Citation: Security National Insurance Company v. Weng, 2026 ONLAT 25-005191/AABS

Licence Appeal Tribunal File Number: 25-005191/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Security National Insurance Company

Applicant

and

Zhao Hui Weng

Respondent

DECISION

ADJUDICATOR:	**Gurleen Thethi**
APPEARANCES:	
For the Applicant:	Lyrica Roche, Counsel
For the Respondent:	Aylina Dhanji, Counsel
Court Reporter:	Prashanth Thambipillai
HEARD: by Videoconference:	**March 19, 2026**

OVERVIEW

[1] Zhao Hui Weng, the respondent, was involved in an automobile accident on June 30, 2023, and received benefits from the applicant, Security National Insurance Company, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). The applicant claims repayment of Income Replacement Benefits ("IRBs") paid to the respondent and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

i. Is the applicant entitled to an income replacement benefit ("IRBs") repayment in the amount of $12,100.00 from July 25, 2023, to March 24, 2024?

ii. Is the applicant entitled to interest on any overdue payment of benefits?

iii. Is the respondent entitled to costs against the applicant?

[3] While the issue of costs was not raised at the case conference, the respondent raised it as an issue in dispute at the beginning of this hearing. I heard submissions from both parties and I have agreed to allow this issue to proceed pursuant to Rule 19.1 of the *Licence Appeal Tribunal Rules*, which states that, "Where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith, that party may make a request to the Tribunal for costs."

RESULT

[4] I find that the applicant is not entitled to a repayment of $12,100.00 relating to its payment of IRBs for the period of July 25, 2023 to March 24, 2024.

[5] I find that the applicant is not entitled to interest.

[6] I find that the respondent is not entitled to costs.

PROCEDURAL ISSUES

[7] The applicant notified the Tribunal of its intention to retain a court reporter in writing, less than 10 days before the hearing. As this notification was provided outside the timelines required by the applicable rules, in prior correspondence, the Tribunal advised the parties that, due to the late notice, the request to engage a court reporter could not be accommodated.

[8] At the hearing, the parties consented to the use of a court reporter. Having considered the parties' submissions and their consent, I permitted the attendance of a court reporter for the proceeding.

ANALYSIS

The applicant is not entitled to a repayment of IRBs for the period of July 25, 2023 to March 24, 2024

[9] The applicant is seeking repayment of IRBs totalling $12,100.00, paid for the period of July 25, 2023 to March 24, 2024. The applicant argues that the respondent willfully misrepresented material facts with respect to his application for IRBs.

[10] Pursuant to s. 52(1) of the *Schedule*, a person is liable to repay to the insurer any benefit that is paid to the person in error on the part of the insurer, the insured person or any other person, or as a result of wilful misrepresentation. Sections 52(2) and (3) require an insurer to give the insured person notice of the amount that is required to be repaid within 12 months after the payment of the amount that is to be repaid, unless it was originally paid to the insured person as a result of wilful misrepresentation or fraud.

[11] The Tribunal has defined wilful misrepresentation as "any manifestation by words or other conduct by one person to another that, under the circumstances, amount to an assertion not in accordance with the facts." The Tribunal has also held that "silence or failure to report" can constitute wilful misrepresentation. It is the insurer's onus to prove that the insured wilfully misrepresented his employment status.

[12] The repayment issue turns on (i) whether the insurer gave proper and timely notice under s. 52; (ii) whether the IRBs in question were not payable, including by reason of the respondent's return to work, non-compliance with s. 33, or wilful misrepresentation; and (iii) if repayment is warranted, the amount properly recoverable by the applicant.

Proper and timely repayment notice

[13] Pursuant to ss. 52(2) and (3) of the *Schedule,* the respondent submits that the applicant failed to comply with the notice requirements. The evidence before me indicates that the applicant issued repayment notices on February 11, 2025, February 18, 2025, September 24, 2025, and October 22, 2025, in respect of IRBs paid between July 25, 2023 and March 24, 2024.

[14] The applicant did not provide submissions addressing the respondent's argument that the repayment notices were issued outside the prescribed 12-month period.

