

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

GARY HAYMAN)	
)	
Plaintiff)	
)	
v.)	CA. No.: 07C-12-106 FSS
)	
GOVERNMENT EMPLOYEES)	
INSURANCE COMPANY)	
Defendant)	

Submitted: September 26, 2008
Decided: December 23, 2008

ORDER

Upon Defendant’s Motion for Summary Judgment – GRANTED

1. On May 18, 2005, Plaintiff was injured in an automobile collision. At that time, Defendant (“GEICO”), was Plaintiff’s PIP carrier.

2. On June 16, 2005, Plaintiff’s counsel requested a PIP application, a “Wage and Salary Verification” form, and an attending physician’s report from GEICO. Shortly thereafter, Plaintiff’s counsel gave GEICO a disability slip that partially incapacitated Plaintiff for June 13-28, 2005. Enclosed with the slip was a demand that GEICO pay Plaintiff’s lost wages. The letter and slip lacked supporting wage verification. Plaintiff’s incapacity was later extended to August 23, 2005. Plaintiff, however, failed to forward additional disability slips to GEICO.

3. In response to Plaintiff's request, GEICO sent a PIP application along with a written request for authorization to "obtain medical reports, copies of records and loss earnings information." Plaintiff submitted the PIP application on June 30, 2005. The application included a lost wages claim and an \$875 average weekly salary. Plaintiff did not submit a wage verification form, or an authorization for GEICO to obtain the wage information. GEICO did not make a second, written request for authorization.

4. Plaintiff's doctors, on their own accord, and within two years post-collision, submitted medical reports to GEICO along with their bills. Some reports indicated Plaintiff's work restrictions as "part-time light duty capacity."

5. On July 6, 2006, Plaintiff filed a personal injury claim against the tortfeasor. In that case, defense counsel subpoenaed GEICO to produce all PIP files pertaining to Plaintiff. The subpoena specifically listed three separate accidents and claim numbers. Included in GEICO's production were documents from a March 17, 2004 automobile accident.

6. In the March 17, 2004 accident, Plaintiff was injured and he filed for PIP benefits. Plaintiff submitted that PIP application to GEICO on April 28, 2004. It included wage verification and authorization forms. That submission was made 14 months before the claim at issue here.

7. On February 28, 2007, Plaintiff filed his first PIP suit against GEICO for outstanding medical expenses.¹ On December 6, 2007, Plaintiff sent GEICO's counsel a partially executed stipulation of dismissal, along with a letter indicating Plaintiff's future lost-wages suit. At that point, Plaintiff submitted the disability notes from June 28, 2005 to August 23, 2005. Plaintiff, however, did not submit a salary verification, or any amount owed, to correlate with the missed work days.

8. On December 12, 2007, Plaintiff filed this action for lost wages. In the complaint, Plaintiff finally revealed the amount of expenses he wants GEICO to reimburse. The complaint was filed 31 months after the collision, which made it seven months late.

9. GEICO filed a motion to dismiss on May 5, 2008. Following oral argument, the court ordered counsel to submit summary judgment briefing. Briefing was completed on September 26, 2008. Plaintiff's complaint demands \$8,925. As of this order's date, however, Plaintiff has not submitted a wage verification form, or authorization, stemming from the 2005 accident.

10. GEICO presents three grounds for summary judgment. First, GEICO argues that Plaintiff failed to prove that his lost wages were reasonable, as

¹ CA. No. 07C-02-288 WCC.

required under 21 *Del. C.* § 2118(a)(2)(a). GEICO also argues that Plaintiff failed to comply with all conditions precedent to entitle him to benefits. Lastly, GEICO argues that Plaintiff's claim is barred by 21 *Del. C.* § 2118(a)(2)(i)(1) for failure to provide expenses within the statutory two-year period.

11. Plaintiff counters that GEICO's policy is broader than the statutory minimum, requiring an insured only show that lost earnings are "lost because of an injured person's inability to work," and not "reasonable and necessary." Plaintiff also asserts that he complied with all conditions precedent because he submitted wage verification and authorization forms in connection with the 2004 accident. Lastly, Plaintiff argues that his claim is not barred under § 2118 because GEICO possessed medical reports that indicated his partial incapacity from June 28, 2005 to August 23, 2005.

12. Summary judgment is granted if, after the court examines the full record, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.² The court accepts all undisputed facts and the non-movant's version of any disputed facts.³ From those facts, the court draws all rational

² Super. Ct. Civ. R. 56.

³ *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

inferences favoring the non-moving party.⁴

13. GEICO's arguments are, in essence, intertwined: Plaintiff failed to file lost-wages expenses. As to the "reasonable and necessary" claim, the parties are arguing a distinction without a difference. Both sides of the argument would require Plaintiff to submit numbers to GEICO before it can cut a check. Also, GEICO's argument, that Plaintiff failed to fulfill the conditions precedent, is based on his failure to submit a verification – the same general basis for the argument that Plaintiff failed to satisfy § 2118. Therefore, the court will address the final argument, that Plaintiff's claim is barred by § 2118(a)(2)(i)(1) for failing to submit expenses within 24 months after the accident.

14. Section 2118(a)(2)(i)(1) dictates that expenses "shall be submitted to the insurer as promptly as practical, in no event more than 2 years after they are received by the insured." The statute adds a 90 day extension for "[e]xpenses which are incurred within the 2 years but which have been impractical to present to an insurer within the 2 years."⁵

15. The statute requires that "expenses," not merely claims, must be submitted to the insurer. The statute's words, in effect, call for specific numbers to

⁴ *Id.* at 100.

⁵ 21 *Del. C.* § 2118(a)(2)(i)(2).

be submitted, not a general notice of a claim. Moreover, the 90 day extension for submitting expenses that were otherwise impractical to present, further supports the holding that “expenses” means specific expenses, not merely claims.

16. The court finds that Plaintiff is not entitled to the 90 day extension. Plaintiff knew about his lost wages claim well within the two-year period. Plaintiff does not offer a reason that would have made it impractical for him to submit a specific claim and, perhaps, a wage verification or expense report to GEICO within two years. Therefore, Plaintiff is limited to his submissions, or lack thereof, within two years post-collision.

17. Plaintiff’s position that he filed the necessary documents with GEICO in the separate 2004 case, is an admission that he failed to file them here. It is immaterial that Plaintiff submitted numbers in connection with the March 2004 accident. Those forms were submitted over a year before the 2005 accident and they are not helpful here. By law, Plaintiff must submit expenses to the insurer for lost wages.⁶ Plaintiff has had time, and several opportunities, to submit a salary verification to GEICO in order for it to pay. More importantly, as discussed above, Plaintiff failed to submit specific lost wages owed within the allowable two-year period.

⁶ See *supra* ¶ 14.

18. Further, the medical reports submitted to GEICO are not enough to establish the allegedly reimbursable expenses. The amount of lost wages owed cannot be gleaned from phrases such as, “part-time capacity.” Plaintiff’s argument that a claim without details and support is sufficient, is basically a way to make the statute fit the facts.

18. Viewing the evidence in the light most favorable to Plaintiff, he informed GEICO generally about his claim, but never submitted specific expenses as required by the statute’s specific language, during the limitations period.

Therefore, GEICO’s motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

Judge

cc: Prothonotary (civil)
Michael Galbraith, Esquire
W. Christopher Componovo, Esquire
Heather A. Long, Esquire