

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of July 6 to 10, 2009

Evidence of intention to work in a job plus “imperfectly drafted” written evidence can demonstrate legitimate contract of employment

Adami and Wawanesa Mutual Insurance Company; FSCO A08-000172; June 10, 2009; Arbitrator William Renahan

February 22, 2002 collision. Insured immigrated to Ontario one month before the collision under a Canada Immigration and Citizenship Family Business Application prepared by his brother who lived and operated a transport company in Toronto. The application included a job offer. The job of “general truck operation” included the following duties: assisting on management of business, basic maintenance of trucks, customer services and driving. Wawanesa denied an IRB on the basis that the job offer was not legitimate because the insured did not have the qualifications for the main aspects of the job.

The arbitrator found that although the insured’s proficiency in English prevented him from management and customer services roles he could do basic truck maintenance. The insured worked for a trucking company in Iran and he was qualified to drive tractor trailers in Iran even though most of his work was in management. In the month before the collision and in the short period of time following the collision he met customers of his brother’s company, did some minor truck maintenance and looked at some paper work but could not manage it due to his limitations with English. He also obtained a learner's driving license and received his regular "G" license shortly after arriving in Canada. He received a "Z" endorsement to his driver's license enabling him to operate vehicles equipped with air brakes. He tried to earn his license allowing him to drive a tractor-trailer but he failed because his English was inadequate.

There was persuasive evidence that his intention was to improve his English and work in his brother’s company. The insured was entitled to an IRB less gross weekly income earned plus interest from the date application for the benefit was made. Offers of employment do not have to be perfectly drafted to fit within the meaning of a “legitimate” contract as set out in section 4(3) of the SABS. The offer does have to reflect the intentions of the parties and there must be evidence to support those intentions.

Implications

This flexible interpretation of a written contract of employment is appropriate given that many people enter jobs without a perfectly documented job offer or full description of job duties. The insured in this case did not present much of the evidence of his qualifications until the arbitration. The insured has an obligation



under section 33 of the SABS to provide the insurer with information reasonably required to assist it in determining entitlement to a benefit. In cases where a perfectly formalized offer of employment cannot be produced, the insured has an added incentive for producing additional information regarding his background, qualifications and attempts to work in the job, if applicable, to provide evidence of his intention to work in that job.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>.

Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.

If you have questions or comments about this edition of the newsletter, contact Karen Hulan at Legate & Associates: khulan@legate.ca.