



Citation: Hadi v. Economical Insurance Company, 2024 ONLAT 21-009686/AABS-R

RECONSIDERATION DECISION

Before: Monica Ciriello, Vice Chair

Licence Appeal Tribunal File Number: 21-009686/AABS

Case Name: Al Shaymaa Abd El Hadi v. Economical Insurance Company

Written Submissions by:

For the Applicant: Jeton Memeti, Paralegal

For the Respondent: Pamela Vlasic, Counsel

OVERVIEW

- [1] The request for reconsideration was filed by the applicant. It arises out of a decision dated January 10, 2024 (“decision”), in which I found that the applicant’s injuries were predominately minor and therefore subject to treatment within the Minor Injury Guideline (“MIG”), her treatment plans were not payable, and she was not entitled to interest or an award.

RECONSIDERATION CRITERIA

- [2] Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* (“Rules”) states that a request for reconsideration will not be granted unless one or more of the following criteria are met:
- a. The Tribunal acted outside its jurisdiction or committed a material breach of procedural fairness;
 - b. The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made; or
 - c. There is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it, and would likely have affected the result.
- [3] In this instance, the applicant is seeking reconsideration of the decision under Rule 18.2(b).
- [4] Rule 18.4 provides that upon reconsidering a decision, the Tribunal may:
- a. Dismiss the request; or
 - b. After providing responding parties an opportunity to make submissions,
 - i. Confirm, vary, or cancel the decision or order; or
 - ii. Order a rehearing on all or part of the matter.
- [5] The applicant is requesting the Tribunal vary the decision or order a new hearing before a different adjudicator.

RESULT

- [6] The applicant’s request for reconsideration is dismissed.

ANALYSIS

- [7] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.

Rule 18.2(b) - Error of Law or Fact

- [8] In order for the applicant to establish grounds for reconsideration under Rule 18.2(b), she must establish that there was an error of law or fact in the decision, and that the Tribunal would likely have reached a different result had the error not been made.
- [9] The applicant submits that the crux of the reconsideration request is that the Tribunal failed to adequately assess the qualifications of Dr. Darrell Justice Ogilvie-Harris, orthopedic surgeon. Specifically, the applicant submits that I erred by:
- a. Failing to appreciate the expertise, qualifications of Dr. Ogilvie-Harris;
 - b. Failing to appreciate the significance of the specialized tests administered by Dr. Ogilvie-Harris, including the Medicolegal Research Brief ("MRB");
 - c. Failing to place weight on the report of Dr. Ogilvie-Harris when determining if the applicant met the criteria for the *American Medical Association Guides* ("AMA Guides"); and
 - d. Failing to rely on Dr. Ogilvie-Harris' chronic pain syndrome diagnosis.
- [10] I disagree with the applicant and find that I did not err in my decision, and even if there was an error, I do not find that the concerns raised by the applicant would have changed the result of my decision.
- [11] The applicant submits that I failed to adequately assess the expertise and qualifications of Dr. Ogilvie-Harris and consider his MRB. The applicant submits that had I properly considered Dr. Ogilvie-Harris' qualifications, MRB, report and diagnosis, I would have found that the applicant had suffered from chronic pain warranting her removal from the MIG.
- [12] I find no error. I discussed Dr. Ogilvie-Harris' report at paragraph 23, 24, 26 and 27 of my decision. Although I did not specifically reference Dr. Ogilvie-Harris'

qualifications, beyond that of referencing he is an orthopedic surgeon, or the specifics of his MRB in my decision, it is clear from the decision that I did consider his evidence. It is well-settled that the Tribunal is not required to refer to every piece of evidence when reaching a determination on the issues in dispute.

[13] In rendering my decision, I considered all evidence presented. This also included a review of the *AMA Guides* at paragraph 25 to which I found that the applicant's evidence was lacking, and that causation was at issue.

[14] Furthermore, the decision also included reference to Dr. Ogilvie-Harris' diagnosis of chronic pain at paragraph 23 and 26. In reviewing the totality of the evidence before me, at paragraph 26, I stated:

“Although in June 2022, Dr. Ogilvie-Harris diagnosis is unsupported by the medical evidence. Even if I did accept Dr. Ogilvie-Harris' chronic pain diagnosis, I am persuaded that for chronic pain to be more than just sequelae from soft tissue injuries it must be of such a severity that it causes suffering and distress accompanied by functional impairment or disability. There is a lack of evidence advanced by the applicant to suggest that her injuries were severe enough to cause distress accompanied by functional impairment or disability.”

[15] In my decision, I did not raise any questions as to Dr. Ogilvie-Harris' qualifications, nor did I fail to consider the MRB. Rather, in paragraph 27 of my decision, I set out why I preferred the evidence presented by the respondent.

[16] I find that the reconsideration submissions of the applicant are being used to re-litigate her position, which was unsuccessful at the initial hearing. It appears that the applicant disagrees with my findings, which is not grounds to grant a reconsideration.

[17] Lastly, the applicant cites an alleged error of fact at paragraph 27 of my decision. I find that this was not an error, and I correctly stated that January 2021 was the last date that the motor vehicle accident was referenced in the clinical notes and records of Dr. Seif.

[18] The applicant has not demonstrated that I erred in fact or law such that I would have reached a different result in my decision if the errors had not been made.

CONCLUSION

[19] The applicant's request for reconsideration is dismissed.



Monica Ciriello
Vice-Chair
Tribunals Ontario – Licence Appeal Tribunal

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