

**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**

Tribunal File Number: **16-000132/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:

Yurak Dahi

Applicant

And

Certas Home and Auto Insurance Company

Respondent

Motion Decision

Order made by:

Terry Hunter, Vice Chair

Date of the Order:

June 20, 2018

Appearances:

Carlos Ortiz, Counsel for the Applicant

Heather Kawaguchi, Counsel for the Respondent

Leslie Bonello, Representative Respondent

Motion by teleconference:

May 30, 2018

Overview:

[1] The applicant brought a notice of motion dated April 30, 2018 for an order seeking the resumption of the Application by an Injured Person dated April 29, 2016 and the scheduling of a case conference.

[2] The Application was filed April 29, 2016 with claims for non-earner benefits and medical benefits.

[3] A Case Conference took place June 20 and June 23, 2016 and the issues in dispute were agreed were a non-earner benefit at the rate of \$185.00 per week from July 25, 2015

and ongoing and interest on overdue payment of benefits. The medical benefits were either withdrawn or resolved. 2

[4] On July 7, 2016 the parties reached an agreement to settle this matter on a full and final basis. The parties notified the Tribunal that the written hearing scheduled for July 25, 2016 was not required.

[5] On July 7, 2016 the Tribunal advised the parties the hearing scheduled for July 25, 2016 was cancelled and the file administratively closed as of the date of the Tribunal's letter.

[6] The applicant filed a second Application by an Injured Person for Auto Insurance Dispute Resolution received by the Tribunal on April 5, 2018. Included as an issue in dispute is the non-earner benefit initially claimed in the April 29, 2016 Application.

[7] The Response by an Insurance Company dated May 10, 2018 takes the position that the non-earner benefit listed as an issue in dispute in the April 5, 2018 Application is 5 months past the 2 year limitation period.

[8] In the applicant's written submissions in support of the motion to re-open a proceeding it is stated the applicant rescinded the settlement as she did not agree with the amounts in the Settlement Disclosure Notice. The settlement documents were not signed by the applicant.

[9] The applicant did not in the written submissions or at the hearing of the motion provide an explanation for the delay of 23 months in seeking a resumption of the application.

Result:

[10] The applicant is permitted to resume the Application by an Injured Person dated April 29, 2016 and the scheduling of a case conference. The only issues in dispute to proceed are the non-earner benefit at the rate of \$185.00 per week from July 25, 2015 and ongoing and whether the applicant is entitled to interest on the overdue payment of benefits.

Reasons:

[11] The compelling reason to allow the resumption of the Application is found in the Tribunal's letter to the parties of July 7, 2016. In that letter the second paragraph reads as follows:

This file has been administratively closed as of the date of this letter. The file may be re-opened upon the request of the Applicant and/or the other parties.

There is nothing in the Tribunal's *Common Rules of Practice and Procedure* that describes the effect of the administrative closure of a file nor is there a direction of the Tribunal

available to the parties describing the process. It would be unfair of the Tribunal to deny the request or enter into an examination of the reasons for the delay when no limits were set by the Tribunal concerning the right to request the file be re-opened.

[12] The respondent argues that to allow the file to be re-opened effectively voids the 3
limitation defence. Had the Tribunal not advised the parties that the file could be re-
opened on request I would have analyzed the request using the 4 part test adopted by the
Tribunal in a reconsideration decision of the Executive Chair of the Safety, Licensing
Appeals and Standards Tribunals of Ontario: *A.F. v. North Blenheim Mutual Insurance
Company*, 2017 CanLII 87546. That decision states the Tribunal should consider section 7
of the Licence Appeal Tribunal Act to determine if the two year limitation period should be
extended.



Released: June 25, 2018

Terry Hunter, Vice Chair