

**OFFICE OF THE DIRECTOR OF ARBITRATIONS**

ARNEL SAQUI

Appellant

and

ALLSTATE INSURANCE COMPANY OF CANADA

Respondent

**Before:** David R. Draper, Director's Delegate

**Counsel:** Arnel Saqui (in person)  
Gerald S. George (for Allstate)

**APPEAL ORDER**

Under section 283 of the *Insurance Act*, R.S.O. 1990, c.l.8, as amended, **it is ordered that:**

1. The appeal is dismissed and the arbitration decision, dated April 30, 1996, is confirmed.
2. No appeal expenses are payable.

\_\_\_\_\_  
David R. Draper  
Director's Delegate

January 13, 1997  
\_\_\_\_\_  
Date

## **REASONS FOR DECISION**

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### **I. NATURE OF THE APPEAL**

This is an appeal by Arnel Saqui from an arbitration decision, dated April 30, 1996, denying his claim for weekly income benefits from May 6, 1994 to October 11, 1994.

### **II. BACKGROUND**

Mr. Saqui was injured in an automobile accident on September 30, 1992. As a result, he received weekly income benefits from Allstate Insurance Company of Canada (“Allstate”) of \$525.61 under section 12 of Ontario Regulation 672, *Statutory Accident Benefits Schedule - Accidents Before January 1, 1994* (“the *Schedule*”). His benefits continued until May 6, 1994, when Allstate stopped paying on the basis that Mr. Saqui was no longer substantially unable to perform the essential tasks of his employment as a cleaner for the City of Toronto. Mr. Saqui claimed that his weekly income benefits should have continued until he returned to work on October 11, 1994.

A second dispute also developed. Mr. Saqui’s employment benefits included long-term disability (LTD) coverage with Sun Life Assurance Company (“Sun Life”). However, he did not apply for these benefits until September 15, 1995, almost three years after the accident. Sun Life rejected his claim, but Allstate argued that the LTD benefits were “available” to him within the meaning of section 12(4)(b)(i) of the *Schedule*. It claimed, therefore, Mr. Saqui should be required to repay the weekly income benefits he received.

Both parties were represented by lawyers at the arbitration hearing. Mr. Saqui was the only witness, but 25 exhibits and written submissions were filed. The arbitrator denied Mr. Saqui’s claim for additional weekly income benefits, finding “no reliable evidence” to suggest that he was unable to return to work by the time his benefits were terminated. She also denied Allstate’s claim for a repayment for two reasons. First, she found that

the benefits were not paid “through error or fraud,” as required by section 27. Second, she was not persuaded that the LTD benefits were “in fact” available to Mr. Saqui.

Mr. Saqui appealed the arbitrator’s order that he is not entitled to weekly income benefits after May 6, 1994. Allstate did **not** appeal the arbitrator’s refusal to order a repayment. Therefore, the only issue on appeal is whether the arbitrator erred in her conclusion that Mr. Saqui was not entitled to additional weekly income benefits.

### III. ANALYSIS

Mr. Saqui’s Notice of Appeal provides the following reason for his appeal: “The arbitrator erred in law in her assessment of my entitlement to long term disability benefits.” He asked for the following outcome: “I wish to obtain the benefits to which I am entitled from Allstate between May 6/94 to October 11/94.” No further explanation is provided.

Following my appointment, I asked for Mr. Saqui’s written submissions according to procedures established in the *Dispute Resolution Practice Code*. He responded by letter, stating as follows:

Please once again examine the two tests of the two insurance policies that were dealt with in this matter. It is my respectful view that the arbitrator who heard my case did not properly deal with this question in her decision and in her written reasons. This failure in my view gives cause to have a new hearing in which an arbitrator will properly deal with this issue.

On October 9, 1996, I advised the parties that the appeal would be decided on the record, without an oral hearing. The parties were invited to make additional written submissions by the end of October, but nothing further was received.

The arbitrator only determined Mr. Saqui’s entitlement to accident benefits, not LTD benefits. She considered the LTD benefits because Allstate claimed their availability disentitled Mr. Saqui from receiving weekly income benefits under the *Schedule*. She concluded that they did not. This part of her decision was in Mr. Saqui’s favour and, therefore, there is no reason for him to appeal it.

The question is whether the arbitrator erred in her determination of Mr. Saqui's entitlement to weekly income benefits under section 12 of the *Schedule*. After reviewing the record, I am satisfied that she approached the question properly, and that there was ample evidence to support her findings.

To succeed, Mr. Saqui had to establish that he was substantially unable to perform the essential tasks of his employment as a cleaner for some period after his benefits were terminated on May 6, 1994. The arbitrator evaluated his essential tasks and the physical capabilities necessary to perform those tasks. After reviewing the course of his post-accident treatment and rehabilitation, she examined the evidence addressing Mr. Saqui's condition at the time his weekly income benefits were terminated.

The arbitrator noted that none of the testing showed any organic or objective evidence of disability during the period in question. Mr. Saqui's claim was not helped by her assessment of his testimony as "scant, vague and unconvincing." Even the records of his own doctor, Dr. Lim, showed only minimal restrictions. The sole medical opinion supporting his claim was a one-line letter from Dr. Lim stating that "Mr. Saqui was not able to work May to October 1994." In contrast, two other physicians, Dr. Diamant and Dr. Parker, found that by April 1994, there was nothing to prevent him from returning to work.

It was the arbitrator's duty to make factual findings based on her assessment of the evidence, which she did. Mr. Saqui may feel that she should have preferred his own view, supported by Dr. Lim, but that was not her assessment. For reasons set out in the decision, she found the opinions of Dr. Diamant and Dr. Parker more persuasive.

It is well established that my role on appeal is not to second-guess the arbitrator's assessment of the evidence. She heard Mr. Saqui's testimony and could evaluate the exhibits in light of it. Because she was in a better position to assess the evidence, her decision should not be disturbed unless she made an error resulting in an injustice, or her findings were unsupported by the evidence. In my opinion, this appeal falls squarely within the area where an appeals adjudicator should not intervene.

Therefore, the appeal is dismissed.

#### **IV. APPEAL EXPENSES**

Mr. Saqui did not specifically claim his appeal expenses. Even if he had, however, this is not an appropriate case for expenses. Mr. Saqui did not raise any clear error, but simply disagreed with the outcome. Previous decisions have held that appeal expenses generally will not be awarded where that is the case. I see no reason to follow a different approach here.

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David R. Draper  
Director's Delegate

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January 13, 1997  
Date