Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

Citation: Robinson v. AIG Insurance, 2025 ONLAT 23-008880/AABS-R

RECONSIDERATION DECISION

Before:	**Rebecca Hines, Adjudicator**
Licence Appeal Tribunal File Number:	23-008880/AABS
Case Name:	Robinson v. AIG Insurance
Written Submissions by:	
For the Appellant:	Eric Winkworth, Counsel
For the Respondent:	Kadey B.J. Schultz, Counsel
	Kayly Machado, Counsel

BACKGROUND

[1] The applicant is seeking reconsideration of the panel's decision released on October 23, 2024 ("decision"), which determined that the parties did not reach a binding settlement agreement.

[2] The grounds for a reconsideration to be allowed are set out in Rule 18.2 of the *Licence Appeal Tribunal Rules 2023* (the "Rules"). To grant a request for reconsideration, the Tribunal must be satisfied that 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 her request for reconsideration, the applicant identifies criteria a) and b) of Rule 18.2 as the basis for reconsideration. The applicant requested that the Tribunal reverse its decision and make a finding that the parties reached a binding settlement.

[4] The respondent opposed the applicant's reconsideration request and argued that the panel's decision is correct, and that the applicant is attempting to relitigate the same position that was already considered by the Tribunal.

RESULT

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

ANALYSIS

[6] Under Rule 18.2, the threshold for reconsideration is high. Reconsideration is a limited, error-correcting exercise, not a new hearing or an appeal of a hearing decision. The party requesting reconsideration must demonstrate how the Tribunal's decision falls into one or more of the criteria set out in Rule 18.2. I will now address my findings regarding the applicant's allegations in turn.

The Tribunal did not act outside of its jurisdiction or commit a material breach of procedural fairness in rendering its decision.

Jurisdiction

[7] The applicant submits that the panel acted outside of its jurisdiction in its decision in finding that the Tribunal's authority is limited to a determination of whether the parties entered into a legally binding settlement in order to resolve disputes from these settlements. The applicant submits that authority is not explicitly set out in the plain language of the *Schedule*, the *Insurance Act,* or the *Licence Appeal Tribunal Act*. The applicant argues that the panel was required to determine the terms of the agreement prior to deciding whether the parties agreed to it.

[8] I find the panel did not act outside of its jurisdiction in its determination of this issue. I find that the panel properly exercised its jurisdiction in determining that the parties did not enter a binding settlement because the parties did not reach an agreement on all of the essential terms of settlement. In paragraphs [17] to [27] the panel provided detailed reasons to explain why. In paragraph [20] of the decision the panel outlined what the parties agreed to and in paragraph [21] explained why the negotiations fell apart. Of significance, the panel determined that the evidence did not support that the parties agreed to the language of the mutually agreeable release which was an essential term of settlement.

Breach of Procedural Fairness

[9] The applicant submits that the panel breached procedural fairness by accepting the respondent's submissions, (not evidence) in paragraphs [18], [21], [22] and [24] of our decision. The applicant asserts that the respondent did not submit any evidence regarding the state of mind of the respondent we considered when assessing whether the parties had reached a binding settlement.

[10] I find the applicant's characterization that the panel did not have any evidence from the respondent in this hearing inaccurate. Both parties relied on various chains of email correspondence (which for the most part was the same) which was entered as exhibits at the hearing during both the in-chief and cross-examination of the witness. For example, the respondent relied on various email exchanges from pages 250, 387, 388, 389 and 587 of its document brief which was marked as Exhibit 2. Consequently, I find the applicant's allegation that the panel breached the rules of procedural fairness in considering this evidence to be unfounded.

No Errors of Fact and Law

[11] The applicant argues that the panel made numerous errors of fact and law in our decision by not properly interpreting Regulation 664; by failing to consider the case law relied upon by the applicant as a whole; by misapplying the legal test to be met for settlement to the facts of this case; and by misapprehending our duty to identify objective terms of settlement versus unusual terms of a release dictated by the insurer.

[12] The respondent submits that the panel's decision is correct and that we did not make any errors of fact and or law in our interpretation of the Regulation 664. Further, the panel properly applied the legal test for a binding settlement in rendering our decision. It submits that the applicant simply disagrees with the panel's decision and is relitigating the same position relied upon at the hearing.

