

**Applicant statute-barred from pursuing a claim for Non Earner Benefits (NEBs) to the License Appeal Tribunal (LAT) due to the limitation period requirements within section 56 of the Schedule. In addition, the case did not warrant extension of the limitation period pursuant to s. 7 of the LAT Act**

The applicant was involved in a motor vehicle accident that took place on December 16, 2016 and sought benefits pursuant to the Statutory Accident Benefits Schedule (SABS, “the Schedule”). The applicant submitted his Application for Accident Benefits on December 28, 2016 and a Disability Certificate dated January 4, 2017 signed by the applicant’s Chiropractor. The Chiropractor check marked ‘yes’ to the question of whether the applicant had a substantial inability to perform the essential tasks of his employment. The Disability Certificate also reflected a check mark ‘yes’ to the question of whether the applicant had a complete inability to carry on a normal life.

On January 12, 2017 an Explanation of Benefits advised that the applicant may be eligible for IRBs and was not eligible for NEBs. Section 35 of the Schedule states that the applicant must elect whether an IRB or NEB is the benefit that he/she wishes to receive.

In a letter from the applicant’s representative dated February 6, 2017 to the respondent they advised that the applicant did not wish to pursue the IRB benefit. On February 9, 2017, the respondent sent an Explanation of Benefits acknowledging that the applicant did not wish to pursue IRBs.

The Tribunal found that the Explanation of Benefits dated January 12, 2017 denying the NEBs was in compliance with the Schedule and the case law; it was a clear refusal, which was directed to an unsophisticated person and it also outlined the dispute resolution process with a warning of the two-year limitation period. The Adjudicator agreed with the respondent who argued that it did not matter that the reason for the denial may not have been correct in law. The Adjudicator also agreed with the Respondent that the denial did not have to provide medical reasons.

In response to whether the Limitation Period should be extended by virtue of s. 7 of the LAT Act the Adjudicator went through the four factors as set out in the case law that would be considered in making the determination of whether the extension of the limitation period should be granted – existence of a bona fide intention to appeal within the appeal period, the length of the delay, prejudice to the other party and the merits of the appeal.

The applicant was unable to establish that the case warranted an extension of the limitation period pursuant to s. 7 of the LAT Act. The applicant relied on the fact that the applicant continued to attend for treatment, apply for benefits and engage in negotiations with the

respondent as support for the bona fide intention to appeal. The Adjudicator agreed with the respondent that engaging in settlement negotiations, continuing with treatment and attending examinations is not evidence of a bona fide intention to appeal.

With respect to the length of the delay, which was over eight months, the Adjudicator agreed with the respondent that the total delay should be considered. In this case, should the matter have proceeded to a hearing, the hearing would take place more than four years after the denial of the NEB and this was excessive. In addition, there was no explanation from the applicant for the delay.

Prejudice would befall the respondent because it would have to locate, produce and rely on old evidence that may no longer be available and the respondent did not have an opportunity to intervene early to provide rehabilitation, investigate the claims in a timely manner or limit its potential exposure.

Finally, the last factor, merits of the case, does not require that the Adjudicator make a determinative ruling on the merits but only assess whether the Applicant would have a reasonable chance of success if allowed to proceed beyond the limitation period. The Adjudicator decided that he was not going to go through a detailed analysis of proving entitlement to the NEB because, even if the case had some merit, this would have been the only factor that would support the request to extend the limitation period. Although not all four factors need to be satisfied, an analysis balancing all the factors is required and the Adjudicator had satisfied himself with the first three factors and concluded that the case did not warrant extending the limitation period.

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