



**Citation: Lubin v. Allstate Insurance Company of Canada, 2024 ONLAT 23-002619/AABS-R**

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## **RECONSIDERATION DECISION**

<b>Before:</b>	<b>Ulana Pahuta</b>
<b>Licence Appeal Tribunal File Number:</b>	<b>23-002619/AABS</b>
<b>Case Name:</b>	<b>Eloisia Lubin v. Allstate Insurance Company of Canada</b>
<b>Written Submissions by:</b>	
<b>For the Applicant:</b>	Jordan Palmer, Counsel
<b>For the Respondent:</b>	Lauren Kolarek, Counsel

## OVERVIEW

- [1] On December 27, 2023 the applicant requested reconsideration of the Tribunal's preliminary issue decision dated December 7, 2023 ("decision").
- [2] In that decision, I determined that the applicant was barred from proceeding with her application for income replacement benefits ("IRBs"), interest, and an award, due to her failure to submit an Election of Benefits form ("OCF-10").
- [3] The grounds for a request for reconsideration are found in Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* ("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 committed a material breach 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; or
  - c) 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.
- [4] The applicant is seeking reconsideration pursuant to Rule 18(b). She submits that in my decision I erred in law such that I would have reached a different result if the errors had not been made.
- [5] The applicant requests that the decision be reversed, varied or vacated, and that she be permitted to proceed with her application. The respondent disagrees and requests that the reconsideration request be dismissed.

## RESULT

- [6] The applicant's request for reconsideration is dismissed.

## ANALYSIS

- [7] 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.

### **Errors of Law – Rule 18.2(b)**

- [8] I find that the applicant has not established grounds for reconsideration under Rule 18.2(b).
  
- [9] The applicant submits that I erred in law by finding that she was required to provide an OCF-10 election. She submits that it was clear that she only satisfied the criteria for an IRB and as such, an OCF-10 was not required. The applicant further argues that I misread s. 35(1) of the *Schedule* and improperly relied on the non-binding Tribunal decisions cited by the respondent in its initial hearing submissions.
  
- [10] The applicant's argument is that pursuant to s. 35(1), an OCF-10 election can only be required by an insurer if an "application indicates that the applicant may apply for two or more" specified benefits. She submits that I erred in paragraph 13 of my decision, where I considered the applicant's Disability Certificate ("OCF-3") in finding that the applicant could have qualified for either a non-earner benefit ("NEB") or an IRB and as such the respondent was warranted in requesting an OCF-10. The applicant argues that pursuant to s. 35(1) of the *Schedule*, only the "application" or OCF-1 should be considered.
  
- [11] I do not find that I erred in law in my analysis of the OCF-10 election issue. Firstly, I do not agree with the applicant that her OCF-1 clearly stated that she only qualified for IRBs. As noted in paragraph 5 of my decision, the OCF-1 stated in Part 5 that the applicant was employed and working at the time of the accident. However, in Part 3 of the OCF-1, the applicant also indicated that she was unable to return to her normal activities following the accident. These statements indicated that the applicant may qualify for either an IRB or an NEB as specified in s. 35(1) of the *Schedule*.
  
- [12] As stated in paragraph 6 of my decision, the applicant subsequently provided an OCF-3 similarly indicating both that she was substantially unable to complete the tasks of her employment and that she suffered a complete inability to carry on a normal life. Although in her reconsideration submissions the applicant appears to be arguing that only the OCF-1 should be considered when determining whether an OCF-10 election is required, in her initial submissions for the preliminary issue hearing, the applicant also included the OCF-3 in her analysis. At paragraph 16 of her initial hearing submissions, the applicant states "*The OCF-3 must be part of the application, since the OCF-3 grounds the inquiry as to whether an OCF-10 is appropriate.*"

- [13] As such, I do not find that the applicant has established that I erred in law in my consideration of the OCF-1 and OCF-3.
- [14] In her reconsideration submissions, the applicant further raises an argument that she made in first instance. Namely, that the fact that she was employed at the time of the accident, and as such eligible for IRBs, automatically ensures that she did not qualify for NEBs. As such, the applicant submits that no OCF-10 was required.
- [15] I agree with the respondent that the applicant is re-litigating arguments already made in her initial hearing submissions. In paragraph 14 of my decision I reference the applicant's argument and cite the respondent's caselaw that I found persuasive on the issue. The fact that the applicant does not agree with my analysis or decision is not grounds for reconsideration. The reconsideration process is not meant to be a reweighing of the evidence presented at first instance. I find that the applicant's reconsideration submissions on this point are an attempt to reargue her case.
- [16] I further do not agree with the applicant that I "ignored" the plain wording of the *Schedule* and followed non-binding decisions. In coming to my decision, I reviewed and considered both the relevant legislation, and the caselaw submitted by the parties. I find no error in law in my analysis of the *Schedule*.

## CONCLUSION & ORDER

- [17] The applicant's request for reconsideration is dismissed.

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Ulana Pahuta  
Adjudicator  
Tribunals Ontario – Licence Appeal Tribunal

Released: February 22, 2024