

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: K.P. vs. Security National Insurance Co., 2019 ONLAT 18-007561/AABS

**Date: October 2, 2019
File Number: 18-007561/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:

K.P.

Appellant(s)

and

Security National Insurance Company

Respondent

DECISION

ADJUDICATOR: Raj Sharda

APPEARANCES:

For the Applicant: Ardi Deti, Paralegal

For the Respondent: Kamil Podleszanski, Counsel

**Held in writing and
decision released on**

April 29, 2019

OVERVIEW

- [1] The applicant was involved in an automobile accident on June 13, 2017 and sought medical benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (“*Schedule*”)¹. The applicant was denied benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [2] The parties participated in a case conference but were unable to resolve all the issues in dispute. Hence this matter proceeded to a hearing in writing.
- [3] The applicant states she suffered injuries to her neck, shoulders, chest, abdomen and lower back arising from the accident. Post-accident the applicant states that psychologically she suffers from anxiety and is quick to anger, she has a hard time getting going in the mornings and completing tasks.

ISSUES IN DISPUTE

- [4] The issues before the Tribunal are:
 - i. Are the applicant’s impairments of a nature that they fall within the Minor Injury Guideline?
 - ii. Is the applicant entitled to a medical benefit for \$3,129.48 for psychological services recommended by Pilowsky Psychological Professional Corporation submitted December 19, 2017 and denied January 22, 2018?
 - iii. Is the applicant entitled to a medical benefit for \$1,977.05 for chiropractic services recommended by Mckenzie Medical Rehabilitation Centre submitted October 28, 2017 and denied November 14, 2017?
 - iv. Is the applicant entitled to the cost of an examination for \$2,200.00 for a psychological assessment recommended by Pilowsky Psychological Professional Corporation submitted November 14, 2017 and denied November 23, 2017?
 - v. Is the applicant entitled to an award for unreasonably withheld or delayed payments under section 10 of Ontario Regulation 664?
 - vi. Is the applicant entitled to interest on any overdue payment of benefits?

¹ Ontario Reg 34/10

RESULT

- [5] For the reasons below, I order as follows:
- a) That the applicant should not be removed from the MIG;
 - b) That the two treatment plans for Psychological services issues 4 (ii) and (iv) are denied.
 - c) The Treatment plan issue 4 (iii) is approved to the extent that funding remains up to the \$3,500.00 Limit. Any payment beyond the \$3,500.00 limit for this treatment plan is denied.
 - d) No Interest is applicable; and
 - e) No award is warranted in this matter.

ANALYSIS

Do the applicant's injuries fall within MIG?

- [6] Minor Injury
- i. "a "minor injury" means one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae."
 - ii. Pursuant to s. 18 of the *Schedule*, the sum of medical and rehabilitation benefits payable to an insured person who sustains a predominantly minor injury is limited to \$3,500.00. Impairment is defined in s. 3 of the schedule to mean: "loss or abnormality of a psychological Physiological or anatomical structure or function.
 - iii. The \$3,500.00 limit does not apply if the insured person provides compelling evidence documented by a health practitioner before the accident that he or she has a pre-existing medical condition that will prevent maximum medical recovery if he or she is subject to the \$3,500.00 limit. In addition, certain accident related medical impairments (e.g. a diagnosis of chronic pain or a psychological impairment) can remove an individual from the MIG in certain circumstances.

Evidence relied upon

- [7] The evidence from both sides confirms that the applicant did suffer predominately minor physical injuries.
- [8] The applicant however, argues that she has sustained psychological injuries as a result of the accident and as such should be removed from the MIG guidelines.
- [9] The Applicant predominately relies upon an Dr. Pilowsky's OCF- 18, and a psychological assessment of January 16, 2018.
- [10] Dr. Pilowsky conducted psychological tests which revealed minimal levels of depression and mild levels of anxiety. Dr. Pilowsky then assigns a DSM-V diagnosis of adjustment Disorder and Depressed mood to the patient.
- [11] Dr. Pilowski comments that although the applicant is strong and resilient, and coping with her pain, the applicant's negative thoughts regarding her current circumstances and future recovery maintain her downcast mood and aggravate her anxiety.
- [12] The applicant relies upon this diagnosis and Dr. Pilowsky's conclusion" Ms. Peart suffers from Adjustment Disorder and Depressed Mood, which is not captured with the definition of "minor Injury" and therefore the patient's impairments ought not be considered minor".
- [13] The respondent relies upon an IE conducted by Dr. Rubenstein, He also conducted psychological tests and concluded based on the results of these tests that the applicant did not suffer from any accident related psychological impairment.
- [14] Dr. Rubenstien does not say why the symptoms identified in the testing by the applicant should be discounted as to not be indicative of a psychological impairment.
- [15] Both doctors acknowledge that the applicant has symptoms of psychological issues however the doctors disagree what conclusion these symptoms indicate with respect to an Psychological impairment. The IE states these symptoms amount to a conclusion of no psychological impairment. Dr. Pilowsky concludes on similar testing that the applicant is diagnosed as suffering from an Adjustment Disorder and Depressed mood.
- [16] Dr. Rubenstien does not clarify why the symptoms of psychological distress he observed in his and Dr. Pilowsky's testing cannot lead to the diagnosis of a

Psychological impairment as identified by Dr. Pilowsky. I therefore, prefer the evidence of Dr. Pilowsky over the evidence of Dr. Rubenstien.

- [17] Based upon Dr. Pilowsky's report and diagnosis I find the applicant does suffer from a psychological impairment as a result of the accident, however based upon the evidence and results of psychological testing I find that this impairment is on the less severe spectrum.
- [18] An Impairment is defined in the schedule as:
- "Impairment means a loss or abnormality of a psychological, physiological or anatomical structure or function"
- [19] There is however little evidence that this psychological impairment has caused the loss of any functional abilities of the applicant. The applicant has made no reporting to her treating family doctor about any psychological impairment. She does reference anxiety when driving, however, she has continued to work and drive since the accident.
- [20] The psychological impairment therefore, does not override the fact that the applicant's injuries are predominantly minor in nature.
- [21] As such, I find based upon the facts before it in this hearing and limited to those facts and this hearing that the applicant should be held under the MIG

AWARD

- [22] I find that the circumstances of this matter do not warrant an award. The respondent replied upon IE's that took a reasonable approach in assessing and processing the claims presented by the applicant.

ORDER

- [23] The Tribunal therefore orders:
- a) That the applicant should not be removed from the MIG;
 - b) That the two treatment plans for Psychological services issues 4 (ii) and (iv) are denied.
 - c) The Treatment plan issue 4 (iii) is approved to the extent that funding remains up to the \$3,500.00 limit. Any payment beyond the \$3,500.00 limit for this treatment plan is denied.

- d) The applicant is not entitled to interest other than on the portion of funds still remaining within the \$3,500.00 limit, under 19 c).
- e) The applicant is not entitled to an award.

RELEASED: October 2, 2019

Raj Sharda, Adjudicator