



Citation: Del Castillo v. Economical Insurance Company, 2023 ONLAT 21-002660/AABS - R

RECONSIDERATION DECISION

Before: Monica Ciriello, Vice-Chair

**Licence Appeal Tribunal
File Number:** 21-002660/AABS

Case Name: Jaqueline Del Castillo v. Economical Insurance Company

Written Submissions by:

For the Applicant: Lyle Miller, Counsel

For the Respondent: Eric Grossman/Lauren Kolarek, Counsel

BACKGROUND

- [1] This request for reconsideration was filed by the Applicant in this matter.
- [2] It arises out of a decision dated March 3, 2023 (“decision”), in which I found that:
 - a. The applicant’s injuries are predominately minor and are therefore subject to treatment within the \$3500.00 limit of the Minor Injury Guideline (the “MIG”);
 - b. As the limit has been reached, the remaining treatment plans in dispute are not payable; and
 - c. The applicant is not entitled to interest.
- [3] In the request for reconsideration, the applicant argues that I failed to consider the section 25 Psychological Assessment Report (“Report”) of Dr. Judith Pilowsky, psychologist dated September 7, 2021, and had I considered it, I would have arrived at a different result in my decision.
- [4] The relief sought by the applicant is that my decision be varied:
 - a. To reflect the consideration of the Report;
 - b. To hold that the applicant’s injuries are deemed outside the MIG;
 - c. To hold that the applicant be entitled to the treatment plans in dispute; and
 - d. To hold that the applicant be entitled to interest on outstanding plans.
- [5] In the alternative the applicant requests a rehearing on all or part of the matter be ordered pursuant to Rule 18.4(b)(ii).
- [6] The respondent submits that there is no basis for granting the reconsideration, as the applicant’s submissions are based on mere conjecture, not fact or law, and do not satisfy the criteria for granting reconsideration under Rule 18.2.

RESULT

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

RECONSIDERATION CRITERIA

- [8] Rule 18.2 of the *Common Rules of Practice & Procedure of the Licence Appeal Tribunal, Animal Care Review, and Fire Safety Commission* (“Rules”) states that 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 it would likely have reached a different result had the error not been made;
 - c. The Tribunal heard false or misleading evidence from a party or witness, which was discovered only after the hearing and likely affected the result; or
 - d. There is new 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 have affected the result.
- [9] The applicant relies on Rule 18.2(b) arguing that I erred in law and fact in failing to consider the Report.
- [10] Rule 18.4 provides that the following remedies are available to the Tribunal on request for reconsideration:
- a. Dismiss the request;
 - b. Confirm, vary or cancel the decision or order; or
 - c. Order a rehearing on all or part of the matter.

ANALYSIS

Rule 18.2(b) – Error of Law or Fact

- [11] In order for the applicant to establish grounds for reconsideration, she must establish that there was an error of fact or law in the decision, and that the Tribunal would likely have reached a different result had the error not been made. I disagree with the applicant and find that I did not err in my decision, and even if there was an error, I do not find that the concerns raised by the applicant would have changed the result of my decision.

- [12] The applicant takes the position that because the Report was not explicitly referenced in my decision when discussing and comparing the evidence of the parties, the Report was not considered in any capacity. The applicant contends that I made a distinct and important error by failing to mention the Report.
- [13] I see no error in not specifically referring to each piece of evidence in my decision. It is well-established that administrative decision makers are not required to include every argument in their reasons or to make explicit findings on each element leading to their conclusion, provided that its path in rendering its decision is clear.
- [14] In this case, I clearly provided rationale for my findings. At paragraph 19 of my decision, I stated that the applicant relied on medical professionals *including*, Dr. Gabriel Vadasz and Dr. Valerie Mettle. This is an inclusive term.
- [15] I was persuaded by the November 21, 2019, section 44 IE Psychological Assessment Report by Dr. Marc Mandel, psychologist. In paragraph 24 of my decision, I noted that I awarded more weight to and was persuaded by the evidence of Dr. Mandel over those of Dr. Mettle as he had an opportunity to conduct an in-person psychological assessment of the applicant. At paragraphs 19 and 20, I reviewed the applicant's evidence, noting that the applicant's evidence included phone consultations with medical professionals. Although not explicitly referenced in the decision, the evidence included the Report by Dr. Pilowsky. Dr. Pilowsky's Report was completed via a telephone with the applicant. The Report did not persuade me that the applicant suffered a psychological impairment.
- [16] Assigning less or more weight or preferring certain evidence is not an error, it is an intrinsic function of the Tribunal. Throughout my decision I highlighted the evidence that I considered more relevant to the issue in dispute and assigned weight accordingly. As noted above, I am not required to refer to every piece of evidence, and just because the Report was not mentioned, does not mean it was not considered.
- [17] I agree with the applicant that my reasons may have been easier to follow if I referred to the Report. However, even if I had provided a detailed analysis comparing the respondent's psychological expert evidence to the applicant's psychological Report, it would not have changed my conclusion that the applicant's injuries are predominately minor and therefore, subject to the MIG. As provided in paragraphs 20, 21, 22, 23 and 24, the medical evidence suggests that even if the applicant may suffer from anxiety and depression, it is due to the COVID-19 pandemic and her job loss, not as a result of the accident.

[18] I stand by my finding that the applicant did not sustain a psychological impairment as a direct result of the accident, the applicant's injuries are minor, and the treatment plans are not payable.

[19] I see no error of law or fact in my decision. As a result, I find the applicant has not established grounds for reconsideration pursuant to Rule 18.2(b).

CONCLUSION

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



Monica Ciriello

Vice-Chair

Tribunals Ontario – Licence Appeal Tribunal

Released: July 28, 2023