



Civil Resolution Tribunal

Date Issued: September 29, 2020

File: VI-2019-009299

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Shin v. ICBC*, 2020 BCCRT 1101

Default decision – non-compliance

BETWEEN:

SUKJAE SHIN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT) about the non-compliance of the applicant, Sukjae Shin, with the CRT's mandatory directions as required, as discussed below.

2. This dispute is about entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident benefits under Part 7.
3. This dispute has been the subject of a previous preliminary decision dated August 13, 2020. In that decision, I considered Ms. Shin's request to indefinitely pause the CRT's process for this dispute, which request I denied after a consideration of the factors set out in CRT rule 1.15. I also considered, and rejected, Ms. Shin's allegation of bias on behalf of CRT members.
4. The CRT case manager has now referred this matter to me for a decision on whether Ms. Shin is non-compliant under the *Civil Resolution Tribunal Act* (CRTA) and the CRT's rules and, if so, whether I ought to hear the dispute without Ms. Shin's further participation, refuse to resolve this dispute, or dismiss it. For the reasons that follow, I find Ms. Shin is non-compliant, and I dismiss her claims.
5. Ms. Shin is represented by Martin Bauer, legal counsel. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

6. As noted above, the case manager has referred Ms. Shin's non-compliance to me for a decision.
7. Section 36 of the CRTA applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with the CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution, which is what has happened here. As the assigned CRT member, I may:
 - a. Hear the dispute in accordance with any applicable rules,

- b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
- 8. These are the CRT's formal written reasons. The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the CRTA. Section 133(1)(a) gives the CRT jurisdiction over the determination of entitlement to accident benefits. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

ISSUES

- 9. The issues before me are:
 - a. Whether Ms. Shin is non-compliant with the CRTA and the CRT's rules, and
 - b. If she is, whether I should decide this dispute without Ms. Shin's further participation, refuse to resolve it, or dismiss it.

EVIDENCE AND ANALYSIS

Non-compliance

- 10. For the following reasons, I find Ms. Shin is non-compliant in this dispute, and has failed to substantively participate in the case management phase, as required by sections 25 and 32 of the CRTA, and CRT rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4. This is despite multiple requests by the case manager for Ms. Shin to either withdraw her claim or proceed to adjudication of the dispute by particularizing details of her claim for accident benefits.

11. Ms. Shin was involved in a motor vehicle accident on April 12, 2019, and Mr. Bauer filed a pro forma application for dispute resolution with the CRT on Ms. Shin's behalf solely to preserve her limitation period for her entitlement to accident benefits under Part 7 of the IVR. In the Dispute Notice, Ms. Shin did not seek any specific benefits, but rather alleged her entitlement to medical, homemaker and income replacement benefits as "a right granted by statute". It is undisputed that Ms. Shin has received some accident benefits from ICBC to date, and there is no indication she has been denied any benefit sought.
12. In the August 13, 2020 preliminary decision, I explained that although Ms. Shin was entitled to file a "bare bones" Dispute Notice, she ran the risk that insufficient detail may mean she would be unable to ultimately prove her claims. I further explained that a dispute, once started, will continue through the CRT's dispute resolution process and is not paused unless so ordered by the CRT, on request of a party, and pursuant to CRT rule 1.15. As noted above, in that August 13, 2020 preliminary decision, I denied Ms. Shin's request for an indefinite adjournment. As a result of that decision, Ms. Shin's dispute about entitlement to accident benefits was set to continue through the CRT's dispute resolution process.
13. CRTA section 32 says that for the purposes of preparing a dispute for resolution by the CRT, the case manager may direct any or all parties to, among other things, provide information respecting the issues in the dispute and the parties' positions in relation to those issues.
14. The case manager made the following attempts to further Ms. Shin's dispute within the dispute resolution process:
 - a. On August 19, 2020, the case manager asked Mr. Bauer to confirm by August 24 whether Ms. Shin would like to withdraw her claim or proceed to adjudication, given the August 13, 2020 decision. Mr. Bauer did not respond.
 - b. On August 27, 2020, the case manager again asked Mr. Bauer to confirm by September 1 whether Ms. Shin would like to withdraw her claim or proceed to

adjudication. The case manager further explained that in order to proceed with adjudication, Ms. Shin would need to provide further details about her claim for entitlement to accident benefits.

