



Civil Resolution Tribunal

Date Issued: January 13, 2020

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Boychuk*, 2020 BCCRT 48

B E T W E E N :

DR. GORDON H. WONG, OPTOMETRIC CORPORATION

APPLICANT

A N D :

CATHERINE BOYCHUK

RESPONDENT

A N D :

DR. GORDON H. WONG, OPTOMETRIC CORPORATION

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for optometric services. The applicant and respondent by counterclaim, Dr. Gordon H. Wong, Optometric Corporation (Dr. Wong), hired the respondent and applicant by counterclaim, Catherine Boychuk, as an independent optometrist. In August 2017, at Dr. Boychuk's request Dr. Wong agreed to reverse certain Medical Services Plan (MSP) billings Dr. Wong had submitted through Dr. Boychuk's MSP billing number with Dr. Wong as payee. In exchange, Dr. Boychuk agreed to reimburse Dr. Wong 70% of "all of those claims" that were confirmed reversed by MSP. Dr. Wong claims \$3,103.74, based on 70% of the billings in 96 claims that were confirmed reversed by MSP.
2. Dr. Boychuk says she should not have to pay anything until all claims billed by Dr. Wong through her billing number are confirmed reversed by MSP. She says this includes not just the 96 in Dr. Wong's claim, but also an additional 62 claims that were paid by MSP through her billing number but not yet confirmed reversed.
3. In her counterclaim, Dr. Boychuk claims a total of \$5,000. First, she says Dr. Wong owes her \$800, for two days of work in August 2017 where she says he cancelled her shift without reasonable notice. Dr. Wong says she was given notice for the first day and was not scheduled for the second day. He says he owes her nothing. Second, Dr. Boychuk claims \$4,200 for the time she spent in "clearing this matter with MSP" due to Dr. Wong's use of her billing number, which Dr. Wong disputes.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The tribunal's mandate is to provide dispute

resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
9. Much of the parties' evidence and submissions is focused on whether Dr. Wong's use of Dr. Boychuk's billing number and submission of MSP claims was fraudulent. Dr. Wong says they were valid claims and Dr. Boychuk says they were not. MSP has its own program to determine fraudulent claims and I find that issue is not before me in this dispute. I say this in part because, as discussed below, it is undisputed that Dr. Boychuk agreed to reimburse Dr. Wong for 70% of the reversed MSP claims. As discussed below, at the heart of that reimbursement issue is whether Dr. Boychuk is entitled to withhold payment pending MSP's investigation and confirmation of the reversal of 62 other claims that are not the subject of Dr. Wong's claim about the 96 claims. I make no findings about whether Dr. Wong's use of Dr. Boychuk's billing number was fraudulent or not.

ISSUES

10. The issues in this dispute are:

- a. Is Dr. Wong entitled to reimbursement of \$3,103.74 for the 96 MSP-reversed claims, or, is Dr. Boychuk entitled to withhold that payment pending confirmation of 62 other claims being reversed?
- b. Is Dr. Boychuk entitled to \$800 for August 17 and 23, 2017, days she says she was scheduled to work but Dr. Wong cancelled without sufficient notice?
- c. Is Dr. Boychuk entitled to \$4,200 for time she spent dealing with the MSP reversal issues?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Dr. Wong must prove his claim, on a balance of probabilities. Dr. Boychuk bears the same burden in her counterclaim. I have only referenced the evidence and submissions as necessary to give context to my decision.

12. In March 2017, the parties agreed Dr. Boychuk would work with Dr. Wong's office as a locum practitioner, and not as an employee. She was an independent contractor. The parties agreed Dr. Wong was the assigned MSP payee for Dr. Boychuk's patient claims. Dr. Wong would then pay Dr. Boychuk 70% of eye exams she performed, with a daily minimum or guarantee of \$400 per day. This is all undisputed.

Dr. Wong's claim for \$3,103.74

13. It is undisputed that for all the patient files at issue, Dr. Wong paid Dr. Boychuk a percentage of the MSP claims that were submitted and paid out. Dr. Wong had emailed Dr. Boychuk that he inserted billing codes in her patient files in error, because that was his practice for student interns. Dr. Wong now argues that the MSP billings were valid. As noted, I find their validity is not an issue before me. As

discussed below, the material point is that the parties later agreed that Dr. Boychuk would reimburse Dr. Wong for the MSP claims she wanted reversed. I turn to the relevant chronology.

