

complaint

Mr L complains about AIG Europe Limited's decision to refuse his personal accident claim.

background

I issued my provisional decision on this case on 23 February 2016, a copy of which is attached and forms part of this final decision.

Briefly, Mr L made a permanent disability claim which was refused by AIG. The claim would only be payable if Mr L had suffered a bodily injury caused by an accident, which resulted in permanent disablement. I thought the available evidence didn't support that Mr L's injury was caused by an accident.

I invited both parties to provide me with any further comments they wished to make.

AIG responded to say it didn't have any further comments.

Mr L responded and made the following points:

- Given that I've accepted he has an injury, he doesn't understand how I've arrived at the conclusion that he didn't have an accident.
- He says it's immaterial that the accident form was completed 17 months after the incident, and he shouldn't be held liable for his employer's incompetence.
- His medical notes confirm he experienced a sudden pain inside the knee. He says whether or not he fell is irrelevant, as the policy doesn't require him to fall over. But there is a defined time when the injury occurred.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've very briefly summarised Mr L's response to my provisional decision above, but I'd like to confirm that I have read his submissions in full. I've also re-read the medical evidence and, having done so, I remain of the opinion that AIG's decision to refuse the claim was reasonable. I'll explain why.

I do accept that Mr L has injured his knee. But for a claim to be payable, the injury must have been caused by an accident.

The policy definition of 'accident' is

'A sudden, unexpected and specific event, external to the body, which occurs at an identifiable time and place.'

Mr L says it's irrelevant whether or not he had a fall. But this is very relevant, because for the injury to have been caused by an accident, the policy says there must be an event that's *external* to the body. Feeling a sudden pain inside the knee isn't an event that's external to the body.

As I've explained in my provisional decision, there's no mention of a fall in the evidence from the time of the incident. If the injury to Mr L's knee had resulted from a fall, then I would have expected this to be recorded in his medical notes. Although the accident report says that Mr L had a fall, this was completed 17 months later, so I remain of the opinion that it isn't as reliable as the other evidence from the time of the incident.

I therefore remain satisfied that it was reasonable for AIG to refuse the claim, as Mr L doesn't satisfy the policy definition of an accident. He therefore hasn't had a 'bodily injury' as defined in the policy.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 April 2016.

Chantelle Hurn-Ryan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr L complains about AIG Europe Limited's decision to refuse his personal accident claim.

background

Mr L held personal accident cover that provided a number of benefits, including permanent disability benefit. He injured his knee in 2011 and made a permanent disability claim. AIG refused the claim as it said Mr L hadn't suffered an accident. Mr L disagreed and brought a complaint to this service.

Our adjudicator upheld the complaint. He thought Mr L's injury would be considered an accident. He recommended AIG obtain medical advice to establish the degree of disablement to Mr L's leg, so that it could pay him an appropriate percentage of benefit.

AIG disagreed with the adjudicator's recommendations, so the matter has been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in this complaint.

The policy provides the following cover:

*"If, during the **period of cover**, you suffer **bodily injury** which, within two years solely and independently of any other cause, results in death, permanent disablement, specified burns, specified fractures, hospitalisation or flesh wounds, we will pay the total sum insured."*

'Bodily injury' is defined as:

*"Injury to the **body** caused by an **accident**"*

'Accident' is defined as:

'A sudden, unexpected and specific event, external to the body, which occurs at an identifiable time and place.'

Mr L's claim relates to an injury to his left knee that he experienced in November 2011. I've therefore looked at the available evidence to see if the injury was caused by an accident.

After the injury, the clinical notes written later that day noted that Mr L had a history of fracture 10 years ago, and had experienced gradual onset of pain that day whilst walking over uneven ground. The following day, the notes said that Mr L had injured his knee years ago, and the day before, he'd experienced gradual onset of left knee pain.

A few days later, the clinical notes recorded that Mr L had felt his calf tighten and then he had a sudden pain in his left knee. And he had denied sudden trauma or twist to his knee. Later clinical notes report the same.

When Mr L's treating consultant was asked by AIG how the injury happened, he said it had happened in November 2011 and that Mr L's knee "...gave way at the time, he heard a popping and then there was a sharp pain. It swelled up at the time and he then sought medical attention." The consultant has since told our adjudicator that he suspected the injury was caused by a small tear in Mr L's patella tendon. He said there was a small acute injury. And clarified *"not an accident or a fall, but an injury."*

Mr L says he injured his knee by falling. But the medical evidence is that Mr L experienced pain in his knee whilst walking. There's no record of any external factors, such as a fall, causing the injury in his medical notes.

I see that the accident report said Mr L had a fall, but I note this was written 17 months after the incident. I find that greater weight should be placed on the clinical notes written at the time of the injury.

Whilst I appreciate Mr L's knee injury was sudden and unexpected, I don't think it can be said that the event was external to the body. Because of this, I find that Mr L doesn't satisfy the definition of accident under the policy. It follows that he doesn't meet the policy requirements of a 'bodily injury' and so I think it was reasonable for AIG to refuse the claim.

my provisional decision

My provisional decision is that I don't intend to uphold this complaint.

Both parties now have two weeks to provide me with any further information before I intend to issue my final decision.

Chantelle Hurn-Ryan
ombudsman