



Interpreting the Statutory Accident Benefits Schedule: A narrow or liberal approach?

By Jillian Van Allen, Partner, and Damian Di Biase, Articling Student, Beard Winter LLP

Summary

A recent [decision](#) from the Divisional Court affirmed that a claimant seeking income replacement benefits under section 5(1) of the *Statutory Accident Benefits Schedule (Schedule)* must provide evidence that they were either employed and receiving income at the time of the accident, employed and receiving income for at least 26 weeks of the 52 weeks preceding the accident, or receiving employment insurance at the time of the accident.

In *Kawa Arab v Unica Insurance (Kawa)*, the appellant claimed the License Appeal Tribunal (LAT) adjudicator incorrectly interpreted the word “employed.” The appellant requested a reconsideration which the vice chair dismissed. The matter was then brought to the Divisional Court.

The Court held that the adjudicators were correct in their interpretation. The appellant had been absent from work since February 11, 2016 but was not formally terminated from his employment until November 30, 2016. He had not received any wages since February 2016 and had only received employment insurance benefits until June 12, 2016. The Court ruled that interpreting the term “employed” to capture anyone in an employment relationship independent of their income-earning situation would not be in accordance with the intent of the *Schedule*.

Kawa not only further establishes the criteria needed to be met to claim income replacement benefits but illustrates how courts will analyze the *Schedule*. Parties dealing with undefined or ambiguous terms in the *Schedule* should look to *Kawa* to determine how an adjudicator will likely interpret the particular provision.

The appellant in *Kawa* claimed that “employed” should not be limited to the periods that the appellant was receiving income

The appellant was involved in a car accident and claimed income replacement benefits. His OCF-2 stated that he had been absent from work since February 11, 2016. However, he was not formally terminated until

November 30, 2016. The result was that the appellant only worked for 20 weeks, opposed to the minimum of 26 weeks required for the benefit.

The LAT ruled that the appellant was not employed at the time of the accident, and that “employed” ought not to be interpreted to refer to the employment relationship as a whole and not be limited to the periods that the appellant was earning income. The appellant appealed on this issue.

The Divisional Court affirmed the adjudicator’s interpretation

The Divisional Court held that the LAT did not err in its interpretation of section 5(1) of the *Schedule*. By analyzing the term “employed” in a manner that was consistent with the text, context, and purpose of the statute, the Court found that it was clear and unambiguous that “employed” is connected to income-earning and receiving wages in exchange for services being rendered.

When read in its entirety, Part II of the *Schedule* intended income earners and non-income earners to be treated differently. It also intended some minimum requirements, such as the requirement of 26 weeks employment out of a 52-week period for income replacement benefits. Had the legislature intended for income replacement benefits to be paid during temporary and/or prolonged absences from employment, it could have included that in the legislation.

Thus, the Court concluded that while the *Schedule* is about consumer protection, interpreting the term “employed” to capture anyone in an employment relationship independent of their income-earning situation would not be in accordance with the intent of the *Schedule*.

Be sure to subscribe to our blog, “The Defender” for timely and relevant information about the latest legal developments and our services.

Disclaimer: The contents of this issue are provided for interest only and are not to be considered as, in any way providing legal advice to the readers by Beard Winter LLP or the individual authors of articles contained herein. All readers are strongly advised to obtain independent legal advice on any issue of concern to them from competent legal counsel in Ontario.

[Click to Subscribe To
The Beard Winter Defender](#)