



**Citation: Gill v. Security National Insurance Company, 2023 ONLAT 20-009822/AABS**

**Licence Appeal Tribunal File Number: 20-009822/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:

**Kevin Gill**

**Applicant**

and

**Security National Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Amanda Marshall**

**APPEARANCES:**

For the Applicant: Kevin Gill, Applicant  
Submissions provided by Lianne Sharvit, Counsel (no longer applicant's representative)

For the Respondent: Al Alilovic, Representative  
Submissions provided by Kamil Podleszanski, Counsel (no longer representative)

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Kevin Gill, the applicant, was involved in an automobile accident on March 18, 2020, and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (“Schedule”). The applicant was denied benefits by the respondent, Security National Insurance Company, and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

## ISSUES IN DISPUTE

- [2] The following issues are in dispute:
- a. Is the applicant entitled to a non-earner benefit (“NEB”) in the amount of \$185.00 per week from the period March 18, 2020 to date and ongoing?
  - b. Is the applicant entitled to a medical benefit in the amount of \$2,200.00 for physiotherapy services, denied July 28, 2020?
  - c. Is the applicant entitled to interest on any overdue payment of benefits?
  - d. Is the applicant liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
- [3] In the applicant’s submission, he seeks to add the issue of costs.
- [4] The respondent, in its submission of April 29, 2022, noted that issue 2 (b) above should be removed as it was approved in a correspondence dated December 21, 2020. The applicant provided a reply on May 4, 2022 and did not dispute the respondent’s request. As such, issue 2 (b) is removed.

## RESULT

- [5] I find the applicant is not entitled to a NEB, interest, an award, or costs.

## ANALYSIS

### **The applicant is not entitled to a NEB**

- [6] Section 12(1) provides that an insurer shall pay an NEB to an insured person who sustains an impairment as a result of the accident, if the insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident. Section 3(7)(a) defines a “complete inability to carry on a normal life” as “an impairment that continuously prevents the person from

engaging in substantially all of the activities in which the person ordinarily engaged before the accident.” The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical Mut. Ins. Co.*, 2009 ONCA 391, which, generally, focuses on a comparison of the applicant’s pre- and post-accident activities.

- [7] The applicant argues that he suffers from a complete inability to carry on a normal life as he has chronic shoulder pain and nerve damage across his left elbow resulting in paralysis of his left hand. Also, his pre-existing conditions were exacerbated by the accident as evidenced by the clinical notes and records of Dr. Jamsheed Desai, Neurologist, Dr. Maria Carmela Tartaglia, Neurologist, Dr. Mohammed Sayeed Ahmed, Psychologist, as well as the self-reporting of his activities of daily living pre- and post-accident.
- [8] The respondent submits the applicant has had a series of adverse events in his life being two prior motor vehicle accidents, several slip and falls, as well as two deaths in his family and even though the applicant sustained injuries in the March 18, 2020 accident, the injuries did not result in his inability to carry on a normal life as he was experiencing limitations before. The respondent relies on the Insurer’s Examination (“IE”) reports of Dr. Steven Baker, Physical Medicine and Rehabilitation, dated June 25, 2021, Dr. Adrian Fawcett, Neurologist, dated September 15, 2021, and Angela Bertolo, Occupational Therapist (“OT”), dated August 23, 2021, which all found the applicant did not suffer a complete inability to carry on a normal life.
- [9] The respondent submits that the only document filed in support of entitlement to a NEB is a Disability Certificate signed by Dr. Bohdan Osoba, Chiropractor, received on December 22, 2020, which does not compare what the applicant could do prior to the accident with what he was unable to do post-accident.
- [10] Further, the respondent submits the applicant was approved for Ontario Disability Support Program (“ODSP”) payments in May 2017 and has continuously received such.
- [11] I find that the applicant has not provided sufficient evidence to demonstrate that the accident of March 18, 2020 resulted in a complete inability to carry on a normal life. The applicant had significant pre-accident physical and psychological issues including a mild traumatic brain injury, post-concussive syndrome including dizziness and blurred vision, post-traumatic headaches, chronic neck pain, severe sleep apnea, depression, and anxiety. His pre-accident issues rendered him unable to work.