[15] The evidence before me indicates that the applicant issued a repayment notice on February 11, 2025 in respect of IRBs paid between July 25, 2023 and March 24, 2024. To the extent that the applicant seeks repayment of benefits paid before February 11, 2024, the notice was issued more than 12 months after those payments were made.

[16] Accordingly, the notice requirements in ss. 52(2) and (3) have not been satisfied in respect of those payments. Consequently, whether the applicant's repayment claim is barred by ss. 52(2) and (3) depends on whether the applicant has established that the benefits were originally paid as a result of wilful misrepresentation. I therefore turn to that issue below.

Willful Misrepresentation

[17] The applicant submits that the respondent willfully misrepresented his employment status and post-accident income while receiving IRBs. In support of its position, the applicant relies on four principal sources of evidence: the respondent's tax records, medical records, surveillance evidence, and the respondent's own statements, including evidence provided during the examination under oath ("EUO") and at the subject hearing.

[18] The applicant argues that the respondent's 2023 income tax return discloses approximately $6,000 in income that was not previously reported to the insurer. The applicant submits that the respondent's explanation that this amount represented a bonus payment is unsupported. According to the applicant, the sole evidence supporting that explanation is a letter from the respondent's former employer, which should be afforded little or no weight because it was unsupported by payroll records, pay stubs, or other corroborating employment documentation. The applicant further submits that an adverse inference should be drawn from the employer's failure to attend the hearing as a witness, despite being summoned to provide testimony.

[19] The respondent submits that there is no direct evidence demonstrating that he performed construction or renovation work during the period in which IRBs were paid. The respondent testified that he was not working while receiving IRBs and maintained that he did not work in construction or renovations in 2022 or 2023. He testified that after the insurer stopped paying IRBs in March 2024, he began looking for work due to financial hardship and his responsibility to support his children. When confronted with his EUO testimony, in which he denied performing any renovation work in 2022 or 2023, the respondent later acknowledged that he may have assisted friends with renovation work on one or two occasions. He also disagreed with medical records that referenced him working for a renovation company or in construction, suggesting that the entries may have resulted from misunderstanding, translation errors, or references to maintenance work he performed at his own home.

[20] The respondent further testified that the amount in question represented a bonus paid in 2023 for work performed in 2022 and stated that it was paid in cash. He acknowledged that there were no payroll records documenting the payment and could not recall whether he had previously disclosed the bonus before his EUO. When asked whether his failure to disclose the bonus or alleged renovation work demonstrated a pattern of non-disclosure, the respondent rejected that characterization, stating that he answered the questions he was asked and did not believe he was required to volunteer information that had not specifically been requested. The respondent further submits that any inconsistencies in his testimony are attributable to the passage of time and fading memory rather than dishonesty.

[21] While I accept that the reported income raised legitimate questions regarding the respondent's employment status, the existence of income alone does not establish that the respondent was working while receiving IRBs or that he deliberately misrepresented his circumstances. The respondent provided an explanation for the amount through an employer letter. Although the applicant argues that the letter should be given little weight because it was unsupported by payroll records and because the employer did not testify, the burden remains on the applicant to establish that the reported income was inconsistent with the respondent's representations. On the evidence before me, I am not satisfied that it has done so.

[22] The applicant submits that an adverse inference should be drawn from the employer's failure to attend and testify. Even if I were to draw a negative inference from the employer's absence, that inference would not remedy the evidentiary gaps in the applicant's case. There remains insufficient direct

evidence establishing that the respondent worked during the relevant period or knowingly failed to disclose material employment information.

[23] The applicant further argues that the respondent's credibility is undermined by inconsistencies in his evidence concerning his employment activities, travel arrangements, and the frequency with which he travelled to Owen Sound. I accept that certain inconsistencies exist. However, not every inconsistency amounts to evidence of dishonesty or willful misrepresentation. The events in question occurred several years before the hearing and some variation in recollection is not unexpected. While the inconsistencies affect the reliability of portions of the respondent's evidence, I am not satisfied that they establish a deliberate intention to mislead the applicant.

