



# Civil Resolution Tribunal

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File: AB-2022-001723

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Xu v. ICBC*, 2024 BCCRT 463

B E T W E E N :

GANDONG XU

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr, Vice Chair

## INTRODUCTION

1. Gandong Xu was in a motor vehicle accident on August 11, 2021, in Langley, BC. This dispute is about his entitlement to accident benefits from the Insurance Corporation of British Columbia (ICBC) after the accident. He claims two things. First,

he claims unspecified healthcare and rehabilitation benefits. Second, he claims \$94,600 in income replacement benefits. He is self-represented.

2. ICBC says that it has funded and will continue to fund medically-supported treatment. ICBC says that it stopped funding acupuncture treatment because it was no longer facilitating Mr. Xu's recovery. ICBC says it agreed to fund physiotherapy and kinesiology. ICBC also says that Mr. Xu has not proved entitlement to income replacement benefits. An employee represents ICBC.

## **JURISDICTION AND PROCEDURE**

3. 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). Section 133(1)(a) of the CRTA gives the CRT jurisdiction over the determination of entitlement to accident benefits.
4. 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.
5. 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. I have considered the potential benefits of an oral hearing. Credibility is not a significant issue in this dispute, which I find largely turns on the documentary evidence. I am properly able to assess and weigh this documentary evidence and the written submissions before me. I find that any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide proportional and speedy dispute resolution. I find that an oral hearing is not necessary in the interests of justice.

6. 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 court.
7. Mr. Xu objected to the CRT giving ICBC several extensions to provide its evidence and submissions. He said the extensions disadvantaged him, but does not say how. The CRT's rules give the CRT authority to extend any deadline. As noted, the CRT's mandate is to provide a flexible and informal dispute resolution process. In the absence of any proven prejudice, I find that the CRT did not act unfairly in giving ICBC extensions and I have considered all the evidence before me.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is Mr. Xu entitled to health care and rehabilitation benefits?
  - b. Is Mr. Xu entitled to income replacement benefits?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Xu as the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Mr. Xu was rear-ended on August 11, 2021. He was undisputedly injured, primarily to his back, neck, left arm, and left hand.

### ***Is Mr. Xu entitled to health care and rehabilitation benefits?***

11. IVA section 123 requires ICBC to cover necessary health care benefits. Mr. Xu's primary argument about health care benefits relates to acupuncture. Section 19 of the *Enhanced Accident Benefits Regulation* (EABR) says that an insured is

automatically entitled to 12 sessions of acupuncture, among other treatments, within the first 12 weeks after an accident. After that, EABR section 19(3) says that ICBC only needs to cover treatment if it will facilitate the insured's recovery or address a decline in their function.

12. Mr. Xu attended 12 initial acupuncture treatments shortly after the accident. On September 16, 2021, Mr. Xu's acupuncturist sent ICBC a report suggesting a further 10 sessions, which ICBC approved. Mr. Xu used these 10 additional treatments before the end of October.
13. The acupuncturist provided an updated treatment plan on January 10, 2022, recommending 10 more treatments. An ICBC employee reviewed the report and decided ICBC needed an updated medical report from Mr. Xu's family doctor, Dr. Shian Gu, because it had been a long time between treatments.
14. On January 26, 2022, Dr. Gu provided ICBC with a Reassessment Medical Report. In that report, Dr. Gu recommended massage and acupuncture. The formal approval document is not in evidence, but ICBC says it funded six further acupuncture treatments after this, for a total of 28. Mr. Xu does not specifically dispute this, so I accept ICBC's evidence is accurate.
15. ICBC next decided to send Mr. Xu for a Comprehensive Medical Assessment (CMA), which was scheduled for March 4 and 11, 2022. According to ICBC's records, Mr. Xu attended the first appointment, but refused to sign the necessary consent forms and was ultimately asked to leave. Mr. Xu implicitly acknowledges refusing to complete the CMA in his submissions. Mr. Xu started this CRT dispute on March 14.
16. ICBC suspended Mr. Xu's health care benefits on March 15, 2022, for failing to attend the CMA. Mr. Xu says that everyone who does CMA is "linked" with ICBC and is therefore in a conflict of interest. He essentially argues he was justified in not completing the CMA.
17. IVA section 121(1)(e) and EABR section 14(b) allow ICBC to suspend benefits if an insured fails to undergo a CMA without a reasonable excuse. I find that Mr. Xu's

unproven suspicions about conflicts of interest are not a reasonable excuse. I find that ICBC was entitled to suspend his benefits.