[13] I find that the panel did not misinterpret Regulation 664 in its finding that s. 9.1(3) requires the parties to sign a settlement disclosure notice ("SDN") and release in coming to a resolution of an accident benefit claim. I find the applicant's argument in her reconsideration submissions that only the applicant is required to sign an SDN is not supported by the language in the regulation. Further, I disagree with the applicant that the panel erred in law by not following binding precedent set out in *Haider v. Rizvi ("Haider")*, 2023 ONCA 354 (CanLII). In paragraph [33] of our decision we explained why we did not find *Haider* helpful. For example, in *Haider* the parties executed minutes of settlement whereas in this case there were email exchanges back and forth negotiating the terms of settlement. I find the panel made no error in law by distinguishing *Haider* from the case before us.

[14] I also find that the applicant's submission that the panel erred in law by not considering the case law relied upon by her as a whole unsubstantiated. The panel discussed the case law relied upon by the applicant in paragraphs [32] to [34] of its decision and explained why the decisions relied upon were not helpful.

[15] Regarding the applicant's allegation that the panel did not properly apply the legal test to be met for settlement to the facts of this case, I find the panel set out the proper legal test in paragraph [14] of its decision. Further, in paragraphs [15] to [27] of its decision the panel set out detailed reasons based on the unique facts of the case and the evidence before us and explained why we did not find there to be a binding settlement. The applicant has not persuaded me that the panel erred in law or fact in our analysis. Further, the applicant alleges that the panel made a finding that she should somehow be compelled to sign a release against the tortfeasor which were terms she never agreed to. I find that at no

point in the panel's decision did the panel make this finding or suggestion, nor did the applicant file any evidence at the hearing to support her position on what the standard terms of a release are in an accident benefit claim for our consideration.

[16] Overall, I find that the applicant disagrees with the panel's decision and is asking that the Tribunal reconsider the same arguments that were already addressed in the decision. As highlighted above, this is not the purpose of a reconsideration request.

[17] Finally, in her submission's concluding paragraph the applicant accused me of bias based on a statistic in a report commissioned by the Ontario Trial Lawyers Association ("OTLA"). She also alleged that I am part of a team of adjudicators assigned to deal with high conflict law firms such as Campisi LLP. As a result, the Tribunal as a whole has demonstrated a reasonable apprehension of bias against cases from her lawyer's firm.

[18] The test for a reasonable apprehension of bias was set out by the Supreme Court of Canada in *Committee for Justice & Liberty v. Canada (National Energy Board)* where it defined that a "reasonable apprehension of bias exists if whether an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly." The threshold for a finding of bias of real or perceived bias is high, and there must be more than mere suspicion. Rather cogent evidence is needed. Further, the cumulative effect of all of the adjudicator's conduct, comments and interventions.

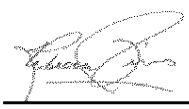
[19] I find that the applicant has not proven that I exhibited a reasonable apprehension of bias in my conduct throughout the hearing or in writing the decision. The applicant never raised the issue of bias at the hearing, nor did she make any allegations about my conduct or comments throughout the course of the hearing in support of same. Consequently, I find it inappropriate for the applicant to accuse me of bias after the fact. Further, the statistics highlighted in the aforementioned OTLA report do not give any insight into the context of any of the past decisions rendered by me to support that I am biased against applicants. I find the applicant simply disagrees with the panel's decision which was not in her favour which does not establish that there was a reasonable apprehension of bias. Further, her submissions did not address the legal test set out above, nor was any evidence relied upon to support her position that I am part of high conflict team of adjudicators assigned to deal with her law firm. I conclude that

the applicant has not established that I exhibited a reasonable apprehension of bias in adjudicating this matter fairly.

[20] For the above-noted reasons, the applicant has not persuaded me that the panel made any error of law or fact such that it would have reached a different result had the error not been made.

CONCLUSION

[21] For the reasons noted above, I dismiss the applicant's request for reconsideration.



Rebecca Hines
Adjudicator
Tribunals Ontario - Licence Appeal Tribunal

Released: February 26, 2025