



Citation: Liu v. Aviva Insurance Company of Canada, 2026 ONLAT 25-001294/AABS

Licence Appeal Tribunal File Number: 25-001294/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:

JunBo Liu

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: **Sam Moini**

APPEARANCES:

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Catherine H Zingg, Counsel

Court Reporter: Hanya Palumbo, Network

Interpreter: Yajun Wang, Mandarin language

Heard by Videoconference: October 28 and 29, 2025

OVERVIEW

[1] JunBo Liu, was involved in an automobile accident on August 24, 2022, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "Schedule"). The applicant was denied benefits by the respondent, Aviva Insurance Company of Canada, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

- i. Is the applicant entitled to an income replacement benefit (IRB) in the amount of \$287.88 per week from August 31, 2022 to September 21, 2023?
- ii. Is the applicant entitled to interest on any overdue payment of benefits?
- iii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

RESULT

[3] The applicant is entitled to an IRB in the amount of \$287.88 per week from August 31, 2022 to September 21, 2023.

[4] The applicant is entitled to interest, as per s. 51 of the *Schedule*.

[5] The applicant is not entitled to an award.

ANALYSIS

IRBs pre-104 week

[6] I conclude that the applicant has established that she is entitled to payments of IRBs from August 31, 2022 to September 21, 2023.

[7] Section 5(1) of the Schedule states that insured persons are entitled to an IRB if they are employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of that employment, or was employed for at least 26 weeks during the 52

weeks before the accident or was receiving benefits under the Employment Insurance Act (Canada) at the time of the accident.

- [8] In this case, only the pre-104 week test applies, as the IRB dispute end date falls within this period.
- [9] To apply the “substantial inability” standard, the Tribunal must determine:
 - (a) What were “the essential tasks” of the pre-accident employment?
 - (b) What, if any, impairments were caused by the accident?
 - (c) Did the applicant’s accident-related impairments cause a “substantial inability” to perform these “essential tasks” of employment?
- [10] The applicant is basing her claim for IRBs on her pre-accident employment in customer services for an online grocery store, “Panda Fresh”.
- [11] Starting with “the essential tasks”, the applicant’s testimony and both sec.44 and sec.25 reports provides an account of the applicant’s pre-accident employment. The applicant testified that most of her work was in customer services where she dealt with a fast-paced work environment. Her tasks included taking customer orders, dealing with customer complaints, dealing with orders and delivery persons, and at times when short staffed, helping with the packaging of orders, which required her to lift things. The respondent submitted that during her sec.44 assessment with Dr. John Presvelos, the applicant claimed her essential task included, organizing items, collecting, processing, packing, and shipping orders. The applicant testified that this was not the case but did agree that these were her tasks when she first started her employment, however she had switched to primarily a customer service role later in her employment. The applicant testified that concentration and a positive attitude was important in her line of work.
- [12] Though there were some discrepancies between the parties regarding “the essential tasks” I find, maintaining emotional regulation and concentration and dealing with customers/delivery peoples needs as the applicant’s “essential tasks”, with a trivial physical element to the applicant’s work. The applicant testimony was corroborated in Dr. Kelly McCutcheon report dated September 15, 2023, and the applicant’s testimony was forthcoming to accepting “the essential tasks’ of her work changed during the duration of her employment.
- [13] Regarding the applicant’s accident-related impairments, the applicant argues the accident caused her psychological impairments with some physical impairments. The applicant argued these impairments caused her an inability to work in the

time frame disputed. The respondent submits that the applicant has not met her onus to prove she has a substantial inability to perform the essential tasks of her employment and primarily relies on sec.44 reports of Dr. Kelly McCutcheon, psychologist and Dr. John Presvelos, general practitioner (GP) dated September 15, 2023.

- [14] The applicant relies on the reports and clinical notes and records (CNRs) of Dr. Dawn Shi, family doctor, Dr. Mehrdad Pojhan, psychologist, Dr. Kelly McCutcheon, psychologist, and the testimony of the applicant. Dr. McCutcheon's sec. 44 report dated September 11, 2023, removed the applicant from the Minor Injury Guideline (MIG) and diagnosed the applicant with a DSM-5-TR adjustment disorder with mixed anxiety and depressed mood as a result of the accident. Dr. McCutcheon recommended a sec.25 assessment and subsequent therapy. Dr. Pojhan's sec.25 report dated October 14, 2023, diagnosed the applicant with an adjustment disorder with mixed anxiety and depressed mood according to the DSM 5. Dr. Pojhan recommended counselling to help her identify her treatment needs. The applicant testified that after the accident she had many psychological issues that did not allow her to work, such as being irritable, sad, and anxious.
- [15] The applicant testified that "Panda Fresh" had gone bankrupt after she ceased working there.
- [16] The respondent relied on multidisciplinary report that was dated September 15, 2023. The report included an assessment by Dr. Presvelos, GP and Dr. McCutcheon, psychologist. Dr. Presvelos diagnosed her with myofascial upper back pain and myofascial low back pain. Dr. Presvelos did not find the applicant suffered a substantial inability to perform the tasks of her previous employment in a physical perspective and encouraged her to stay active. Dr. McCutcheon did diagnose the applicant, as previously mentioned, with a DSM-5-TR adjustment disorder with mixed anxiety. However, Dr. McCutcheon concluded that while the applicant is dealing with some anxiety and depression, it was not in an incapacitating degree, and therefore, from a psychological perspective does not suffer a substantial inability to perform the essential tasks of her pre-accident employment. The respondent also submitted investigation reports dated November 17, 2023, April 9, 2024, and April 11, 2024. The reports primarily depicted the applicant in a store shopping and transporting materials to the curb of her likely residence. Additionally, the reports showed investigators visiting the addresses associated with Panda Fresh, where no business operations were observed.

