



Citation: **Sahadeo v. Pafco Insurance Company, 2023 ONLAT 19-006331/AABS - R**

---

## **RECONSIDERATION DECISION**

**Before:** Chloe Lester, Vice-Chair

**Licence Appeal Tribunal  
File Number:** 19-006331/AABS

**Case Name:** Richard Sahadeo v. Pafco Insurance Company

### **Written Submissions by:**

**For the Applicant:** Ashu Ismail, Counsel

**For the Respondent:** Jonathan Schrieder, Counsel

## **BACKGROUND**

- [1] This request for reconsideration was filed by the applicant. It arises out of the Tribunal's Decision dated June 28, 2022, in which I found the applicant was not catastrophically impaired.
- [2] The applicant submits that I failed to: 1) decide on the applicant's diagnosis, 2) mention the expert report of Dr. Hanick and, 3) account for the reports of pain as a factor in his psychological impairments. The applicant argues that these errors of fact and law affected my ultimate decision and, had it not been for these errors, I would have concluded that he is catastrophically impaired.
- [3] The respondent submits that I properly considered and weighed the evidence. In its view, the Decision does not contain an error of fact or law, rather the applicant is attempting to re-litigate the case. Conversely, the respondent seeks reconsideration of the Decision awarding costs against it for interfering with the proceedings.

## **RESULT**

- [4] The request for reconsideration is denied.

## **ANALYSIS**

- [5] The criteria for granting a reconsideration are contained in Rule 18.2 of the Tribunal's Common Rules of Practice and Procedure:
  - (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.
- [6] 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. Minor or inconsequential procedural or substantive mistakes are not enough to interfere with a decision made in the first instance.

- [7] The applicant appears to be relying on criterion 18.2(b) above. He submits that I made errors of fact and law and that had those errors not been made, the outcome of the Decision would have been different.

*Failure to decide on the applicant's diagnosis*

- [8] The applicant argues that I failed to decide on his diagnosis and that this amounts to an error of fact and law. I disagree. The Decision did not decide on the applicant's diagnosis, because the parties largely agreed on it. It was not in dispute at the hearing. Both parties acknowledged the applicant had a mental and pain disorder. The applicant's assessors diagnosed him with major depressive disorder and somatic pain disorder. The respondent's assessor diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood and a somatic pain disorder. Accordingly, it was not necessary to rule on the applicant's diagnosis since the level of psychological disorder is not determinative of the degree of impairment in an area of function. I find no error.

*Failure to mention the expert report of Dr. Hanick*

- [9] The applicant argues that the report of Dr. Hanick, psychiatrist, was not mentioned in the Decision and if I had considered it, I would have accepted the opinion that he suffers from a somatic pain disorder and that the applicant's impairments "markedly disrupt his lifestyle and...quite fully disable him at the workplace."
- [10] Dr. Hanick's report was not mentioned in my decision because other than diagnosing the applicant with a mental health disorder, it was not very persuasive. Dr. Hanick did not comment on how the psychological impairments affected the applicant's ability to adapt. Thus, while I considered Dr. Hanick's diagnosis of somatic pain disorder, it did not assist me in deciding the ultimate issue in dispute. I see no error in my treatment of Dr. Hanick's report.

*Failure to account for the reports of pain as a factor of his psychological impairments*

- [11] The applicant argues and demonstrates 6 paragraphs<sup>1</sup> in which I gave the impression that his report of pain was not considered in my analysis of whether he met a catastrophic designation. The applicant argues that since he was

---

<sup>1</sup> Paragraph 22, 23, 26, 27, 28, and 31 of the Decision

diagnosed with a pain disorder, reports of pain should be considered in accordance with the Ontario Court of Appeal decision of *Pastore v. Aviva*<sup>2</sup>. The applicant argues that correcting this error and factoring in the pain-related impairments would elevate his moderate rating to a marked rating in adaptation, thereby meeting the threshold for a catastrophic designation.

- [12] The respondent argues that I did include reports of pain in paragraph 28 of the Decision. It also argues that the Decision refers to the correct test for determining a catastrophic impairment in adaptation. Further, it submits that not every argument or piece of evidence needs to be addressed in the Decision.
- [13] I agree that my Decision may have left the applicant with the impression that his reports of pain were not fully considered in my analysis of whether he met a level of marked impairment in adaptation. So, I will reiterate my decision with a focus on the reports of pain and outline why I find the applicant does not meet the threshold for a catastrophic designation, and why my Decision remains unchanged.
- [14] I also wholly agree that in accordance with the decision in *Pastore v. Aviva*, reports of pain should be considered with respect to the applicant's impairments on account of his pain disorder. I find in this case, they were considered.<sup>3</sup>
- [15] The *Schedule* is clear that to obtain a catastrophic designation, the applicant must show that he meets a marked impairment in one of the 4 areas of function: activities of daily living, concentration, persistence and pace, social functioning and adaptation. It is not the psychiatric diagnosis that determines the level of impairment in any one of these areas. The AMA Guides, 4<sup>th</sup> edition explains what factors an examiner must consider when assessing the 4 areas of function. An assessment may include various methods of obtaining the information, including past medical records, interviews with the individual, collateral interviews, and tests.
- [16] In this case, the applicant argues that he meets a marked impairment in adaptation. I disagree.
- [17] The Guides define impairment in adaptation as the repeated failure to adapt to stressful circumstances, in the face of which "the individual may withdraw from the situation or experience exacerbation of signs and symptoms of a mental

---

<sup>2</sup> *Pastore v. Aviva Canada Inc.*, 2012 ONCA 642 (CanLii)

<sup>3</sup> Paragraph 28 of the Decision

disorder; that is, decompensate or have difficulty maintaining activities of daily living, continuing social relationships, and completing tasks.”

- [18] The applicant must demonstrate that he has repeatedly failed to adapt to stressful circumstances to meet the high bar of being markedly impaired.
- [19] Simply avoiding a situation is not necessarily a demonstration of a repeated failure to adapt to a stressful circumstance. Also, an inability to complete a task because of a psychological or pain disorder is not necessarily a demonstration that a person failed to adapt to a stressful situation.
- [20] To illustrate, a failure to return to work because of a mental or pain disorder does not automatically demonstrate that a person meets the definition of being markedly impaired in adaptation. When an individual is faced with difficulties in the workplace it could demonstrate an impairment in function under activities of daily living and/or adaptation.<sup>4</sup> The AMA Guides ask the assessor to provide examples of any decompensation at work which might involve stressors common to work environments including attendance, making decisions, scheduling, completing tasks, and interacting with supervisors and peers. We also know that based on the definition provided in the AMA Guides, the failures to adapt to stressful situations will also spill into other areas of function.
- [21] The applicant describes his pre-accident life as happy. He had a satisfying full-time job, was in a relationship, took care of his children, did chores around the house, socialized, played basketball with friends and enjoyed performing music.
- [22] After the accident, the applicant argues at the hearing that:
- a. His partner at the time of the accident left him because of the changes in him physically and emotionally. It also reduced his ability to participate in household chores.
  - b. He has bad days and on those bad days, he is depressed, does not eat, does not interact, and raises his voice.
  - c. He no longer participates in his musical hobby. He states that he cannot focus in the studio, he forgot his lyrics at one performance and walked off stage, he cut the Rastafest performance short because he was in pain, and ceased performing in 2018 and creating music videos in 2017.

---

<sup>4</sup> AMA Guides 4<sup>th</sup> edition – page 299

- d. He no longer could return to work because his job was overwhelming, call volume was hectic, he would sometimes cry in the bathroom, and would get irate with customers.

- [23] I find that the applicant's arguments on its face do not demonstrate a marked impairment in adaptation. As I found in the Decision, at most, the evidence demonstrates a moderate impairment.
- [24] The applicant had relationship difficulties stemming from his impairments from the accident, but on the other hand, he also began a new relationship with a woman with whom he had a child.<sup>5</sup>
- [25] The applicant claimed he has bad days, and, on those days, he is depressed and has difficulties with activities of daily living and social interactions. Yet, the evidence demonstrates that he does have good days and bad days. The applicant and his partner could not quantify or demonstrate how much these bad days affected him. Therefore, there was not enough evidence that it impaired the applicant to a marked level.<sup>6</sup>
- [26] The applicant testified that he had difficulties at work. However, when he was put through a series of occupational therapy tests, the evidence demonstrates that he could complete the tests, and for the most part, was able to regulate his emotions and cope. The very few instances where he had difficulties coping, or had heightened emotions, it did not affect his ability to complete the tasks. The report by Ms. Kara demonstrates that he might have rushed through some of the exercises and made errors, but in the end, the assessment and tests were considered complete. The same is true for the respondent's occupational therapy assessment. The applicant demonstrated good auditory recall, organizational skills, and had no difficulties with his memory. Both tests did not demonstrate an inability to adapt and even if they did, it was certainly not at a level to markedly impair him.<sup>7</sup>
- [27] Regarding his inability to work, the applicant testified that the reason he quit was that his employer stated that he had to return to full-time hours. The applicant claimed he attempted a few 8-hour shifts and could not keep up with the demands. He reports he tried looking for part-time jobs in his field, and that he is still looking for part-time work.<sup>8</sup> He testified that once he was irate with a

