

complaint

Mr W has complained about ACE European Group Limited's decision to decline his claim under his personal accident insurance policy.

background

In 2001, Mr W took out a personal accident policy with ACE (which was then trading as Combined Insurance Company of America). The policy offered various benefits in the event of Mr W suffering an injury following an accident. These included benefit if the accidental injury prevented Mr W from working in his normal occupation (which the policy defined as "total loss of time").

In September 2013, Mr W says he injured his same ankle and also his arm while exercising in a gym.

He went to see his GP shortly afterwards and was signed off work for five weeks.

In October 2014 he was signed off work for three weeks after an operation on his arm.

In January 2015 he was signed off work for twelve weeks after an operation on his ankle.

He made a claim to ACE for these periods of absence. ACE declined the claim as it believed that neither the ankle problem nor the arm problem was caused by an accident. It acknowledged that Mr W had suffered an accidental injury to his ankle in 1997 but this predated the policy and so was excluded. It considered that the current ankle problem was a degenerative issue caused by wear and tear. It thought that the arm problem, while it came on suddenly, wasn't caused by a single accident. It believed both problems would more appropriately be classed as sickness rather than an accidental injury.

Mr W was unhappy at ACE's response and referred a complaint to this service.

Our adjudicator didn't recommend that the complaint be upheld. She thought ACE had acted reasonably in the way it had assessed his claim.

Mr W didn't accept the adjudicator's findings. He thought ACE should pay his claim.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't uphold this complaint. I shall explain why.

The policy explains that benefit for total loss of time is payable only if the policyholder is prevented from working solely because of an accidental injury and within thirty days of the accident.

In the case of Mr W's ankle, he sustained an accidental injury to this in 1997. However, it appears that the problems he is now experiencing in his ankle are degenerative issues, including osteoarthritis. While these may be related to his 1997 injury, I don't think he can reasonably claim that any disablement due to his ankle is solely the result of an accidental injury. In any case, the 1997 injury, as well as being outside the thirty day period specified in the policy, occurred before the policy was taken out and therefore would be excluded. I

therefore think that it was reasonable for ACE to decline any claim from Mr W that relied on his ankle problem.

In the case of Mr W's arm, he was eventually diagnosed as suffering from a trapped nerve. ACE asked Mr W's GP whether the problem was due to a traumatic accident or had it developed gradually over time. His GP responded to say that the problem had presented as a sudden onset but that it wasn't due to a traumatic accident. I think it was reasonable for ACE to conclude that the arm problem wasn't an accidental injury.

Mr W has pointed out that another insurer with whom he had a policy has accepted that the arm problem was caused by an accident. I acknowledge this but ACE isn't bound by the view of the other insurer. Based on the evidence available to it, I think ACE acted reasonably.

Besides, even if I was persuaded that the arm problem definitely could be described as being caused by an accident, ACE could still have declined Mr W's claim. This is because when Mr W was signed off in September 2013, it was to allow investigations to take place because it was feared that he may have suffered a mini-stroke. I haven't seen evidence that Mr W's arm injury in itself was sufficient to prevent him from working at this time. Therefore, I think the only time that Mr W was unable to work solely because of his arm injury was in October 2014 which was more than thirty days after the date when Mr W thinks the accident occurred.

In light of the above, I think it was reasonable for ACE to decline Mr W's claim.

Finally, I note that Mr W has raised a question over the sale of the policy. He said he was told by ACE's adviser that he would definitely be covered for his ankle under the policy. I should just clarify that this is not necessarily incorrect. While Mr W wasn't covered for any problems arising out of his original ankle injury, he would have been covered for any new accidental injury he suffered to his ankle.

my final decision

For the reasons given above, my final decision is to not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 February 2016.

David Poley
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