[17] I find the applicant has established an accident-related psychological impairment. The applicant's testimony gave a compelling account of her psychological distress after the accident. In her testimony the applicant gave a detailed description of her psychological issues which included being anxious, sad, and irritable. This was corroborated by both sec.25 and sec.44 assessors, Dr. Pojhan and Dr. McCutcheon, as they both diagnosed the applicant with a DSM-5 adjustment disorder with mixed anxiety.

[18] As I find the applicant has suffered a psychological impairment, I am also satisfied this impairment caused a substantial inability to perform the essential task of maintaining emotional regulation, concentration and dealing with customers/delivery peoples needs. As mentioned in this decision, the applicant's employment involved managing customer orders/complaints and dealing with delivery orders which at times, could be in stressful settings. Though Dr. McCutcheon's report stated the psychological condition was not in an incapacitating degree, she did state the applicant was experiencing significant depressive and anxious symptomatology in the context of her ongoing pain and physical concerns, as well as in-vehicle anxiety, and worries related to her mental health, all of which would affect her essential tasks in a customer service position. Also, no weight was given to all investigation reports, as they all took place past the disputed time frame and were not relevant.

[19] I find the applicant has established on a balance of probabilities that she sustained an accident-related psychological impairment that resulted in a substantial inability to perform the essential tasks of her pre-accident employment.

IRB Quantum

[20] I conclude that the applicant has established that she is entitled to payment of IRBs in the amount of \$287.88 per week from August 31, 2022 to September 21, 2023.

[21] If the applicant is employed, then Section 4(2) of the *Schedule* says that the gross annual employment income is either the person's gross employment income for the four weeks before the accident, multiplied by 13, or the person's gross employment income for the 52 weeks before the accident.

[22] Section 7(1) of the schedule states, the weekly amount of an income replacement benefit payable to an insured person who becomes entitled to the benefit before his or her 65th birthday is the lesser of "A" and "B" where,

“A” is the weekly base amount determined under subsection (2) less the total of all other income replacement assistance, if any, for the particular week the benefit is payable, and

“B” is \$400 or, if an optional income replacement benefit referred to in section 28 has been purchased and applies to the person, the amount fixed by the optional benefit. O. Reg. 34/10, s. 7 (1).

- [23] Section 7(2)(1)(i) of the *Schedule* states, the weekly base amount in respect of an insured person is determined as follows, 70 per cent of the amount, if any, by which the sum of the insured person’s gross weekly employment income and weekly income from self-employment exceeds the amount of the insured person’s weekly loss from self-employment, if the weekly income replacement benefit is for one of the first 104 weeks of disability.
- [24] The applicant submits that the quantum was calculated with the applicant’s income 52 weeks pre-accident to the date of loss. This amount was \$21,385.27 according to tax records and EI payments. This amount was divided by 52 weeks and multiplied by 70% which equalled \$287.88/week, which is the disputed amount.
- [25] The respondent submits that the applicant did not meet their onus to prove quantum of IRB and was not calculated correctly as the amount being disputed changed in the hearing. The respondent did not provide their own calculation of IRBs.
- [26] I find, that based on the tax records provided that the applicant met their onus to prove quantum at \$287.88 per week.
- [27] I find the applicant has established on a balance of probabilities, she is entitled to payments of IRBs in the amount of \$287.88 per week from August 31, 2022 to September 21, 2023.

Interest

- [28] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the Schedule.
- [29] The applicant is entitled to interest, as per s. 51 of the Schedule.

Award

- [30] The applicant is not entitled to an award.

[31] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning “behaviour which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate.” The onus is on the applicant to prove, on a balance of probabilities, that the respondent’s conduct meets this threshold.

[32] The applicant submits that no IRB was paid even though an OCF 2 was submitted to insurer on October 17, 2022, and an OCF 3 was submitted on September 6, 2022.

[33] The respondent submits that they acted in good faith and had properly scheduled sec.44 assessments.

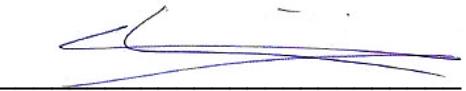
[34] I do not find the respondent unreasonably withheld or delayed payments of benefits. The respondent throughout the claim engaged with the applicant on many assessments and though they disagreed with the applicant on whether some were reasonable and necessary, I did not find sufficient evidence to deem the respondent acted excessive, immoderate, or indicative of bad faith.

ORDER

[35] For all the above-noted reasons, my orders are as follows:

- i. The applicant is entitled to an income replacement benefit in the amount of \$287.88 per week from August 31, 2022 to September 21, 2023.
- ii. The applicant is entitled to interest, as per s. 51 of the Schedule.
- iii. The applicant is not entitled to an award.

Released: January 19, 2026



Sam Moini
Adjudicator