---

<sup>5</sup> Paragraph 29 License Appeal Tribunal Decision Sahadeo v. Pafco Insurance Company, 2022 ONLAT 19-006331/AABS (the "Decision")

<sup>6</sup> Paragraph 29 of the Decision

<sup>7</sup> Paragraph 21-25 of the Decision

<sup>8</sup> Reported to an assessor that he is looking for part-time work

customer and that he had gone to the bathroom to cry. Again, these one-off examples do not demonstrate a repeated failure to adapt in the face of stressful circumstances to a level of marked impairment in adaptation. The evidence demonstrates that he could work a part-time shift and at most was moderately impaired in his ability to work.<sup>9</sup>

[28] With regards to household chores and activities of daily living, the applicant reports in various assessments that he is independent with his self-care activities, he participates in light chores but avoids heavier chores. He no longer cooks, which was a shared responsibility and participates in some grocery shopping. He also testified that every day is a bad day, but that does not stop him from doing what he must do. He still gets up, takes a shower, and gets his son to school. He testified that he tries to make every day the best day but there are always thoughts in the back of his mind, like how he has no money, and that he is in constant discomfort. Even if the applicant demonstrates an inability to manage his activities of daily living because of his failure to adapt to stressful circumstances, at most it moderately impairs because the evidence demonstrates that he is still very functional.<sup>10</sup>

[29] With leisure pursuits and interpersonal relationships, the applicant denied feelings of stress or anxiety when in public settings. He testified that he would go to the mall after dropping off his son at daycare and he also took his son for walks. At the mall, he testified at one time he sold “grabba” tobacco, and he would sit with friends at the barber shop or at his friends’ clothing store. He reports that he no longer plays basketball or pursues his musical interests. The applicant claims that he no longer can go to any family function because it makes him stressed out. Again, I find that at most this demonstrates that the applicant is moderately impaired and still functional.

[30] The applicant points to the fact that Dr. Hanick opined that his psychological impairments “markedly disrupt his lifestyle and...quite fully disable him at the workplace.” This opinion suggests that overall, impairments disturb all areas of function. In accordance with the *Schedule*, the applicant must demonstrate a marked impairment specifically in one area of function - a much higher bar than what is suggested in Dr. Hanick’s report.

[31] To summarize the applicant is claiming I failed to take into consideration all mental and pain disorders affecting his ability to function in adaptation. Even if I

---

<sup>9</sup> Paragraph 26 of the Decision

<sup>10</sup> Paragraph 27 and 28 of the Decision

were to accept all the difficulties reported by the applicant as an inability to adapt to stressful circumstances, the evidence still demonstrates that he is quite functional and at most moderately impaired. The Decision provides additional reasons why I preferred the respondent's assessment over the applicants in this regard.<sup>11</sup> I find that even if I had made an error in how I considered the applicant's reports of pain in the Decision, having reviewed the evidence again through the lens of pain, it would not lead to a different result as required by Rule 18.2(b).

### *Respondent's Request for Reconsideration*

- [32] The respondent argues that in the Decision, I awarded costs against it for the alleged interference with the proceeding and it asks that the order for costs portion of the Decision be overturned. It argues that counsel for the respondent did not give any opinion about the validity of the summons to the witness, Avi Kaplan. When Mr. Kaplan did appear, the respondent argues that it did not lengthen the hearing and therefore costs should not have been awarded.
- [33] In reply, the applicant argues that the respondent should have brought its own application for reconsideration. Nonetheless, the applicant argues that the way the respondent dealt with the summons was inappropriate and there were other appropriate remedies available to it, like a motion to quash the summons.
- [34] I agree with the applicant that the respondent ought to have brought its own application for reconsideration on the costs order, however, I will exercise my discretion to consider the issue. The order for costs was made based on the testimony of the witnesses and the evidence presented at the hearing. There was evidence to suggest that even if counsel did not explicitly give "advice", his conversations dissuaded the witness from attending the hearing until there was a threat of contempt of court. My Decision made a finding that costs were warranted because of certain actions or inactions of counsel and because this lengthened the hearing by half a day. The respondent has not provided any compelling arguments with respect to where an error in the Decision lies. Therefore, the cost order stands.
- [35] For the reasons noted above, I find that the grounds for reconsideration under rule 18.2(b) have not been established.

## **CONCLUSION**

---

<sup>11</sup> Paragraph 31 of the Decision



[36] The request for reconsideration is denied.



---

Chloe Lester  
Vice-Chair  
Tribunals Ontario – Licence Appeal Tribunal

Released: January 13, 2022