



Civil Resolution Tribunal

Date Issued: August 13, 2021

File: VI-2020-007537

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Polzin v. ICBC*, 2021 BCCRT 888

B E T W E E N :

JACOB POLZIN

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

INTRODUCTION

1. This dispute is about whether the applicant, Jacob Polzin, is entitled to retain accident benefits that the respondent, the Insurance Corporation of British Columbia (ICBC) paid to him. Mr. Polzin was involved in a motor vehicle accident in Kelowna, BC, on November 20, 2019. After the accident, he received \$9,595.53 in accident benefits from ICBC under Part 7 of the *Insurance Vehicle Act* (IVA).

2. ICBC argues that Mr. Polzin forfeited his entitlement to accident benefits by making a wilfully false statement that he was not working when ICBC says he was working. Section 75(c) of the IVA says that an insured forfeits their right to accident benefits if they make a wilfully false statement to ICBC. Mr. Polzin denies making a wilfully false statement.
3. In September 2020, ICBC demanded that Mr. Polzin repay the \$9,595.53 he had received. Mr. Polzin refused. In this dispute, Mr. Polzin asks for an order that he is entitled to retain the \$9,595.53. He also asks for an order that he is entitled to a further \$2,289.30 in wage loss benefits.
4. ICBC asks me to dismiss Mr. Polzin's claims. ICBC did not counterclaim for repayment of the accident benefits.
5. Mr. Polzin is self-represented. An ICBC employee represents ICBC.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA).
7. ICBC initially argued that the CRT did not have jurisdiction (legal authority) over Mr. Polzin's claims because he was seeking declaratory or injunctive relief. A CRT vice chair considered that argument in a preliminary decision. The vice chair noted that section 133(1)(a) gives the CRT jurisdiction to determine whether a party is entitled to accident payments "paid or payable" under the IVA. The vice chair concluded that this gives the CRT explicit jurisdiction to make declaratory orders about whether a person is entitled to accident benefits and injunctive orders requiring ICBC to provide accident benefits. This includes jurisdiction to determine eligibility for benefits that ICBC has already paid. ICBC does not challenge this preliminary decision, and I agree with it. I find that the CRT has jurisdiction to hear this dispute.

8. 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.
9. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute turns, in part, on Mr. Polzin's credibility. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
10. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

11. The first issue in this dispute is whether Mr. Polzin forfeited his right to accident benefits by making a wilfully false statement about his employment. This requires me to answer 2 questions:
 - a. Did Mr. Polzin make a wilfully false statement?
 - b. If so, was this statement material?
12. The second issue is whether Mr. Polzin is entitled to further wage loss benefits.

EVIDENCE AND ANALYSIS

13. Typically, in a civil claim the applicant must prove their case. However, when an insurer like ICBC denies coverage, they bear the burden to prove that the denial was justified. So, in this dispute, ICBC must prove on a balance of probabilities that Mr. Polzin forfeited his right to accident benefits by making a wilfully false statement. See *Boyle v. Insurance Corporation of British Columbia*, 2017 BCSC 1762, at paragraph 54. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The following facts are undisputed. Mr. Polzin was in an accident on November 20, 2019. On December 1, 2019, he made a claim for wage loss and medical benefits under Part 7 of the IVA (often called no-fault benefits). Between December 1, 2019, and August 11, 2020, Mr. Polzin received \$3,848.03 in medical benefits and \$6,515.33 in wage loss benefits, for a total of \$9,595.53. At the time of the accident, Mr. Polzin was an employee of a moving and storage company, Precisely Right Moving and Storage Ltd. (Precisely Right). He is also the sole owner and operator of Precisely Right.
15. On May 29, 2020, an ICBC employee emailed Mr. Polzin several questions about his employment. ICBC alleges that Mr. Polzin made wilfully false statements when he responded to those questions. I find that the 2 relevant questions for this dispute are (reproduced as written):
 - a. If you have worked in any employment/work related capacity since the motor vehicle accident?
 - b. If you have worked, volunteered, gone to school or provided assistance to any employer? If the answer is yes please provide details.
16. On June 2, 2020, Mr. Polzin emailed his answers to ICBC's questions. He answered "no" to both of the above questions.

17. ICBC sent Mr. Polzin a letter on September 11, 2020, denying coverage because it said that Mr. Polzin's answers were wilfully false. ICBC said that Mr. Polzin had worked on May 1, 2020, by helping move furniture. Mr. Polzin responded that he had no recollection of that day. He did not deny working but said that he had not received any compensation for working, so denied that his statement was wilfully false.
18. ICBC relies on section 75(c) of the IVA, which says that an insured's claims for accident benefits under Part 7 are forfeited if they make a wilfully false statement with respect to the claim. ICBC must prove 2 things to succeed: first, that Mr. Polzin made a wilfully false statement, and second, that the statement was material. See *Boyle* at paragraphs 71 to 74.

Did Mr. Polzin make a wilfully false statement?

19. A wilfully false statement is a false statement made purposefully and with no justifiable excuse. In other words, it is not enough for ICBC to prove that Mr. Polzin was careless or honestly mistaken in making a false statement. See *Peterson v. Bannon*, 1993 CanLII 4719 (BC CA), at paragraph 46, and *Boyle* at paragraph 73.
20. ICBC relies on video surveillance from a private investigator, an internal "Cyber Search" report about Mr. Polzin's online presence, and a report from ICBC's Special Investigations Unit (SIU). I place little weight on the social media or other online evidence because, as the Cyber Search report's author pointed out, there is no way to know when the photos in the report were actually taken, only when they were posted. Further, the SIU did not get a statement from Mr. Polzin and uncovered no information I find relevant to this dispute. I also find that any evidence collected after Mr. Polzin answered ICBC's questions is irrelevant. ICBC's questions asked what Mr. Polzin had done up to that point, so the fact that he may have worked after June 2, 2020 does not make his answers false.
21. Much of the video surveillance shows Mr. Polzin coming and going from Precisely Right's premises. Mr. Polzin explains that he lives in a residential unit at the same address. So, he says that this surveillance just shows him coming and going from his

home. ICBC does not dispute this, so I accept that the mere presence of Mr. Polzin at Precisely Right's commercial premises does not necessarily mean that he was engaged in work.

