



Civil Resolution Tribunal

Date Issued: April 10, 2024

File: AB-2022-008633

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Duchesne v. ICBC*, 2024 BCCRT 348

BETWEEN:

RICHARD DUCHESNE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about entitlement to income replacement benefits.
2. Richard Duchesne was in a motor vehicle accident on May 14, 2022 in Surrey, BC. Mr. Duchesne was not employed at the time of the accident, but was scheduled to

start a new job on June 7, 2022. Mr. Duchesne worked from June 7 to July 6, and then took a 5-day leave. His employment was terminated around July 14, 2022. Mr. Duchesne says the respondent insurer, Insurance Corporation of British Columbia (ICBC), has not paid him income replacement benefits. He says the accident aggravated pre-existing injuries and contributed to him losing a lucrative position and future commissions. Mr. Duchesne claims \$15,000 in income replacement benefits.

3. ICBC says Mr. Duchesne is not entitled to income replacement benefits under the *Insurance (Vehicle) Act (IVA)* and associated regulations. ICBC denies it owes Mr. Duchesne any income replacement benefit compensation.
4. Mr. Duchesne is self-represented. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

5. 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 jurisdiction over the determination of entitlement to accident benefits.
6. CRTA section 2 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.
7. CRTA section 39 says that 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.

8. CRTA section 42 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.

ISSUE

9. The issue in this dispute is whether Mr. Duchesne is entitled to any income replacement benefits, and if so, how much.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicant, Mr. Duchesne bears the burden of proof on a balance of probabilities, meaning “more likely than not”. While I have reviewed all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision. Mr. Duchesne did not provide any documentary evidence despite being provided the opportunity to do so.
11. The parties agree that Mr. Duchesne was in an accident on May 14, 2022 in Surrey, British Columbia. As noted, Mr. Duchesne was not working at the time of the accident, but had secured a job that was scheduled to start on June 7, 2022. Mr. Duchesne undisputedly started the new job as scheduled on that date.
12. Mr. Duchesne worked from June 7 to July 6, and then took a week medical leave from work between July 7 to July 15, 2022. Mr. Duchesne’s employment was then terminated.
13. Mr. Duchesne applied for income replacement benefits, and on August 19, 2022, ICBC advised Mr. Duchesne that he was not eligible for income replacement benefits.
14. Part 10 of the IVA, Enhanced Accident Benefits and Limits on Actions and Proceedings, applies to accidents that occur on and after May 1, 2021, which includes Mr. Duchesne’s accident.

15. The IVA and *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRB) set out an insured's entitlement to income replacement benefits. Division 6 of the IVA provides that full-time earners, temporary or part-time earners, and non-earners are entitled to income replacement benefits if they are unable to continue or hold employment because of their accident injuries.
16. ICBC says Mr. Duchesne is not eligible for any income replacement benefits because Mr. Duchesne has not shown he is unable to work due to his accident injuries. For his part, Mr. Duchesne says the accident aggravated pre-existing injuries and contributed to him losing a lucrative position and future commissions.
17. After the May 14, 2022 accident, Mr. Duchesne started his new job on June 7, 2022. Mr. Duchesne worked until July 6, 2022. Mr. Duchesne undisputedly took a 5-day leave from work between July 7 and July 15, 2022, and was terminated at the end of this period. More on this below. ICBC says that Mr. Duchesne took time off to care for a sick relative. Mr. Duchesne himself says he had pre-existing family health emergencies that required time off, but says the accident also contributed to his need for time off.
18. ICBC provided some limited clinical records in evidence. An undated "checkpoint note" indicated Mr. Duchesne had a pre-existing back injury following a 2013 motor vehicle accident, had been on disability since then, and was receiving weekly chiropractic treatments. Mr. Duchesne does not dispute that he had pre-existing back pain. There is no further evidence on any alleged disability status. A May 19, 2022 medical report after the accident from a walk-in clinic doctor indicated that Mr. Duchesne reported ongoing back pain before the accident during a telehealth evaluation. The doctor diagnosed mild to moderate muscle spasms to Mr. Duchesne's back and neck. There is no indication in this report that Mr. Duchesne was unable to work.
19. The only medical evidence that suggests Mr. Duchesne was unable to work is the doctor's note he obtained after he was already terminated from his job. A July 28, 2022 chart note from the same walk-in clinic doctor indicated that Mr. Duchesne

reported he had back pain and had to miss work from July 7 to 15, 2022, and asked for a note to cover this period. The August 2, 2022 note indicated Mr. Duchesne was evaluated via telehealth and reported that he had lower back pain and was unable to attend work for medical reasons between July 7 and July 15, 2022.

20. I acknowledge that the medical note indicates Mr. Duchesne's time away from work was for medical reasons due to his reported back pain. However, Mr. Duchesne's own submissions indicate that he took time off to care for a relative, and he acknowledged he had pre-existing back pain. Given the above, I find the doctor's note indicating he took time off work for medical reasons, without further medical records, more details about the reasons for this medical leave, or any specific reference to the accident, does not show that Mr. Duchesne's 5-day medical leave was due to his accident injuries. There is no other medical evidence to show that Mr. Duchesne was unable to work due to his accident injuries. On balance, I find the medical evidence does not support a finding that Mr. Duchesne was unable to work due to his accident injuries.
21. Additionally, Mr. Duchesne argues his accident injuries contributed to him losing a lucrative position and future commissions. ICBC says Mr. Duchesne was not terminated due to his accident injuries. ICBC provided an email from Mr. Duchesne's employer to Mr. Duchesne that said he was not "let go" because he was on medical leave, but because it was not the right job for him. The employer said his work ethic and ability to pick things up were not at the level expected for the position. The employer also noted that they had tried to tell Mr. Duchesne this, but Mr. Duchesne would not answer calls and did not return to work after his 5-day medical leave. The employer indicated they were forced to advise Mr. Duchesne about his dismissal by email. ICBC also provided a November 23, 2023 email from Mr. Duchesne's employer responding to questions asked by an independent adjuster retained by ICBC. In the email, the employer confirmed that Mr. Duchesne was employed from June 7 to July 14, 2022. The employer also confirmed Mr. Duchesne was on approved days off, but "severed communication", never returned to work, and was terminated by email. Mr. Duchesne says his employer severed communication first. However, nothing turns

on this because Mr. Duchesne did not dispute the employer's reasons for termination as stated in the above emails. Mr. Duchesne did not further explain or provide further evidence to show he was terminated or unable to continue employment due to his accident injuries. Given the evidence from Mr. Duchesne's employer, I find Mr. Duchesne was terminated from his employment for reasons unrelated to his accident injuries.

22. Mr. Duchesne did not otherwise provide evidence or submissions to show that his accident injuries prevented him from holding employment. Given the above, I find Mr. Duchesne has not proved he is entitled to any income replacement benefits. I dismiss Mr. Duchesne's claims.

CRT fees and dispute-related expenses

23. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Mr. Duchesne did not pay any CRT fees. As ICBC was successful, I order Mr. Duchesne to reimburse ICBC \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

24. Within 30 days of the date of this decision, I order Mr. Duchesne to pay ICBC a total of \$25 as reimbursement of CRT fees.
25. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
26. I dismiss Mr. Duchesne's claims.
27. This is a validated decision and order. 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.

Leah Volkers, Tribunal Member