[24] I also do not find the medical records determinative. The applicant relies on references in records from three practitioners suggesting that the respondent worked in construction or renovations during the time period he was receiving IRBs. However, the records contain limited detail regarding the timing, nature, frequency, or extent of any alleged work activity. They do not establish that the respondent was working during the period in which IRBs were paid, nor do they demonstrate that any representations made to the applicant were knowingly false. In my view, these records raise questions but fall short of proving willful misrepresentation.

[25] The applicant further relies on surveillance evidence. I agree with the applicant that the surveillance evidence is admissible and may properly be considered. However, the surveillance was conducted after the period for which repayment is sought and after the respondent's IRBs had been terminated. While the surveillance may provide some evidence regarding the respondent's functional abilities or subsequent activities, it offers limited assistance in determining whether the respondent willfully misrepresented his employment status between July 25, 2023 and March 24, 2024. I therefore assign the surveillance evidence limited weight on the central issue before me.

[26] Having considered the evidence as a whole, I find that the applicant has raised suspicions regarding the respondent's employment status and post-accident income. However, suspicion is not sufficient to meet the legal test for willful misrepresentation. The evidence relied upon by the applicant is largely circumstantial and does not establish, on a balance of probabilities, that the respondent knowingly made false representations or deliberately failed to disclose material information regarding his employment status during the period IRBs were paid.

[27] Accordingly, I find that the applicant has not established that the IRBs were paid as a result of willful misrepresentation. As a result, the applicant is not entitled to repayment of the $12,100.00 in IRBs paid to the respondent for the period of July 25, 2023 to March 24, 2024.

Interest

[28] Section 52(5) and (6) of the *Schedule* provide guidance on when an insurer may recover interest on repayment. As I have found that no repayment is owed to the applicant, no interest is payable.

Costs

[29] Rule 19.1 of the *Rules* provides for the Tribunal to order costs where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith. Rule 19.5 lists the factors to consider when adjudicating a request for costs.

[30] Finally, the applicant opposes the respondent's request for costs. It submits that the existence of a bona fide dispute does not justify a costs award and that insurers should not be penalized for seeking adjudication of legitimate repayment issues before the Tribunal.

[31] The respondent seeks costs on the basis that the applicant's repayment claim was frivolous and unsupported by the evidence. The respondent argues that the applicant acted unreasonably by continuing to pursue allegations of willful misrepresentation despite having insufficient evidence to establish its claim.

[32] While I have found that the applicant has not met its burden of proving willful misrepresentation, that finding does not automatically justify an award of costs. Costs are reserved for conduct that is unreasonable, frivolous, vexatious, or undertaken in bad faith during a proceeding, rather than simply for an unsuccessful claim.

[33] In this case, the applicant relied on several sources of evidence, including the respondent's tax records, medical records, surveillance evidence, and inconsistencies in the respondent's statements. Although I ultimately found that this evidence was insufficient to establish willful misrepresentation on a balance of probabilities, I am satisfied that it provided a reasonable basis for the applicant to investigate and advance its repayment claim.

[34] I am not persuaded that the applicant acted frivolously, vexatiously, or in bad faith by bringing the matter before the Tribunal. The dispute concerned the respondent's employment status, reported income, and the potential application of s. 52 of the *Schedule.* These were legitimate issues requiring adjudication. Nor am I satisfied that the applicant's conduct during the proceeding was unreasonable within the meaning of Rule 19.1.

[35] Although the respondent submits that the applicant's repayment calculations changed over time, the evidence indicates that the applicant continued to assess the claim as additional information became available. In the circumstances, I do not find that this conduct rises to the level required to justify a costs award.

[36] Having regard to the factors set out in Rule 19.5, I conclude that this matter involved a genuine dispute between the parties and that neither party engaged in conduct warranting the exercise of the Tribunal's costs jurisdiction.

[37] Accordingly, I decline to award costs and find that the applicant's conduct does not meet the criteria set out in Rule 19.1.

ORDER

[38] For the reasons outlined above, I find:

i. The applicant is not entitled to a repayment of $12,100.00 relating to its payment of IRBs for the period of July 25, 2023 to March 24, 2024.

ii. The applicant is not entitled to interest.

iii. The respondent is not entitled to costs.

Released: July 21, 2026

Gurleen Thethi
Adjudicator