- c. On August 28, 2020, Mr. Bauer advised he had no submissions to provide.
 - d. The case manager sent further requests for response on August 31 and September 3, 2020. Each of the August 27, August 31 and September 3 requests contained a warning referencing section 36 of the CRTA and advising Mr. Bauer that if he did not comply with the case manager's directions, the dispute may be referred to a CRT member who may decide Ms. Shin's dispute without her further participation.
 - e. On September 14, 2020, the case manager called Mr. Bauer and left a message asking for a return phone call by September 15, 2020.
 - f. Mr. Bauer did not respond to the August 31 or September 3, 2020 emails, or the September 14, 2020 voicemail message.
15. The case manager then referred the matter of Ms. Shin's non-compliance with the CRT's rules and the CRTA to me for a decision as to whether I should hear the dispute without Ms. Shin's further participation. To date, Ms. Shin's claims for accident benefits have not been particularized. Instead, as noted above, Ms. Shin has only generally stated she is statutorily entitled to unspecified accident benefits, though there is no allegation she has been denied any benefits sought.
16. Based on the above, I find Ms. Shin is non-compliant with the CRTA and the CRT's rules for her failure to make a choice between withdrawing her claim or proceeding with adjudication (requiring Ms. Shin to particularize her accident benefits claim), as directed by the CRT's case manager. As noted above, Ms. Shin was warned 3 separate times, in writing, about the risks of her failure to comply with the case manager's directions. I turn then to whether I should continue to hear this dispute, or whether I should refuse to resolve or dismiss it.

Should the CRT hear Ms. Shin's dispute without her further participation?

17. As noted above, Ms. Shin initiated this CRT dispute. As referenced in the August 13, 2020 preliminary decision and in my previous decision of *Mu v. ICBC*, 2020 BCCRT 267, once a Dispute Notice is issued, the dispute resolution process is started, and is not paused unless so ordered by the CRT, under CRT rule 1.15.
18. Mr. Bauer requested to indefinitely pause the dispute resolution process, which I denied. As a result, Ms. Shin had two options at that point: to withdraw her claim or to proceed to adjudication. Through her counsel, Ms. Shin has declined to substantively participate in the CRT's process, with Mr. Bauer either not responding to CRT requests, or stating he had no further submissions on the dispute.
19. Mr. Bauer, on Ms. Shin's behalf, did not indicate any intention to withdraw Ms. Shin's claims. Therefore, Ms. Shin is required to proceed through the dispute resolution process. I find Ms. Shin has failed to comply with the CRT's directions to choose to either withdraw her claim or continue to adjudication, and to quantify her claims.
20. Rule 1.4(2) says that if a party is non-compliant, the CRT may:
 - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
 - b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
 - c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
 - d. Require the non-compliant party to pay to another party any fees or other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

21. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
 - b. The stage in the case management process at which the non-compliance occurs,
 - c. The nature and extent of the non-compliance,
 - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
22. I find that in the circumstances of this case, it is appropriate to dismiss Ms. Shin's claims for accident benefits. I say this because despite being given several opportunities to further her claim, Ms. Shin has refused to indicate how she wants to proceed with the dispute, or to particularize her claim for accident benefits.
23. As noted above, Ms. Shin does not allege she has been denied any accident benefits, nor does she currently seek any specific entitlement to benefits. Rather, the Dispute Notice was only filed to preserve her limitation period to seek accident benefits at some time in the future. In *Mu v. ICBC*, 2020 BCCRT 267, I determined that is inconsistent with the CRT's mandate and section 103 of the IVR which sets out the process for obtaining accident benefits.
24. I find Ms. Shin's non-compliance with the CRT's process is significant. I find to allow the dispute to continue would be inconsistent with the CRT's mandate and would waste the CRT's resources, given that Ms. Shin refuses to participate.
25. In considering the relative prejudice to the parties, I find there is no prejudice to Ms. Shin because dismissing this dispute does not prevent Ms. Shin from making a future application for a determination of entitlement to accident benefits if

necessary, subject to the applicable limitation periods set out in section 103 of the IVR.

26. Given all the above, I dismiss this dispute.

27. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given Ms. Shin's non-compliance, I find no fee refund is justified, and none is ordered.

ORDERS

28. I order Ms. Shin's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair