



Citation: Balakarnan v. Allstate Canada, 2022 ONLAT 19-011513/AABS - R

RECONSIDERATION DECISION

Before: Brian Norris

Licence Appeal Tribunal
File Number: 19-011513/AABS

Case Name: Kaneswary Balakarnan v. Allstate Canada

Written Submissions by:

For the Applicant: Davide V. Cortinovis, Counsel

For the Respondent: Evan Argentino, Counsel

OVERVIEW

- [1] This request for reconsideration was filed by the Applicant in this matter. It arises out of a decision in which I found that the Applicant sustained a minor injury as defined under the *Schedule*. As a result of that finding, I also found that the Applicant was not entitled to the two disputed treatment and assessment plans, nor interest.
- [2] The Applicant submits that I made an error of law or fact such that I would likely have reached a different decision had the error not been made. She seeks an order to reverse the decision on all issues in dispute.

RESULT

- [3] The Applicant's request for reconsideration is dismissed.

BACKGROUND

- [4] The Applicant was involved in an accident and claimed entitlement to accident benefits from the Respondent. The Respondent characterized the Applicant's injuries as a predominantly minor injury and subjected her to the Minor Injury Guideline ("MIG"). The Applicant disputed the characterization of her injuries, as well as entitlement to two treatment and assessment plans and interest, and the issues were sent to a hearing. I agreed with the Respondent's characterization of the Applicant's injuries and found that she sustained a predominantly minor injury. Having reviewed the parties' submissions and evidence, I determined that her pre-existing right upper extremity pain was not caused or exacerbated by the subject accident.
- [5] The Applicant seeks a reversal of my decision on all issues. From this submission I infer that she seeks a finding that her injuries are not subject to the MIG and that she is entitled to the disputed treatment and assessment plans. She submits a report from her treating orthopedic surgeon to rebut the findings in my decision.

ANALYSIS

- [6] The grounds for a request for reconsideration to be allowed are contained in Rule 18 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version 1 (October 2, 2017)* as amended ("Rules"). Pursuant to Rule 18.2 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 violated the rules 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;
- c) The Tribunal heard false evidence from a party or witness, which was discovered only after the hearing and likely affected the result; or
- d) 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.

- [7] Reconsideration is only warranted in cases where an adjudicator has made a significant legal or evidentiary mistake preventing a just outcome, where false evidence has been admitted, or where genuinely new and undiscoverable evidence comes to light after a hearing.
- [8] As previously noted, the ground that the Applicant argues applies to this case is that I made an error of law or fact such that the Tribunal would have likely reached a different result had the error not been made.
- [9] More specifically, the Applicant submits that I incorrectly applied the test for causation and, with the benefit of a rebuttal report produced in response to my decision, should prefer her specialist's report and reverse my decision.
- [10] The Respondent submits that the Applicant is procedurally barred from seeking a reconsideration due to the timing of her request. It submits that the request for reconsideration was submitted on June 7, 2021, 38 days after the date of my decision and 17 days after the 21-day deadline prescribed by Rule 18.1.
- [11] The Respondent further submits that it would be highly prejudicial and procedurally unfair for the Tribunal to consider the rebuttal report which was generated after my decision.
- [12] To the Respondent, the request for reconsideration is without merit and an attempt by the Applicant to reargue her case. It further submits that, if the reconsideration is permitted to be heard on its merits, that no error of law or fact occurred such that the Tribunal would likely have reached a different result had the error not been made and that I correctly applied the test for causation. The Applicant chose not to reply to the Respondent's submissions.

- [13] I agree with the Respondent on all arguments. The request for reconsideration is denied.

Untimely Application for Reconsideration

- [14] Pursuant to Rule 18.1, a request for reconsideration must be made within 21 days of the decision. The Applicant's request for reconsideration was made June 7, 2021, about 17 days following the deadline to file a request for reconsideration.
- [15] The Applicant wrote to the Tribunal on May 28, 2021, after the expiry of the 21-day deadline under Rule 18.1, and advised that a request for reconsideration was forthcoming, pending the receipt of the aforementioned rebuttal report. She provides no reason why she never contacted the Tribunal prior to this email and within the 21-day deadline.
- [16] In my view, the Applicant's untimeliness, without any explanation provided before the 21-day deadline, is sufficient reason to deny a request for reconsideration. Nevertheless, the parties made arguments on other issues which I will address.

The Rebuttal Report Must be Omitted from the Request for Reconsideration

- [17] Considering the rebuttal report would be highly prejudicial and procedurally unfair. The Applicant's opportunity to present her evidence occurred during the initial hearing and should not occur during the request for reconsideration.
- [18] Permitting the rebuttal report would allow the Applicant to reargue her case and unnecessarily prolongs the dispute resolution process. This is contrary to the Tribunal's mandate to ensure an efficient process, pursuant to rule 3.1. A request for reconsideration is an opportunity to "right a wrong", it is not an opportunity to rebut or reargue a case.
- [19] Further, I am not satisfied that the rebuttal report could not have been obtained prior to the hearing. Pursuant to rule 18.2(d), a reconsideration may be considered if there was 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. I understand that the very nature of a rebuttal report is that it must occur after the opinion which it chooses to rebut. Yet the Applicant fails to consider that the report and opinion provided in it, could have been produced at any time prior to the initial hearing.

No Error of Fact or Law Occurred

- [20] The Applicant has not established that an error of fact or law occurred. Her submission that I incorrectly applied the causation test is a position that is not supported by any reasons. She fails to identify where the causation test is incorrectly applied, nor does she explain what the test is or how it should have been applied. She simply asserts it.
- [21] In any event, I find no error in determining that there was no compelling evidence to show that the Applicant's pre-existing right upper extremity pain was exacerbated by the accident. The Applicant bears the burden of proof to make her case. Thus, it was incumbent upon her to establish that her right upper extremity pain was caused by or exacerbated by the subject accident and it was within my prerogative to decide on the issue, based on the facts and evidence before me.

CONCLUSION

- [22] The Applicant's request for reconsideration is untimely and is an attempt to reargue her case based on a report made in response to my decision. It would be improper and procedurally unfair to permit the rebuttal report and a request for reconsideration in this situation. Furthermore, the Applicant has not demonstrated that an error of fact or law occurred that would result in a different decision had the error not occurred.
- [23] For these reasons I deny the Applicant's request for reconsideration.



Brian Norris
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: March 28, 2022