21-007827/AABS

Licence Appeal Tribunal File Number: 21-007827/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:

Yunjuan Chen

Applicant

and

Economical Insurance

Respondent

DECISION

ADJUDICATOR:

Rebecca Hines

APPEARANCES:

For the Applicant:

Yunjuan Chen, Applicant
Nima Azizi, Counsel

For the Respondent:

Kevin Kane, Claims Adjuster
Mai Nguyen, Counsel

Interpreter:

Mangli Qu, Mandarin Language

Court Reporter:

Hema Rekhi, NTC Reporting

**Heard: by way of
Videoconference:**

January 24, 25 and 26, 2023

OVERVIEW

- [1] Yunjuan Chen (the “applicant”) was involved in an automobile accident on May 17, 2019 and sought benefits from Economical Insurance (the “respondent”) pursuant to the Statutory Accident Benefits Schedule - *Effective September 1, 2010 (including amendments effective June 1, 2016)* (“Schedule”). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

ISSUES

- [2] I have been asked to decide the following issues:
1. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 limit and in the Minor Injury Guideline (“MIG”)?
 2. Is the applicant entitled to \$285.00 (\$1,300.00 less \$1,015.00 approved) for chiropractic treatment, proposed by Prime+ Care Health Centre in a treatment plan (“OCF-18”) submitted to the respondent on December 16, 2019?
 3. Is the applicant entitled to \$2,200.00 for a psychological assessment, proposed by Perfect Choice Psychological Services in an OCF-18 submitted to the respondent on September 16, 2019?
 4. Is the applicant entitled to \$3.06 for prescription medication, submitted on a claim form (OCF-6) to the respondent dated March 3, 2020?
 5. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 6. Is the applicant entitled to interest on any overdue payment of benefits?
- [3] At the outset of the hearing, the applicant withdrew her claim for a non-earner benefit.

RESULT

- [4] The applicant has not established that her accident-related injuries fall outside the MIG. As a result, she is not entitled to any of the benefits in dispute, interest or an award.

BACKGROUND

- [5] On May 17, 2019, the applicant was involved in an accident when her vehicle was t-boned by another vehicle. Her vehicle was deemed a total loss.
- [6] Five months prior to the accident, the applicant was the victim of an armed robbery at her workplace. Following this incident, she did not return to work and received benefits through the Workplace Safety and Insurance Board (WSIB). As a result of this incident, she was diagnosed with Post Traumatic Stress Disorder (“PTSD”), Specific Phobia: Situational Type: Workplace Acute, and Adjustment Disorder with Mixed Anxiety and Depressed Mood. She received psychological treatment and occupational therapy to assist in her recovery from her impairments.

ANALYSIS

Did the applicant sustain a minor injury which is subject to treatment within the \$3,500.00 MIG limit?

- [7] Section 18(1) of the *Schedule* sets out that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains an impairment that is predominantly minor in accordance with the MIG. Section 3(1) defines a “minor injury” as “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”
- [8] An insured person may successfully be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, pursuant to s. 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence stating that the condition prevents recovery if they are kept within the MIG. The Tribunal has also determined that chronic pain with functional impairment or a diagnosed psychological condition may justify removal from the MIG. The applicant bears the onus of proving on balance of probabilities that her accident-related impairments fall outside of the MIG.
- [9] The applicant submits that she should be removed from the MIG because she had both pre-existing physical and psychological conditions which would prevent her from achieving maximum recovery within the MIG. She also asserts that she sustained a psychological impairment and chronic pain as a result of the accident which do fit within the definition of the MIG. Further, she argues that these injuries are significant barriers to her ability to return to her daily activities.

[10] The respondent argues that the applicant sustained soft-tissue injuries as a result of the accident. Further, that she has not established that she suffers from chronic pain or a psychological impairment as a result of the accident. It also argues that the workplace robbery is responsible for her psychological impairment and the evidence does not support that there was any change in her condition following the accident. Nor has the applicant provided compelling medical evidence that her pre-existing psychological condition would prevent her from achieving maximum medical recovery within the MIG.

The applicant does not have a pre-existing physical impairment which would prevent maximum medical recovery within the MIG.

[11] The applicant asserts that she injured her back in the workplace incident when she moved a heavy cabinet in front of the bathroom door causing low back pain. Further, she maintains this pre-existing condition would prevent her from achieving maximum medical recovery within the MIG.

[12] The applicant relies on a few pre-accident entries in the family doctor's CNRs which reference back pain and an x-ray dated March 21, 2019, which states "history of low back pain - slight degenerative disc disease - pain or muscle spasm." I do not find the applicant has met her onus in providing compelling medical evidence of a pre-existing physical condition that would preclude her from achieving maximum medical recovery within the MIG. In my view, a few references in the family doctor's CNRs and an x-ray that supports degenerative disc disease is not compelling evidence. Further, there was no opinion from a treating practitioner that this pre-existing back pain would prevent the applicant from achieving maximum medical recovery within the MIG. Therefore, the applicant has not proven she has a pre-existing physical condition which warrants removal from the MIG.

The applicant does not suffer from chronic pain which would remove her from the MIG.

[13] The applicant relies on the CNRs of her family doctor – one of which references chronic pain. She also relies on an OCF-3 prepared by Dr. Pernia, chiropractor, which lists chronic pain under accident-related injuries. I find the CNRs of the applicant's family doctor to be sparse. The applicant did not visit her family doctor about any accident-related complaints until three months post-accident. Further, there are significant gaps between visits. In my view, the fact that the applicant reported back and neck pain on a few occasions following the accident to her family doctor, who noted "chronic pain" on one occasion, does not support a diagnosis of chronic pain or chronic pain syndrome. There was also very little

reference to ongoing physical complaints noted in the post-accident WSIB reports. In addition, I do not find that Dr. Pernia's opinion that the applicant suffers from chronic pain was supported by any objective medical evidence of reduced functionality.

- [14] As highlighted by the respondent, the Tribunal has adopted the criteria outlined in the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, 6th Edition, 2008 (the "Guides"), as an evaluative tool for assessing chronic pain claims. The *Guides* require an applicant to meet a minimum of three of the following six criteria in that they: (i) use prescription drugs beyond the recommended duration or any abuse of same; (ii) has excessive dependence on health care providers or family; (iii) suffers from secondary physical deconditioning due to disuse or fear-avoidance of physical activity due to pain; (iv) has withdrawn from social interactions, including work or recreational activities, (v) failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational needs, and (vi) has developed psychosocial sequelae after the incident.
- [15] The applicant has not submitted sufficient evidence to support that she meets three out of the six criteria as a result of the accident. For example, she is not overly dependent on prescription drugs, is not excessively dependent on family or health care providers and there is no evidence to support that she has suffered physical deconditioning due to disuse or fear or avoidance of physical activity due to pain. Further, the applicant was not working and was socially withdrawn prior to the accident. However, post-accident the applicant made some improvements as she participated in English as a Second Language classes and yoga which is referenced in the WSIB reports of the occupational therapist. I do not find that the evidence supports that the applicant has any physical impairment which would prevent her from pursuing work.
- [16] Although I acknowledge that the applicant has experienced some psychological sequelae as a result of the accident, this on its own does not satisfy three out of the six criteria. Further, simply implying that she has developed chronic pain without pointing me to any referrals to a pain specialist, or any other reports that support she suffers from chronic pain resulting in functional impairment, is not adequate. I conclude the evidence does not support that the applicant suffers from chronic pain or chronic pain syndrome as a result of the accident.

The applicant's pre-existing psychological impairment would not prevent her from achieving maximum medical recovery within the MIG.

- [17] I find the applicant has proven that she had a pre-existing psychological condition prior to the accident as she was diagnosed with PTSD and an adjustment disorder as a result of the workplace robbery. However, as this diagnosis is not related to the accident, the applicant has failed to prove that this pre-existing condition would prevent her from achieving maximum medical recovery within the MIG to satisfy the requirements of s. 18(2).
- [18] The applicant relies on the testimony and an OCF-18 prepared by Dr. Bao, psychologist, who drafted the psychological pre-screen report attached to the OCF-18. The OCF-18 recommended that the applicant undergo a psychological assessment to assess whether she sustained a psychological impairment as a result of the accident and to recommend treatment. Dr. Bao testified that the applicant's pre-existing psychological impairment would prevent her from achieving maximum medical recovery within the MIG.
- [19] Overall, I did not find the OCF-18 and pre-screening report or Dr. Bao's testimony helpful or persuasive. For example, there were typos on the OCF-18 itself referring to the applicant as another person and the doctor lacked insight into the applicant's situation, as he checked off "unknown" on the barriers for recovery question. Further, the goal of the assessment was to return the applicant to her employment. It is undisputed that the applicant was not working due to unrelated reasons at the time of the accident. During cross-examination, Dr. Bao acknowledged that his pre-screen interview lasted 15 minutes and he had a limited understanding about the applicant's pre-accident health and functional status. For these reasons, I give his opinion little weight.
- [20] The applicant also relies on the WSIB reports of Dr. Waxer and Leonithas Meridis, occupational therapist, to support her position that the accident exacerbated her pre-existing psychological condition. Dr. Waxer's progress report dated June 29, 2019 notes that the applicant had been improving from her tendency to isolate herself but had recently been set back as a result of the accident. Specifically, the applicant had returned to hiding in her home. Further, the doctor notes that as a result of this set back she will require additional effort to restore earlier gains due to the gravity of her PTSD.
- [21] I do not find the WSIB reports support the applicant's position as they discuss the accident, COVID-19, and the applicant's breakup with her boyfriend interchangeably as reasons for exacerbating her psychological condition. I agree with the respondent that the reports do not distinguish between the impact of the

accident and COVID-19 as far as what made her condition worse. Neither of these reports indicate that the applicant's pre-existing PTSD would prevent her from achieving maximum medical recovery within the MIG.

- [22] Dr. Aleem, psychiatrist, also prepared two reports for the WSIB regarding the impact of the workplace robbery versus the accident on the applicant's psychological symptoms. In a report dated November 15, 2019, the doctor states that it was the workplace robbery that was the primary contributor to the applicant's psychological symptoms. The report makes a reference to driving anxiety but otherwise does not discuss any other psychological symptoms as a result of the accident. Further, none of the WSIB reports reflect a change in the applicant's psychological diagnosis following the accident, nor was there an increase to her medication.
- [23] While I acknowledge that the applicant had a serious psychological impairment arising from the workplace robbery, there is insufficient medical evidence to support that the accident made this condition worse, or that it would prevent maximum medical recovery within the MIG. Nor did the applicant submit persuasive evidence to support that she has been diagnosed with a psychological impairment as a result of the accident.
- [24] The respondent relies on two IE reports prepared by Dr. Mandel, psychologist. In the first assessment, the applicant attributed the robbery to being the cause of her psychological symptoms. Dr. Mandel concluded that there was a lack of consistent objective information present that would support a psychological diagnosis in direct relation to the accident. In addition, he concluded that there was no pre-existing psychological impairment which would prevent the applicant from achieving maximum medical recovery in the MIG. Also important to the doctor's opinion was the fact that the applicant's results on psychometric tests were invalid and supported a strong possibility of symptom exaggeration. This was another reason why the doctor could not provide a diagnosis.
- [25] By contrast, in Dr. Mandel's second assessment, the applicant credits the accident as being the cause of her current symptoms and psychological complaints. The results of the psychometric tests raised similar validity concerns and the doctor maintained his opinion on the MIG. I accept Dr. Mandel's opinion because the applicant has not submitted compelling evidence to refute it.
- [26] For the above-reasons, I find the applicant has not met her onus in proving that she would be prevented from achieving maximum medical recovery from the MIG as a result of her pre-existing psychological impairment.

The respondent is not liable to pay an award under s. 10 of Reg. 664.

- [27] Regulation 664 states that if the Tribunal finds that an insurer had unreasonably withheld or delayed payments, the Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled, may award a lump sum of up to 50 percent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.
- [28] In light of my decision in this matter, the applicant is not entitled to an award as I have determined that the applicant's accident-related impairments fit within the MIG. Consequently, I do not find the respondent unreasonably withheld any benefits.

ORDER

- [29] The applicant has failed to establish that the injuries she suffered as a result of the accident were not predominantly minor. Accordingly, the claimed OCF-18s are not reasonable and necessary. In light of my decision, an award is not warranted.
- [30] This application is dismissed.

Released: March 13, 2023



**Rebecca Hines
Adjudicator**