Citation: Wardere v. Certas Home and Auto Insurance Company, 2023 ONLAT 22-003479/AABS-R

RECONSIDERATION DECISION

Before:	**Brian Norris**
Licence Appeal Tribunal File Number:	**22-003479/AABS**
Case Name:	**Omer Wardere v. Certas Home and Auto Insurance Company**

Written Submissions by:

For the Applicant:	Nidhi Vinayak, Counsel
For the Respondent:	Jonathan Schrieder, Counsel

OVERVIEW

[1] This request for reconsideration was filed by Omer Wardere ("the Applicant"). It arises out of a decision dated August 16, 2023 in which I found that he materially misrepresented his involvement in a motor vehicle accident on January 13, 2021. I also concluded that Certas Home and Auto Insurance Company ("the Respondent") was entitled to a repayment of benefits in the amount of $6,012.65, plus interest pursuant to section 52(5) of the *Schedule*.

[2] The Applicant seeks an Order reversing the initial decision in its entirety and a finding in his favour on all issues in dispute. In the Alternative, he seeks a variance in the decision, cancelling the order to repay benefits.

RESULT

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

ANALYSIS

[4] The grounds for a request for reconsideration are found in Rule 18.2 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version I, (October 2, 2017)* as amended ("Rules"). To grant a request for reconsideration, the Tribunal must be satisfied that 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.

[5] 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.

[6] The Applicant advances his request pursuant to grounds a) and b).

[7] Specifically, the Applicant submits that I failed to consider the Motor Vehicle Accident Report and the Police File, and failed to consider his serious psychological issues when analyzing whether he committed an act of willful misrepresentation.

[8] The Applicant further submits that I erred in law by including the repayment notice in evidence and failing to consider whether it was compliant with section 52 of the *Schedule*.

[9] Lastly, the Applicant submits that I violated the rules of procedural fairness by relying on the statements of witness WN, which he submits were inconsistent and should have been discounted because he testified via telephone and used personal notes which were never disclosed to either party at the hearing.

[10] The Respondent disagrees and submits that the Applicant is attempting to inappropriately reargue issues addressed in the hearing. It further submits that all evidence was reviewed when determining that the Applicant willfully misrepresented his involvement in the accident. It submits that the weighing of evidence is the role of the adjudicator and does not represent an error of law of fact which would likely have reached a different result had the error not been made.

[11] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.

All evidence was considered at the hearing

[12] Applicant submits that I failed to consider the Motor Vehicle Accident Report and the Police File, and failed to consider his serious psychological issues when analyzing whether he committed an act of willful misrepresentation.

[13] I find no error of law with my weighing of the evidence and I considered all evidence when rendering my decision. It appears that the Applicant is attempting to relitigate issues addressed at the hearing. The motor vehicle accident report and the police file were clearly noted in the decision at paragraphs [17] and [18]. The weighing of evidence is the role of the adjudicator, and an adjudicator is not required to refer to every piece of evidence when issuing a decision. As such, I

see no error of fact or law occurred such that a different result would have occurred had the error not been made.

[14] Similarly, I find no error of law in my analysis of whether the Applicant committed an act of willful misrepresentation and that the Applicant is attempting to relitigate issues addressed in the hearing. Paragraph [47] of the decision notes that the Applicant argued that his misrepresentations can be attributed to his psychological impairments but concludes that he presented no evidence to support his claims, which remains the case to-date. At reconsideration, the Applicant directs me to various medical documents in which he was diagnosed with psychological and psychiatric disorders and was taking prescription medication before and after the accident to deal with those disorders. However, the Applicant remains unable to direct me to any medical opinion which suggests that he is unable to tell the truth or accurately recall events as a result of those disorders.

[15] The onus lies with the Applicant to provide evidence to support his submissions. Indeed, many people who come before the Tribunal suffer from psychological injuries, yet they are able to accurately recall events and tell the truth. Having failed to produce medical evidence indicating he is unable to tell the truth or is an inaccurate historian, he has failed to support his argument and meet his burden. Accordingly, I find no error of law or fact occurred when considering whether the Applicant's misrepresentations were willful.