22. I find the key evidence is video surveillance from May 1, 2020. On that day, Mr. Polzin drove to a residence with 2 people, who I find were Precisely Right's employees because they were all in a Precisely Right moving truck. Mr. Polzin then helped the 2 employees unload a shipping container into the residence. Over about an hour, the video showed Mr. Polzin:

- a. Moving boxes and other items from the back of the container to the front for the employees to move,
- b. Moving garbage bags and small items from the container to the home,
- c. Loading dollies with boxes and small furniture,
- d. Helping an employee load a dolly with a large piece of furniture, and
- e. Moving loaded dollies from the container down to the pavement and into the home.

23. In general, Mr. Polzin argues that the statements were not false because when he answered "no" he was only referring to the "physical labour part" of his job. He says that any non-physical work was "beyond the scope" of his ICBC claim. He argues that ICBC knew that his role in the business was "complex" because on December 3, 2019, Precisely Right's office manager wrote a letter to ICBC setting out his duties, which included non-physical work. He argues that his doctor's notes that said that he should remain off work only referred to the most physical parts of his job.

24. I find nothing in Mr. Polzin's previous correspondence with ICBC to suggest that he believed that his claim was only about physical work. In fact, on April 4, 2020, Mr. Polzin told an ICBC employee that he was disabled from office work because he could not sit in an office chair. I also find that there is nothing in his doctor's notes that

supports Mr. Polzin's assertion that his doctor's advice was just to avoid heavy physical work. The notes all simply say that Mr. Polzin should remain off work.

25. I find this explanation unpersuasive. Regarding the scope of ICBC's questions, I find that they were broad and clear. ICBC asked if Mr. Polzin was doing anything at all to assist his business, including volunteering. I find that there was nothing in ICBC's questions that suggested that it was only asking about the physical parts of Mr. Polzin's job. Mr. Polzin answered these questions with a categorical "no".
26. As for the May 1 move itself, Mr. Polzin says that there is no evidence that he lifted heavy items and that the videos show him limping and experiencing back pain. In his submissions, he characterizes his work as "supervising employees". I find that this is a strained description of what the videos show. I find that Mr. Polzin engaged in physical labour, even if he left the heaviest items to his employees.
27. With that, even if I accepted Mr. Polzin's explanation that ICBC was only asking about the physical parts of his job, I would still find Mr. Polzin's answers false. I find that he performed physical labour to assist his employer on May 1, 2020, and falsely denied doing so on June 2, 2020. Given that only a month passed between the move and his statement, I find that Mr. Polzin knew that his answers were false. I therefore find that his false statements were wilful.

Was the statement material?

28. A false statement is material if it is "capable of affecting the mind of the insurer". This means that ICBC does not need to prove that it would have handled Mr. Polzin's claim differently but for the false statements. See *Inland Kenworth Ltd. v. Commonwealth Insurance Co.*, 1990 CanLII 548 (BC CA).
29. So, it is unnecessary to speculate about what ICBC would have done if Mr. Polzin told it on June 2, 2020, that he had partially returned to work or returned to work with modified duties. Mr. Polzin was receiving wage loss benefits under section 80 of the *Insurance Vehicle Regulation* (IVR), which only applies to an insured who is "totally disabled" from working. Section 81.1 of the IVR provides a formula for calculating

wage loss benefits if an insured is able to partially return to work. With that, I find that the fact that Mr. Polzin was working, even part-time or with modified duties, could have affected how ICBC handled his wage loss claim. So, I find that his false statements were material.

30. ICBC refers in its submissions to other statements that Mr. Polzin made. Because of my conclusion that the above statements were wilfully false, I find it unnecessary to assess any of ICBC's other arguments.
31. I note that most of Mr. Polzin's evidence is about the extent of his injuries, the treatment he had received, and his ability to work. I find that this evidence is not relevant to this dispute, which is about the truth of his statements to ICBC. It may be that Mr. Polzin's injuries forced him to work with difficulty or pain, modify his work duties, or work part-time. I find that this does not change the fact that his answers to ICBC's questions were wilfully false. For clarity, I make no finding about the severity of Mr. Polzin's injuries.
32. I therefore find that Mr. Polzin's right to insurance money for accident benefits in relation to the November 20, 2019 accident is forfeited under section 75(c) of the IVA. Because of this conclusion, I find that I do not need to determine whether Mr. Polzin would have been entitled to a further \$2,289.30 in wage loss benefits under Part 7. If he was entitled to more wage loss benefits, he forfeited them as well.
33. I dismiss Mr. Polzin's claims.

FEES AND EXPENSES

34. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. Mr. Polzin was not successful, so I find that he is not entitled to reimbursement of his CRT fees. ICBC was successful, so I find that it is entitled to reimbursement of its \$25 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

35. Within 30 days of the date of this order, I order Mr. Polzin to pay ICBC \$25 for CRT fees.
36. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
37. I dismiss Mr. Polzin's claims.
38. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Eric Regehr, Tribunal Member