18. There is no clear evidence about when ICBC ended the suspension, but in early October 2022, it asked Dr. Gu for another report. On October 25, 2022, Dr. Gu provided the report. The only recommendation was for massage, which ICBC approved after reviewing a November 26, 2022 treatment plan. On April 20, 2023, the massage therapist recommended 10 more sessions, noting some improvement. ICBC approved this too.
19. On April 21, 2023, ICBC denied funding for acupuncture because Dr. Gu had not recommended it in his most recent report. ICBC denied another acupuncture treatment plan on May 15 for the same reason.
20. On May 16, 2023, Dr. Gu signed a very short “Certificate of Health Status”, which recommended acupuncture for left arm and neck pain. Mr. Xu’s acupuncturist submitted a new treatment plan on May 17, presumably relying on this “Certificate”. ICBC denied the request because it had requested a new report from Dr. Gu.
21. Dr. Gu provided his report on May 20, 2023. Dr. Gu recommended massage and “ICBC Rehab program”, which I find is likely a reference to an active rehabilitation program. Dr. Gu did not mention acupuncture other than to say Mr. Xu was “on Acupuncture now”, which I find is not a recommendation. I find that it was reasonable for ICBC to wait for Dr. Gu’s report before approving acupuncture, given the amount of time since the accident and the lack of detail or clarity in the May 16 “Certificate”.
22. On July 12, 2023, ICBC wrote to Mr. Xu again denying funding for more acupuncture. ICBC said that it had been almost two years since the accident and there was “no medical evidence to suggest that further passive treatment” would help. ICBC invited Mr. Xu to get a physiotherapist or kinesiologist to submit a treatment plan for approval. According to ICBC, he never has.
23. Mr. Xu did not provide any medical evidence other than the “Certificate” to support his argument that ICBC should have approved acupuncture at any time after ICBC

restored his benefits around October 2022. In the absence of any such evidence, I find that he has not proved that acupuncture would have, or would now, facilitate his recovery or address a decline in his function. Based on EABR section 19(3), that alone is enough to dismiss Mr. Xu's claim for either past or ongoing acupuncture benefits.

24. I also note the absence of evidence about unfunded acupuncture treatments. Dr. Gu's reports suggest that Mr. Xu's acupuncture treatments were ongoing, but Mr. Xu did not provide any evidence or documentation showing when he attended acupuncture or what he paid for those treatments. The only specific evidence that Mr. Xu received any unfunded treatment is an April 21, 2023 email Mr. Xu sent ICBC. In that email, he asked why ICBC had denied five treatments in January and February 2021. Mr. Xu's email does not say what kind of treatment he received on those days. He does not mention that email, or any other specific unfunded treatment, in his submissions. So, I find that Mr. Xu failed to prove his out-of-pocket expenses in any event.
25. The rest of Mr. Xu's claim for health care benefits is somewhat vague. He says he repeatedly asked for reimbursement of medical treatments and bus passes in 2021 and 2022. However, the only correspondence about bus passes in evidence indicates that ICBC consistently reimbursed him. Mr. Xu did not provide a specific example of when ICBC denied reimbursement for travel expenses, or any invoices or other documentation proving any such expenses. I find Mr. Xu failed to prove any outstanding transportation expenses.
26. The only other evidence that suggests a possible unfunded benefit is about prescription costs. On February 8, 2022, ICBC refused to reimburse Mr. Xu for \$299.15 in prescription costs because Mr. Xu provided a receipt that just listed several "prescription items" with no other information or description. ICBC asked Mr. Xu to get a more detailed receipt from his pharmacy so it could consider reimbursement. There is no evidence Mr. Xu ever did. I find Mr. Xu failed to prove any entitlement to reimbursement for prescriptions.

27. Finally, Mr. Xu provided another “Certificate of Health Status” from Dr. Gu, this one from November 13, 2023. It recommends massage therapy. However, as ICBC points out, Mr. Xu did not say anything in submissions about ongoing or future massage therapy benefits. He also has not provided ICBC with a treatment plan and there is no evidence he has requested benefits for massage therapy. So, ICBC has not denied massage benefits at this time. So, I find this claim is premature, and I decline to address it.

### ***Income Replacement Benefits***

28. Division 6 of Part 10 of the IVA provides for income replacement benefits for people who are unable to work because of an accident. A person’s eligibility for benefits is based on whether the insured was a full-time earner, part-time earner, temporary earner, or a non-earner.

29. The evidence is unclear about whether Mr. Xu was a “full-time earner” or “temporary earner” as those terms are defined in the IVA and the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation*. This is because both definitions require information about how long an insured has worked at each employer, and there is not clear evidence about this. ICBC says he was a full-time earner, and Mr. Xu does not argue otherwise. I find it does not matter for my decision. In either case, IVA sections 131 and 133 require Mr. Xu to prove that he was unable to continue his employment or, if he was a temporary earner, unable to hold employment he would have held because of his accident injuries. With that, I turn to the evidence about Mr. Xu’s employment.

30. Mr. Xu filled out an accident benefits application on September 2, 2021. According to that application, Dr. Xu worked as an instructor at Sterling College and as an assistant professor at Simon Fraser University. He listed both jobs as full-time. In a box for “any additional employment information”, Mr. Xu wrote the name of a corporation, Vange Enterprise Co. Ltd.

31. Despite listing three employers in the application, Mr. Xu only claims income replacement benefits based on his alleged inability to continue working at Sterling College. There is no explanation in the evidence about what Mr. Xu did for Vange Enterprise, other than a vague reference in an ICBC note that Mr. Xu said he worked for both the Canadian and Chinese governments, which might relate to Vange Enterprise. As for Simon Fraser University, it told ICBC in June 2022 that Mr. Xu had last worked there in December 2020, long before the accident.
32. So, I will focus my decision on Sterling College. Mr. Xu started working there on August 10, 2021, the day before the accident.
33. Dr. Gu provided an Extended Medical Report form on August 13. Dr. Gu reported that Mr. Xu could not hold anything in his left hand or make a fist. Dr. Gu indicated that Mr. Xu had been working full-time as a professor before the accident and was absent from work because of his injuries.
34. According to Mr. Xu's acupuncturist's September 16, 2021 report to ICBC, Mr. Xu was not missing any work because of his injuries. However, despite receiving this report, ICBC understood that Mr. Xu was off work, which is confirmed in an October 25, 2021 internal record.
35. On November 4, 2021, Sterling College provided ICBC with a Certificate of Earnings forms. In the field marked "DATE WORK ENDED (as a result of the accident)", Sterling College wrote "Has not stopped working?". Sterling College indicated that Mr. Xu worked 30 hours per week.
36. On November 22, 2022, ICBC had a phone call with a Sterling College employee. According to ICBC's notes of that conversation, Mr. Xu stopped working on December 22, 2021, because Sterling College terminated his employment without cause. The note also says that Sterling College was unaware of the accident, but I find this is inaccurate because it had filled out a Certificate of Earnings. Still, there is nothing in the evidence to suggest Sterling College terminated Mr. Xu's employment was because he was unable to perform his duties at Sterling College because of the



accident. Mr. Xu's Record of Employment indicates that the reason for his employment ended was that he was dismissed, not because of an injury.

37. I note as well that Mr. Xu received employment insurance benefits from December 26, 2021, to April 8, 2022. He provided a Service Canada printout that shows these were regular benefits. There is no suggestion that he received medical benefits.
38. In short, Mr. Xu worked full-time for over four months after the accident. He does not explain why he became incapable of working only after Sterling College terminated his employment at the end of December 2021. In his initial submissions, he simply says he was unable to continue his employment with Sterling College. I find that this lack of explanation is alone enough to dismiss Mr. Xu's claim because he fails to address a clear issue with his claim. He also does not address the issue in his reply submissions after ICBC points out that he worked for months after the injury.
39. I acknowledge that all of Dr. Gu's later Reassessment Medical Reports answer "yes" to the question "Is the patient absent from work as a result of the MVA?". However, I find that this notation alone is not enough to prove that Mr. Xu was unable to work after January 2022 because of his injuries. I find it simply records what Mr. Xu told Dr. Gu about his work status.
40. In short, I find that Mr. Xu was able to continue his employment at Sterling College after the accident despite his injuries for over four months. There is nothing in the medical evidence to suggest that his symptoms worsened after this time such that he was unable to work again because of his injuries. I therefore find that he has not proved that he was entitled to income replacement benefits. I dismiss this claim.

## **FEES AND EXPENSES**

41. 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. Mr. Xu was unsuccessful. I order him to pay ICBC \$25 for its paid CRT fees. Neither party claimed any dispute-related expenses.

## ORDERS

42. I dismiss Mr. Xu's claims. I order him to pay ICBC \$25 in CRT fees within 30 days of this decision.
43. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
44. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Eric Regehr, Vice Chair