The repayment notice complied with the Schedule and is relevant to the dispute

[16] The Applicant submits that the notice of repayment was not in compliance with section 52(2) of the *Schedule*. He submits that the notice requires more accuracy and fails to specify the type of benefits to be repaid, the payment period for which repayment was sought, and the amount of repayment. The Respondent submits that the notice was compliant with the *Schedule* and that this is an attempt to relitigate the issue.

[17] I agree with the Respondent and find no violation of procedural fairness in my analysis of the repayment notice or in including it in evidence.

[18] The Applicant's arguments regarding the accuracy of the notice are an attempt to raise a new issue at the reconsideration stage. As stated in paragraph [45] of the decision, the Applicant never contested the validity of the notice or the Respondent's request for repayment, despite it being at issue for the hearing. It is settled law that a party to a proceeding must put their best foot forward at first instance and the reconsideration process is not the time to raise arguments that

could have reasonably been anticipated at the initial hearing. In addition, I provided a full analysis of the notice in paragraphs [43] and [44] and the Applicant has not provided any reasons why my analysis is incorrect.

[19] Indeed, the notice letter was entered as an exhibit following the conclusion of the oral hearing, but I find no violation of procedural fairness in doing so. While deliberating on the evidence, I requested that the parties produce a document that I felt may be the notice of repayment and was required to render my decision. In response, the Applicant objected to the inclusion of said document because it was not included in the Respondent's document brief. In response to that, the Respondent advised that it believed I was looking for a different document and, correctly, directed me to the proper notice, which was included in its document brief. The Applicant never objected to the inclusion of the document that was contained in the Respondent's document brief and never sought leave to make submissions on its inclusion. I included the document in evidence because it was relevant to the dispute and was required to render my decision.

[20] I find no error of law in including the document. The notice is relevant to the issue of repayment. The Applicant knew of the notice well before the production deadline and the hearing, so it was no surprise to him to include it in evidence. Further, the Applicant never raised issues with the sufficiency of the Respondent's notice at any time during the hearing. The sufficiency of a notice is always at issue at a hearing and having never addressed it at the hearing, it is reasonable to conclude that the Applicant did not contest the content of the notice and it would be unnecessary to seek submission on the issue after the hearing.

[21] Nevertheless, best practice provides that I ought to have noted in the decision that I sought the notice from the parties following closing submissions. However, failing to note this in my decision is not an error of law such that a different result would have been reached had the error not occur. Likewise, including a relevant document in the hearing evidence following the hearing is not an error of law that would likely have led to a different result had the error not been made.

No violation of procedural fairness in preferring WN's account of the accident

[22] I find that no violation of procedural fairness occurred and that the Applicant is attempting to relitigate issues addressed at the hearing.

[23] The Applicant submits that it was an error to rely on witness WN and characterizes this as a violation of procedural fairness because, I infer, the notes that he relied on during his testimony were not produced for either party at the

hearing. The Respondent contends that this is an attempt to relitigate the case and does not demonstrate a violation of procedural fairness. I agree with the Respondent.

[24] At paragraph [35] I addressed the issue of WN's notes and found that they did not need to be produced because WN was available for, and subject to, cross examination. The Applicant has provided no reason or authority explaining how or why this decision is a violation of procedural fairness. Accordingly, I see no violation of procedural fairness occurred.

[25] Further, I find that the Applicant is attempting to relitigate an issue that was addressed at the hearing. The Applicant argues that relying on WN's testimony was an error of law because it was inconsistent with the other evidence. I addressed WN's credibility at paragraph [36] of the decision and found that nothing in WN's testimony was proven to be inaccurate in cross-examination.

[26] The weighing of evidence, including testimony, is the role of the adjudicator and it is not an error of law to prefer the testimony of one witness over the other. Accordingly, I dismiss the Applicant's request on this ground.

CONCLUSION & ORDER

[27] For the reasons above, I find no violation of procedural fairness and no error of law or fact occurred such that the Tribunal would likely have reached a different result had the error not been made.

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

Brian Norris
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: November 15, 2023