



TPD Claims - Start Of Qualifying Period Not Necessarily The Date Employment Ceased

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Standley v Onepath Life Ltd [2020] NSWSC 848

The NSW Supreme Court has found that, in relation to a claim for benefits pursuant to an “Own Occupation” for total and permanent disablement (TPD) policy, a requirement for an insured to be absent from work and unable to work for a three month period did not imply that the requisite period was limited to the first three months of absence from work.

The case of *Standley v Onepath Life Ltd [2020] NSWSC 848*, considered a claim by Mr Standley regarding an “Own Occupation” TPD policy issued by Onepath Life Ltd (Onepath). Onepath had rejected the claim on the basis that Mr Standley did not meet the

relevant TPD definition as at the date three months after his employment ceased. However, after that date, Mr Standley developed a psychological condition that the court accepted, together with his physical condition, rendered him unlikely to ever return to his “Own Occupation”.

The court held that the subject TPD definition could not be read to imply a limit to the scope of the requisite three month period. Therefore, the court held that assessing psychological and/or physical disability at a date three months from the diagnosis of the psychological condition was appropriate.

Facts

In 2008, Mr Standley was issued with a sickness and accident insurance policy by Onepath, which contained cover for TPD. This was subject to an “Own Occupation” TPD definition that included:

‘Own Occupation’ relates to the most recent occupation in which the life insured was engaged prior to the date of disability.

Own Occupation TPD means that, as a result of illness or injury, the life insured: ...

- a. has been absent from and unable to engage in their ‘Own Occupation’ for three consecutive months; and
- b. is disabled at the end of the period of three consecutive months to such an extent that they are unlikely ever again to be able to engage in their ‘Own Occupation’.

Since June 2015, Mr Standley had been employed as a call centre manager for a parcel delivery service. In August 2015, as a result of a motor vehicle accident, he suffered injuries to his left wrist and two fractures to his right leg. Mr Standley attempted to return to work in October and November 2015, however, in February 2016, Mr Standley resigned from his position. In September 2016, Mr Standley lodged a claim with Onepath seeking payment of the TPD benefit.

A medical report obtained in September 2016 as part of Mr Standley’s motor accident claim (obtained by another insurer) identified that while Mr Standley did have a degree of permanent impairment, the level of impairment did not render him as totally and permanently impaired in performing his Own Occupation. The court noted that Mr Standley had exaggerated the physical requirements of his employment and the court was not persuaded that, from February to May 2016, Mr Standley was precluded from working in his pre-accident occupation on a full-time basis.

In April and September 2017, Mr Standley was diagnosed as suffering from secondary

anxiety and depression. The court noted that no expert evidence referred to Mr Standley as suffering from a psychological condition three months from when he ceased employment on 2 May 2016. The court held that, as of September 2017, Mr Standley had not been working for at least three months and, as a result of his psychological and physical condition, he was unlikely to ever return to his Own Occupation.

The court held that the TPD definition “does not in its terms limit the three months of inability to work to any particular period” and the court was “not persuaded that there is any reason to read into the clause any limitation on its scope”.

Implications

The court’s decision appears to run contrary to conventional wisdom in relation to determining the date relevant to the assessment of disability associated with claims for TPD benefits. The implication concerning the uncertain dates of assessment could prove to be significant. However, interpretation regarding the relevant date of assessment will depend on specific case facts and specific wording of relevant TPD clauses.

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