



Civil Resolution Tribunal

Date Issued: January 4, 2024

File: VI-2023-003309

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Penner v. ICBC*, 2024 BCCRT 9

B E T W E E N :

DAVE PENNER

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin, Vice Chair

INTRODUCTION

1. This is a final decision dismissing this claim as out of time.
2. This dispute is about entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR) (also known as Part 7 benefits). The applicant, Dave

Penner, says he was involved in a 2-car accident on December 14, 2020. He claims income replacement benefits.

3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), administers Part 7 benefits. Although the applicant frames his claim as one for “income replacement benefits”, ICBC says it is a claim for temporary total disability (TTD) benefits under Part 7 of the IVR, based on the accident date. ICBC also says the applicant’s claim is out of time under section 103(1)(b) of the IVR.
4. The applicant has also filed claims against the alleged driver and owner of the vehicle, which are the subject of a separate dispute (VI-2023-000543). I will not address those claims or that separate dispute in this decision.
5. The applicant is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the CRT exclusive jurisdiction over the determination of entitlement to accident benefits.
7. 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.
8. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

9. Section 42 of the CRTA says 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.

ISSUE

10. The issue is whether the CRT should dismiss the applicant's claims as out of time.

EVIDENCE AND ANALYSIS

11. In making this decision I have reviewed the Dispute Notice, the Dispute Response, and the parties' submissions and evidence on the limitation issue.
12. Section 103 of the IVR sets out the process for obtaining Part 7 benefits from ICBC.
13. Section 103(3) says an insured may give ICBC written notice of their intention to commence an action for accident benefits if their claim for benefits has been denied by ICBC or if ICBC has not made a payment within the time limits prescribed in section 101. Section 103(1)(b)(iii) says that, if an insured has not issued written notice under section 103(3), then any action (or claim) for Part 7 benefits must be filed within 2 years of the accident date, or of the last Part 7 benefit payment date.
14. ICBC says the applicant did not provide written notice of their intention to commence an action for accident benefits under IVR section 103(3) and the applicant does not dispute this. It is undisputed that ICBC has not paid any Part 7 benefits for the December 14, 2020 accident. So, under IVR section 103(1)(b)(iii), I find the applicant was required to start any claim for accident benefits by December 14, 2022, at the latest. I find the applicant failed to do so, as they did not file this CRT claim until January 29, 2023.
15. The applicant argues that he did not discover his claim against ICBC before ICBC first offered to pay the applicant any money on October 5, 2022. The applicant refers to section 8(d) of the *Limitation Act* and says he did not know that a court proceeding would be an appropriate means to remedy his loss until ICBC offered a "below value"

settlement offer. I find I need not consider this argument here, as it is section 103 of the IVR, rather than the *Limitation Act*, which sets out the limitation period that applies to a claim for Part 7 benefits.

16. I also acknowledge the applicant's argument that ICBC delayed the claim, rather than the applicant. I find that any delays by ICBC do not operate to extend the deadline for filing a claim for Part 7 benefits set out in section 103 of the IVR.
17. For the above reasons, I find the applicant's claim for accident benefits is out of time under the IVR and I dismiss it.
18. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. ICBC was successful, so I find the applicant must reimburse ICBC \$25 in CRT fees. ICBC claims no dispute-related expenses.

ORDERS

19. Within 30 days of the date of this decision, I order the applicant to pay ICBC a total of \$25 as reimbursement of CRT fees. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
20. I dismiss the applicant's claims.
21. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court or the British Columbia Provincial Court if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court where it is filed.

Sherelle Goodwin, Vice Chair