

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

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**RECONSIDERATION DECISION**

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**Before:** Derek Grant

**Date of Order:** 11/12/2020

**Tribunal File Number:** 19-003389/AABS

**Case Name:** JT vs. TD General Insurance Company

**Written Submissions by:**

**For the Applicant:** Angela James, Counsel

**For the Respondent:** Paul Irish, Counsel

## OVERVIEW

- [1] J.T.'s request for reconsideration, filed on August 14, 2020, arises from the Tribunal's July 23, 2020 decision ("the decision"). The decision determined that J.T. is not entitled to interest, an award or costs related to an approved treatment plan.
- [2] Both J.T. and TD filed submissions.
- [3] Pursuant to Rule 18 of the Tribunal's *Common Rules of Practice and Procedure*, I have been delegated responsibility to reconsider this matter.

## RESULT

- [4] For the reasons to follow, J.T.'s request for reconsideration is denied.

## BACKGROUND

- [5] J.T. sustained injuries in an accident on July 27, 2013 (the "accident"). He claimed entitlement to a medical benefit under the Schedule. When that benefit was denied by TD, J.T. submitted an appeal to the Tribunal. TD subsequently approved the benefit. In his initial submissions, J.T. added the issues of entitlement to an award and costs. I concluded that J.T. was not entitled interest, an award or costs; J.T.'s claim was dismissed. J.T. seeks reconsideration of that Decision.

## ANALYSIS

- [6] The grounds upon which a Request for Reconsideration can be granted are set out in Rule 18.2 of the Tribunal's *Common Rules of Practice and Procedure* (the "Tribunal Rules").<sup>1</sup> The ground that J.T. submits applies in this case is Rule 18.2 (b), which states:
  - (a) 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.
- [7] Specifically, J.T. submits that I made errors of law or fact in that:
  - (i) I erred in law in my interpretation of s. 33 of the Schedule;

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<sup>1</sup> *Licence Appeal Tribunal, Animal Care Review Board and Fire Safety Commission Common Rules of Practice and Procedure*, October 2, 2017, as amended.

- (ii) I made an error in law by assessing the reasonableness of TD's conduct with considering that J.T. suffered from chronic pain; and
- (iii) I failed to consider s. 51 of the Schedule and award interest. Tying interest to the determination of whether or not there was an award or costs order made amount to an error in law.

[8] I am not persuaded by J.T.'s submissions that I made an error of fact or that there was a lack of procedural fairness regarding the disputed OCF-18s. I find that I considered the evidence put before me and based on a review of the evidence, correctly determined that J.T. was not entitled to interest, costs or an award.

## **DISCUSSION AND REASONS**

[9] I find that the Tribunal did not make a significant error of law or fact such that the Tribunal likely would have reached a different decision if it had not made the error.

### **Error of Law**

#### *Section 33 interpretation*

- [10] In this case, J.T.'s main argument is that "the decision resulted from a failure to consider the remedial/consumer protection nature of the legislation". J.T. further submits that the "failure to consider the remedial/consumer protection nature of the legislation amounts to an error of law".
- [11] J.T. submits that "while s. 33 of the Schedule is silent about costs by an insured, the provision addressing examination under oaths is specific in stating that the cost of legal representation for an insured is the insured's responsibility". J.T.'s position is that because this responsibility is made explicit, "suggests that the other out of pocket costs do rest with the insurer".
- [12] TD submits that J.T.'s submissions regarding expenses as a result of s. 33 requests are "irrelevant to the request for reconsideration and do not show how the Tribunal made an error of law or fact....".
- [13] I agree with TD. At paragraph 12 of the decision, I specifically state, "There is no evidence of an agreement between J.T. and TD that TD would reimburse J.T. for documents produced. In addition, s. 33 does not require an insurer to compensate an insured for producing information reasonably required to assist the insurer in determining entitlement to a benefit".

[14] Despite his claim, there is no basis for J.T.'s interpretation of s. 33. Further, J.T. provides no evidence or argument of how the interpretation of s. 33 in the decision amounts to an error of law. Further still, J.T. fails to establish how this alleged error would have caused the Tribunal to have reached a different decision.

#### *Chronic pain*

[15] J.T. submits that I did not consider that TD was aware J.T. "suffered from chronic pain and complex regional pain syndrome" prior to the submission of the OCF-18. J.T.'s position is that I failed to assess at which point the medical information was sufficient enough that TD should have approved the OCF-18. J.T. argues that I failed to review the medical evidence provided that supported the reasonableness of the treatment, which amounts to an error of law.

[16] TD submits that the decision identified the relevant information TD had in its possession at the time the OCF-18 was denied - specifically, the CBI Health Centre Discharge Report dated January 10, 2018, which is over a year before the OCF-18 was submitted. The report indicated that facility-based physiotherapy was no longer necessary as J.T. had plateaued with regard to his pain and range of movement.

[17] Further, at paragraph 8, I detailed a timeline of events leading up to the approval of the OCF-18. At paragraph 13, I stated, "based on the evidence, it is not until March 5, & 12, 2020 that J.T. provided TD with updated medical evidence that TD determined was sufficient to approve the dispute treatment plan." Subsequent to receiving the update medical evidence, TD approved the OCF-18.

[18] It is common understanding that the onus is on the insured to establish entitlement to treatment. This onus includes providing "any information reasonably required to assist the insurer in determining an insured's entitlement to a benefit". J.T. has not pointed me to any evidence that was not considered. J.T. has failed to persuade me that the alleged lack of consideration of his chronic pain and complex regional pain syndrome should be given more weight than the Discharge Report from CBI Health (as an example). In addition, J.T. has failed to show how the decision would be varied had this alleged error of law not been made. Lastly, the OCF-18 was approved, so any consideration of chronic pain was not necessary. The issues before me were interest, award and cost. There is no need for me to consider what role chronic pain plays with regards to the issues before me.

#### *Interest, Award and Costs*

- [19] J.T. claims that the decision failed to award interest. J.T.'s position is that pursuant to s. 51 of the Schedule, that an amount is overdue if the insurer does not pay the benefit within the time limit required. Despite this claim, J.T. provides no evidence that TD did not pay the benefit within the time limit prescribed in the Schedule. Without such evidence, no interest can be payable.
- [20] Under Rule 19 of the Tribunal *Rules*, where a party believes that another party has acted unreasonably, frivolously, vexatiously, or in bad faith within the proceeding (i.e. civility within the proceeding), that party may make a request to the Tribunal for costs. Costs are also discretionary, not mandatory. In the decision, I found that TD's actions did not demonstrate a lack of good faith or any other grounds that warranted an order for costs, and therefore I declined to order costs to J.T. There was also no basis for an award. In his request for reconsideration, J.T. has failed to show how an error of law or fact was made that likely would have led to a different decision made regarding interest, award or costs.

## SUMMARY

- [21] Both J.T. and TD acknowledge that the Tribunal is not required to expressly address every piece of evidence, case law or argument made by a party. The onus is on J.T. to establish that the Tribunal met the criteria he claims, as set out in Rule 18.2. J.T. has not met his onus.
- [22] The Tribunal made specific reference to the evidence of J.T. in the decision when weighing the evidence. I did not ignore evidence or facts but found certain evidence more persuasive over others, specifically, the timeline and medical evidence. I find no error of law or fact that likely would have resulted in a different decision.

## ORDER

- [23] J.T.'s request for reconsideration is denied.



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**Derek Grant**

Adjudicator

Tribunals Ontario- Safety, Licensing Appeals and Standards Division

**Released: November 12, 2020**