

**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**

File Number: 18-008802/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:

Y.C.

Applicant

and

Economical Insurance Company

Respondent

DECISION ON PRELIMINARY ISSUES

ADJUDICATOR: Lindsay Lake

APPEARANCES:

For the Applicant: Mitchell Barber, Counsel

For the Respondent: Helen Friedman, Counsel

HEARD IN WRITING: June 17, 2019

OVERVIEW

- [1] The applicant, Y.C., was injured in an automobile accident on January 30, 2014 (the “accident”) and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the “*Schedule*”) from Economical Insurance Company (“Economical”), the respondent.
- [2] On September 19, 2018, Y.C. submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) to determine her entitlement to weekly non-earner benefits (“NEBs”).
- [3] At the case conference held on February 4, 2019, Economical raised two preliminary issues regarding Y.C.’s claim for NEBs. It submits that the Tribunal does not have jurisdiction to hear Y.C.’s claim for NEBs and, in the alternative, that pursuant to s. 56 of the *Schedule*, Y.C. is statute barred from proceeding with her claim for NEBs at the Tribunal because she failed to apply within the limitation period of two years after Economical’s refusal to pay NEBs.
- [4] As a result, a written preliminary issue hearing was scheduled for April 29, 2019, which was adjourned on consent to June 17, 2019.

PRELIMINARY ISSUES

- [5] The following preliminary issues are to be decided:
 - (i) Does the Tribunal have jurisdiction to hear Y.C.’s claim for NEBs as she previously applied to the Financial Services Commission of Ontario (“FSCO”)?
 - (ii) If the answer to issue (i) is “yes,” then I must answer the following:
 - (a) Is Y.C. statute barred from pursuing his claim for NEBs to the Tribunal due to the limitation period in s. 56 of the *Schedule*?

RESULT OF PRELIMINARY ISSUES

- [6] I find that the Tribunal has no jurisdiction to hear Y.C.’s claim for NEBs.

FACTS

- [7] Following the accident, Y.C. submitted an application for accident benefits (OCF-1) dated February 5, 2014 to Economical.
- [8] NEBs were paid to Y.C. from July 30, 2014 until September 28, 2014 when Economical terminated Y.C.’s NEBs following the results of insurer examinations (IEs).
- [9] On November 13, 2015, Y.C. applied to FSCO for mediation of Economical’s denial of NEBs and other medical benefits. On February 4, 2016, Y.C. then applied for

arbitration of these issues. FSCO received Y.C.'s application for arbitration on March 2, 2016.

- [10] The arbitration was assigned by FSCO to ADR Chambers and a pre-hearing took place on February 6, 2017. An arbitration was scheduled for November 14 to 17, 2017.
- [11] Prior to the scheduled arbitration, Y.C. and Economical, through their counsel, entered into an agreement for a full and final settlement of Y.C.'s accident benefit claims. A full and final release and settlement disclosure notice was provided to Y.C.'s counsel on October 13, 2017 to be signed by Y.C.
- [12] On December 19, 2017, Y.C.'s counsel advised Economical that Y.C. would not be signing the settlement documents.
- [13] Both parties submit that they both advised FSCO that the matter had resolved and requested that the arbitration scheduled for November 14 to 17, 2017 be cancelled. No documents were submitted to confirm the notices to FSCO and/or ADR Chambers but I accept that the arbitration scheduled for November did not take place.
- [14] On September 15, 2018, Y.C. filed her application with the Tribunal regarding her entitlement to NEBs.

ANALYSIS

Jurisdiction

- [15] Economical submits that the Tribunal does not have jurisdiction to hear Y.C.'s application for NEBs as the dispute remains within the jurisdiction of FSCO. Economical relies upon the following provisions of *Ontario Regulation 664* (the "Regulation"):

21. (1) A proceeding described in subsection (2) that was commenced but not completed before the transition date is continued after that date.

(2) The proceedings referred to in subsection (1) are the following:

...

3. An arbitration under section 282 of the pre-transition date Act.

20. (3) The powers and duties that the officials referred to in subsection (1) had before the transition date continue, with necessary modifications, for the purposes of proceedings continued under section 21 of this Regulation or that may be commenced under section 22 of this Regulation.

[16] I also note s. 21(6) of the *Regulation* states:

For greater certainty, if mediation fails, a court proceeding or arbitration may not be commenced on or after the transition date but the insured person or the insurer may apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act.

[17] The transition date was April 1, 2016.

[18] Economical argues that because the purported settlement agreement was not completed by Y.C. and because the dispute was also not subject to a final adjudication by an arbitrator by April 1, 2016, the appropriate course of action, therefore, was to continue the dispute at FSCO. Economical also argues that the mere fact that the FSCO file may be closed, which it argues Y.C. has provided no evidence of, that this does not make the dispute magically disappear – a dismissal or some other finality to the arbitration is still required.¹

[19] The only submission made on the jurisdiction issue by Y.C. was its reliance upon the decision of *17-009243 v Gore Mutual Insurance Company*² where the insurer raised the argument that FSCO retains jurisdiction over the application. The insurer's jurisdictional argument was dismissed for failure to provide any explanation or analysis and the Tribunal held, "I am not persuaded that proceeding with this matter before the Tribunal would result in unfairness or hardship to Gore or result in efficiency gains that would warrant dismissing Z.M.'s appeal. Frankly I believe it to be in the best interests of both parties to get on with this matter."³

[20] I distinguish Economical's arguments from those advanced in *17-009243* as Economical had cited specific provisions of the *Regulation* that appear to have not been before the Tribunal in *17-009243*.

[21] I find that there was no final disposition of Y.C.'s first application for arbitration dated February 4, 2016 at FSCO and, therefore, the FSCO process was not "complete" for the purposes of the *Regulation*. Although "complete" is not defined in the *Regulation*, neither party provided any evidence that Y.C. dealt with her dispute by formally withdrawing it. I also agree with Economical that the matter was not subject to final adjudication by an arbitrator.

[22] Furthermore, asking for the scheduled arbitration hearing dates to be vacated is not enough to "complete" a matter. In this case, Y.C. was entitled to, and she did, rescind her settlement agreement with Economical. Economical concedes this. In doing so, Y.C.'s actions are akin to an applicant rescinding his or her settlement of an application before the Tribunal. If a settlement fails, the Tribunal's file would be reopened even if it was considered "closed." The applicant would not be required to

¹ *Botezatu v. Certas Home and Auto Insurance Company* (FSCO Appeal P18-00036, December 12, 2018) at page 5 and *Vaitheeswaran v. State Farm Mutual Automobile Insurance Company* (FSCO P17-00002, August 23, 2018) at page 5.

² 2018 CanLII 83531 (ON LAT) ("*17-009243*").

³ *Ibid.* at para. 37.

re-file a new application. This is Y.C.'s situation before FSCO and ADR Chambers and she is required to continue her first application in that jurisdiction.

Limitation Period

[23] Based on my finding that the Tribunal lacks jurisdiction to hear Y.C.'s application for NEBs, the issue of whether or not Y.C. is statute-barred from proceeding with her claim for NEBs at the Tribunal is moot.

CONCLUSION

[24] Based on my reasons set out above, I find that the Tribunal has no jurisdiction over Y.C.'s claim for NEBs as she has not completed her first application before FSCO.

Released: August 28, 2019



**Lindsay Lake
Adjudicator**