- [12] I find that the applicant's self-reported activities pre- and post-accident do not align with the history he provided to the IE assessors nor his own treating practitioners' clinical notes and records.
- [13] The applicant submits that prior to the accident he lived alone and was completely independent with caretaking and housekeeping responsibilities, was independent with personal care tasks, could sleep with minimal difficulty, would socialize with friends and family, and had started looking for employment.
- [14] Post-accident, the applicant reported that his sister assists him with caretaking and housekeeping. He has difficulty showering due to dizziness. He has insomnia due to shoulder/left arm pain, and he is no longer able to look for employment due to his pain and exacerbation of his pre-existing symptoms.
- [15] In my view, the applicant's records do not support the applicant's overview of his pre-accident activities. Although the applicant said he could travel, grocery shop, participate in social activities and complete household chores pre-accident, the reporting from Highmark Health in 2017 found the applicant was prevented from doing those things due to headaches and dizziness.
- [16] The clinical notes and records indicate that the applicant had a fall due to dizziness in 2017. He fell again on June 26, 2019, injuring his left shoulder. On August 11, 2019, he was hit by a car while riding his bike.
- [17] I find the applicant had difficulty with sleep for many years as evidenced by the report dated October 15, 2018 by Dr. Apmeh Tarazi, Neurologist.
- [18] On July 20, 2018, the applicant's family doctor, Dr. Timothy Panowyk, determined the applicant was incapable of working and considered him chronically disabled.
- [19] While the applicant said he was no longer able to look for work due to the subject accident, I find the applicant's records indicate he stopped working in 2010, applied for and started receiving ODSP in 2017 and continues to receive ODSP. He was deemed incapable of working by his family doctor in 2018 two year prior to the accident.
- [20] With respect to the applicant's activities of daily living ("ADLs"), Dr. Andre Douen, Neurologist that the applicant visited two months post-accident, said the applicant has restricted range of motion in his left shoulder and is limited in lifting his left arm. However, noted the applicant can drive using his right arm and is able to manage with his ADLs.
- [21] I find Ms. Bertolo's OT findings consistent with Dr. Douen. Ms. Bertolo found the applicant was able to manage with his ADLs. He was able to prepare light

meals, remove garbage, wipe down counters, get groceries, and make beds/change linens with his right hand. She reported the applicant demonstrated limited left shoulder range of motion and acknowledged that he may experience pain while performing some of his activities of daily living. However, his functional abilities were such that he can engage and participate in his pre-accident normal daily activities.

- [22] The applicant's pre-accident psychological and physical conditions contributed to him experiencing significant limitations in his ADLs for many years prior to the accident. I acknowledge that the applicant has residual issues with his left shoulder. However, I find the applicant has not demonstrated his injuries sustained in the accident prevent him from engaging in substantially all the activities in which he did prior to the accident as he is able to drive, live alone, manage household tasks with pacing, and complete small grocery shops which is what he reported he could do prior to the accident.

#### **The respondent is not liable to pay an award**

- [23] Section 10 of Regulation 664 provides that an award may be granted if the respondent unreasonably withheld or delayed payments. Here, I find there was no payment unreasonably withheld or delayed and as a result no award is payable.

#### **The applicant is not entitled to interest**

- [24] As no benefits are payable, no interest is payable.

#### **The applicant is not entitled to costs**

- [25] Rule 19.1 of the *Common Rules* provides that a party may make a request to the Tribunal for its costs where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith.
- [26] The applicant requests costs for the proceedings as he believes the respondent acted unreasonably by initially denying the applicant was in an "accident" as defined by the *Schedule* and by refusing to pay NEBs until February 7, 2021.
- [27] The respondent contends despite conflicting evidence with respects to the whether the applicant was in an accident, the respondent did accept that the incident was an accident. The respondent also made NEB payments pending the completion of the IE assessments.
- [28] I do not find that the respondent acted unreasonably. While the respondent initially questioned whether the applicant was in an accident, the respondent did

accept that he was. The respondent also decided to pay NEBs from February 7, 2021 until the results of the IE reports were completed which is not required of it by the *Schedule*. As such, I do not find that the respondent acted unreasonably and, therefore, the applicant's requests for costs are denied.

## **CONCLUSION**

[29] The applicant is not entitled to payment of a NEB, interest, an award, or costs.

**Released:** March 16, 2023

---

**Amanda Marshall**  
Adjudicator