

Tribunals Ontario
Safety, Licensing Appeals and
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RECONSIDERATION DECISION

Before: Terry Hunter, Vice Chair

Date: March 25, 2019

File: 18-005492/AABS

Case Name: P. L. v. Aviva Insurance Canada

Written Submissions by:

For the Applicant: Philip Kai Kwong Yeung, Counsel

For the Respondent: Matthew Owen, Counsel

OVERVIEW

- [1] This Request for Reconsideration arises from an October 30, 2018 order of the Licence Appeal Tribunal (the Tribunal). The order sets out the parties' disclosure obligations in advance of the hearing. The applicant, P. L., takes issue with the order.
- [2] The applicant makes two main submissions. First, he takes issue with the disclosure he was ordered to produce, namely bank records from July 31, 2016 to date. Secondly, he submits that the adjudicator declined to order that the respondent, Aviva Insurance, produce the adjuster's log notes. He requests I amend the orders, reversing the order denying the production of the adjuster's log notes and varying / cancelling the order to produce the applicant's bank records.
- [3] Pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act*, 2009, S.O. 2009, c. 33, Sched. 5, I have been delegated responsibility to decide this matter in accordance with the applicable rules of the Tribunal.

RESULT

- [4] For the reasons that follow the applicant's Request for Reconsideration is dismissed.

ANALYSIS

- [5] As a preliminary matter, Aviva submits the Tribunal lacks jurisdiction to determine this reconsideration for two reasons. First the request for reconsideration was submitted after the 21 day time limit set out in Rule 18.1 and secondly, the request fails to specify the applicable criteria under Rule 18.2.
- [6] The late filing and the failure to specify criteria for the request are not jurisdictional issues. The Tribunal has discretion under Rule 3.1 to vary its rules to ensure "efficient, proportional, and timely resolution of the merits of the proceeding before the Tribunal." A delay of 8 days causes negligible, if any prejudice to Aviva in the circumstances. The failure to specify criteria for the request has not impaired Aviva's capacity to respond to this request.

Bank Records

- [7] One of the issues in dispute is income replacement benefits. The adjudicator's reasons for ordering the production of the bank records was based on what he characterized as concerns by the respondent about pre-accident and post-accident pay documentation. The applicant submits the scope of the production is an invasion of privacy and not warranted. These submissions were made to the case conference adjudicator. The reconsideration process is not a second opportunity to make submissions on the appropriate scope of disclosure.

- [8] Concerns about the relevance of the banking records are best left to the hearing adjudicator.
- [9] Reconsideration is only warranted where an adjudicator has either made a significant legal or evidentiary mistake preventing a just outcome. The decision on the production of bank records does not warrant a review under Rule 18.

Adjuster's Log Notes

- [10] The adjudicator hearing the submissions of the parties found the applicant failed to establish a nexus between the log notes and the substantive issues. The adjudicator notes that there is no award claim and the applicant did not persuade him that they would add any probative value. This is a finding that he is entitled to make. The applicant has not demonstrated the failure to order production of the log notes will result in an unfair result in the determination of the substantive issue. I dismiss the request for reconsideration on this basis.

CONCLUSION

- [11] For the reasons noted above, I dismiss the applicant's Request for Reconsideration.

Terry Hunter
Vice Chair
Tribunals Ontario – Safety, Licensing Appeals and Standards Division

Released: March 25, 2019