14. On August 10, 2017, Dr. Boychuk says she noticed MSP billings for her patients that she did not enter in the patient file herself, and so she emailed Dr. Wong. On August 26, 2017, Dr. Wong emailed and asked her to send a list of billings she wanted reversed.
15. The evidence shows that from August to November 2017 the parties cooperated and Dr. Boychuk identified the relevant claims that needed to be MSP-reversed.
16. On November 28, 2017, Dr. Boychuk emailed Dr. Wong:

Once it's determined that all of those claims have been successfully reversed, then MSP will be informed [that Dr. Boychuk's locum number is no longer affiliated with Dr. Wong]. After this has been completed, I will reassess all of my work days. I will then reimburse you 70% for those reconciled claims minus any amount that applies to our agreed \$400 minimum.

17. I cannot tell from the face of the November 28, 2017 email if Dr. Boychuk's reference to "all of those claims" refers to just the 96 claims that are the subject of Dr. Wong's dispute, or, whether they also include the other 62 claims that were paid by MSP but admittedly not yet reversed. As discussed further below, I find her email did not refer to the 62 other claims.
18. The evidence shows that Dr. Wong took about a year to completely reverse the MSP charges for the 96 patient claims at issue in this dispute. To some extent the delay was due to the complexity of the MSP reversal process. I mention this because Dr. Boychuk appears to argue that because of Dr. Wong's delay (and alleged fraud) he cannot be trusted, and so she is entitled to be sure all claims are reversed before she pays anything. I disagree, and find the delay is not a basis to delay repaying Dr. Wong.

19. On July 11, 2018, Dr. Wong emailed Dr. Boychuk that the claims had to be processed manually by MSP, and “this is complete now”. He also wrote that Dr. Boychuk owed MSP, not him. I infer Dr. Wong meant that ultimately MSP deserves to be repaid, and once Dr. Boychuk reimburses him he will pay MSP.
20. On September 11, 2018, Dr. Boychuk emailed Dr. Boychuk “here are MSP reconciliations from April to now”, and asked Dr. Boychuk to cross-check and send 70% of the total. Dr. Wong sent follow-up emails but Dr. Boychuk did not respond. He then started this tribunal dispute in August 2019.
21. As for the 62 claims that were submitted to MSP but not reversed, Dr. Wong submits Dr. Boychuk did not select them to be reversed. Dr. Boychuk does not deny this. I find her submissions suggest that her later discussions with MSP revealed these 62 additional claims, beyond the 96 claimed by Dr. Wong, where her billing number was used to bill MSP and were not reversed.
22. I find those 62 claims were not part of the reimbursement agreement at issue in Dr. Wong’s tribunal claim. I say this because I find the parties’ emails show the agreement was that Dr. Boychuk would identify the claims to be reversed and then Dr. Wong would process the reversal with MSP. I find Dr. Boychuk only identified the 96 claims that are the subject of Dr. Wong’s dispute. The fact that Dr. Boychuk submits she did not have enough time in November 2019 to obtain evidence about the 62 claims supports the conclusion that she did not identify them for Dr. Wong in 2017.
23. It is undisputed and the evidence shows MSP has confirmed the 96 claims were reversed. Given my conclusions above, I find this is sufficient proof to trigger Dr. Boychuk’s obligation to reimburse Dr. Wong for those 96 claims, based on 70% of the associated billings. I make no findings about the 62 other claims.
24. In summary, I find Dr. Boychuk must reimburse Dr. Wong 70% of the 96 claims, as the parties agreed. There is no dispute about the calculation, which I accept totals

\$3,103.74. I will address a set-off for this award below when I discuss Dr. Boychuk's counterclaim.

Dr. Boychuk's counterclaim - \$800 for 2 shifts

25. Dr. Boychuk says she was scheduled to work on August 17 and 23, 2017, but that Dr. Wong failed to pay her the \$400 minimum for each date. She claims \$800.
26. The evidence shows that after Dr. Boychuk's March 2017 start date, the parties emailed back and forth over the following months about different schedule days as needed. I find Dr. Boychuk had no set regular schedule for August 2017.
27. It is undisputed Dr. Boychuk was scheduled to work on August 17, 2017. On August 16, 2017, Dr. Wong emailed Dr. Boychuk at 12:58 p.m. that he was sorry there were not very many bookings for the next day and that it would not be worth her time to come to the clinic. Dr. Boychuk argues that this was insufficient notice and that she is entitled to the \$400 minimum for August 17. I agree.
28. There is nothing in the parties' March 2017 emails that address what notice must be provided if Dr. Wong was going to cancel Dr. Boychuk's shift. However, I find reasonable notice is an implied term. I say this in part because the parties' agreement expressly reflected Dr. Boychuk's desire to ensure a base income level, and Dr. Wong agreed to the daily \$400 minimum. He had emailed in March 2017 that he was confident there would be enough work. I find less than 1 days' notice is insufficient. Dr. Boychuk would not have reasonably been able to find other locum work in less than 24 hours. The purpose of the guaranteed \$400 daily minimum is defeated if Dr. Wong could just cancel her shift the day before. I find Dr. Wong must pay Dr. Boychuk \$400 for August 17, 2017.
29. Next, Dr. Boychuk says she was scheduled to work on August 23 and Dr. Wong says she was not. On August 23, 2017, Dr. Wong emailed Dr. Boychuk and wrote "I heard there was some confusion about doctor's scheduling today. To avoid this in the future, I'm going to ask all the doctors to email me their available days and I'll coordinate for everyone." I find this email is not determinative that Dr. Boychuk was

scheduled to work. I find it could also simply show that Dr. Wong wanted to take steps to avoid confusion in future.

30. Dr. Wong submitted an undated letter from CM, a former employee. CM wrote that Dr. Boychuk “used to show up when we didn’t know she was coming so no appointments we pre-booked for her” (quote reproduced as written). I place little weight on this letter as I find it does not address whether Dr. Wong had arranged for Dr. Boychuk to work on August 23, 2017.
31. However, Dr. Boychuk did not submit any email or documentation to show she was scheduled for August 23. On balance, I find Dr. Boychuk has not proved she was scheduled, and as noted above the burden of proof rests on her to prove her claim. So, I dismiss her claim for \$400 for August 23, 2017.

Dr. Boychuk’s counterclaim for \$4,200

32. On November 29, 2018 Dr. Boychuk sent Dr. Wong a \$25,600 invoice for the \$800 claim for the 2 August 2017 shifts plus her time spent going through patient records, and communicating with Dr. Wong and MSP. As for the ‘time spent’, she based it on 62 days at \$400 per day, between August 12, 2017 and November 27, 2018. However, in her counterclaim Dr. Boychuk claims \$4,200, in order to bring it within the tribunal’s small claims maximum \$5,000 limit.
33. While I accept that Dr. Boychuk’s review was somewhat labour intensive, I am not prepared to accept that she spent 62 entire days on it. Dr. Boychuk says she lost work because of the time spent on these matters, though she provided no proof of any income loss. Further, when the parties agreed to the MSP reversal and Dr. Boychuk’s reimbursement, there was no discussion about Dr. Boychuk being paid for her time. Next, Dr. Boychuk included at least \$4,000 (10 days) for her time spent reviewing and preparing documents for the MSP integrity department. I would have found those 10 days’ of work inappropriate for this counterclaim. Overall, I find Dr. Boychuk’s claims for time spent excessive and unsupported by the evidence before me. Plus, if she had expected to be paid for her administrative time, I find she ought

to have negotiated that in the parties' reimbursement agreement. I dismiss this claim.

Set-off, interest, and tribunal fees

34. I have awarded Dr. Wong \$3,103.74 above. From this I deduct the \$400 I awarded to Dr. Boychuk for the April 17, 2017 day of work. This is a net award of \$2,703.74.
35. The *Court Order Interest Act* (COIA) applies to the tribunal. I find Dr. Wong is entitled to pre-judgment interest under the COIA on the \$3,103.74, from September 30, 2018, to the date of this decision. This equals \$74.15. I use that date as I find it is most reasonable, given Dr. Wong's request was in early September 2018.
36. Under the CRTA and the tribunal's rules, the successful party is usually entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. Dr. Wong was successful and so I find Dr. Boychuk must reimburse him the \$175 he paid in tribunal fees. Dr. Boychuk was partially successful, so I order Dr. Wong to pay her half the \$125 in paid fees, namely \$62.50. This leaves a net payment to Dr. Wong of \$112.50. There is no COIA interest on tribunal fees. Neither party claimed dispute-related expenses and so I make no order about them.

ORDERS

37. Within 30 days of this decision, I order Dr. Boychuk to pay Dr. Wong a total of \$2,890.39, broken down as follows:
 - a. \$2,703.74 in debt,
 - b. \$74.15 in pre-judgment interest under the COIA, and
 - c. \$112.50 in tribunal fees.
38. The successful portion of Dr. Boychuk's counterclaim is addressed in my order above. The balance of her counterclaim is dismissed. Dr. Wong is entitled to post-judgment interest as applicable.

39. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
40. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair