



Citation: Zvonkin v. Aviva General Insurance Company, 2026 ONLAT 24-012876/AABS

Licence Appeal Tribunal File Number: 24-012876/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Leonid Zvonkin

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

VICE-CHAIR: Brian Norris

APPEARANCES:

For the Applicant: Kateryna Vlada, Counsel

For the Respondent: Suzanne Clarke, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Leonid Zvonkin (“the Applicant”) was involved in an automobile accident on September 27, 2016, and sought benefits from Aviva General Insurance Company (“the Respondent”) pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The Applicant was denied a catastrophic impairment designation by the Respondent and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The issue in dispute is:
- i. Has the Applicant sustained a catastrophic impairment as defined by the *Schedule*?

RESULT

- [3] The Applicant has not sustained a catastrophic impairment as a result of the accident.

BACKGROUND

- [4] The Applicant was the driver of a vehicle which was struck from behind while stopped at a traffic light. Police and paramedics attended at the scene of the accident and the Applicant’s partner was taken to the hospital. The Applicant did not seek any medical attention at the scene of the accident or later that day.
- [5] The Applicant reports that he developed pain in his right shoulder, right arm, and low back, as well as headaches and tinnitus. The Applicant submits that he visited a walk-in clinic at some time following the accident because his family physician was on vacation. He reports that the doctor at the walk-in clinic referred him for rehabilitation treatment and recommended over-the-counter pain medication. To the Applicant, his injuries have evolved into chronic and disabling conditions that profoundly affect his daily functioning and quality of life.
- [6] The Applicant submits that since the accident he has developed serious and enduring psychological impairments. He claims that his mental and behavioural impairments have become catastrophic, entitling him to enhanced benefits from the Respondent. To the Respondent, the Applicant has not suffered from a catastrophic impairment as a result of the accident.

ANALYSIS

- [7] For the following reasons, I find that the Applicant has not sustained a catastrophic impairment as a result of the accident.
- [8] The onus lies with the Applicant to demonstrate that he sustained a catastrophic impairment under criterion (f) of the *Schedule* as a result of the accident. The Applicant must demonstrate that he sustained an impairment in accordance with the *American Medical Association Guides to the Evaluation of Permanent Impairment* (“the *AMA Guides*”), that results in a class 4, or “marked” impairment, in three of the four areas of function due to a mental or behavioural disorder.
- [9] The impairment rankings in the *AMA Guides* are as follows:

Class 1: No Impairment	Class 2: Mild Impairment	Class 3: Moderate Impairment	Class 4: Marked Impairment	Class 5: Extreme Impairment
No impairment is noted	Impairment levels are compatible with <i>most</i> useful functioning	Impairment levels are compatible with <i>some</i> , but not all, useful functioning	Impairment levels <i>significantly impede</i> useful functioning	Impairment levels <i>preclude</i> useful functioning

- [10] According to the *AMA Guides*, a person with a marked impairment in a single domain would not completely preclude functioning, but more than one might limit useful functioning. More so, the *AMA Guides* state that a marked limitation in one or more spheres would be likely to preclude performing complex tasks without special support or assistance, such as that provided in a sheltered environment.
- [11] The Applicant relies on the report by Dr. A. Herschorn, family physician, dated February 23, 2023. Dr. Herschorn did not assess the Applicant but adopted the opinion of occupational therapist (“OT”) M. Lindgren, set out in the report dated July 21, 2022, and agreed that the Applicant sustained a marked impairment in the domains of social functioning; concentration, persistence and pace; and adaptation to work or work-like situations. OT Lindgren assessed the Applicant’s

function inside and outside of his residence over two days and provided impairment rankings for the Applicant pursuant to the four spheres of function. Registered social worker V. Tolmatshov, supervised by F. Touyeh, psychologist, also assessed the Applicant and in a report dated December 29, 2022, opined that the ratings provided by OT Lindgren were consistent with their findings.

- [12] Of the opinions relied upon by the Applicant, Dr. Herschorn is the only health care professional that is permitted by the *Schedule* to find that the Applicant sustained a catastrophic impairment. Pursuant to section 45(2)(1) of the *Schedule*, an assessment or examination in connection with a determination of catastrophic impairment shall be conducted only by a physician, but the physician may be assisted by such other regulated health professionals as they may reasonably require. While OT Lindgren and social worker Tolmatshov prepared catastrophic impairment assessment reports and provided opinions on the Applicant's impairments, neither of them are physicians and thus, are limited to assisting Dr. Herschorn.
- [13] The Applicant also highlights that the report dated November 16, 2016, by Dr. J. Moss, psychiatrist, diagnosed him with Panic Disorder and Bereavement. The Applicant further highlights the report dated April 25, 2017, by certified psychological associate V. Kleiman, which includes a diagnosis of Panic Disorder, Agoraphobia, and Adjustment Disorder with Depressed Mood, as a result of the subject accident. The Applicant also submits that his psychological state continued to decline, as depicted in the report of Dr. F. Yaroshevsky, psychiatrist, dated June 16, 2017, which included a provisional diagnosis of Post Traumatic Stress Disorder ("PTSD"), and Organic Brain Syndrome.
- [14] On the other hand, the Respondent relies on the report of Dr. J. N. Eisen, psychiatrist, dated May 10, 2024, which concluded that the Applicant did not sustain a catastrophic impairment as a result of the accident. Dr. Eisen assessed the Applicant and reviewed his medical records, and concluded that the Applicant sustained class 3, moderate, impairments in all four domains of function, indicating that the Applicant's impairment level are compatible with some, but not all useful functioning.
- [15] To be successful in his application for a determination of a catastrophic impairment, the Applicant must demonstrate that the marked impairment ratings adopted by Dr. Herschorn in the spheres of social functioning, concentration, persistence and pace, and adaptation to work or work-like situations, are an accurate reflection of his post-accident function.

A finding that the Applicant suffers from a moderate impairment in any of these three spheres would indicate that he has not sustained a catastrophic impairment as a result of the accident.

- [16] For the following reasons, I find the report of Dr. Herschorn to be unpersuasive and prefer the report of Dr. Eisen.

Deficiencies with Dr. Herschorn's report methodology

- [17] I give less weight to the report of Dr. Herschorn due to the methodology used by Dr. Herschorn. Dr. Herschorn did not personally assess the Applicant. While this is not fatal to the persuasiveness of his report, it nevertheless undermines the findings and ratings offered as they were completed by different healthcare providers who do not appear to be under the supervision or guidance of Dr. Herschorn. Instead, as set out above, Dr. Herschorn relied on the accident-related mental and behavioural impairment ratings provided by OT Lindgren, and the report of social worker V. Tolmatshov, supervised by F. Touyeh, psychologist, dated December 29, 2022, which adopted OT Lindgren's impairment ratings without any meaningful discussion about the ratings. The difficulty with this methodology is that an OT is not qualified to provide diagnoses or opine on causation and thus, cannot render an opinion on whether an impairment is as a result of an accident.
- [18] The Applicant's catastrophic impairment assessment report does not adequately address the Applicant's pre-accident state. An analysis of a person's accident-related mental and behavioural impairments requires an assessment of their pre-accident state. Here, none of the Applicant's assessors conducted an analysis of his pre-accident state. In fact, Dr. Herschorn's report lists only two pre-accident medical records: a sleep study for sleep apnea, and an emergency room consultation for hypertension. This is an inadequate pre-accident document review as the two documents do not give a clear picture of the Applicant's pre-accident state.
- [19] The Applicant's catastrophic impairment reports do not adequately address the impairment ratings provided by OT Lindgren. Social worker V. Tolmatshov and psychologist Touyeh state in their report that the ratings provided by OT Lindgren are consistent with their findings from a psychological perspective. However, the report includes no discussion or analysis of OT Lindgren's assessment, and no discussion on whether the rated impairment is measured from his pre-accident function.

It is virtually impossible to conclude that a person sustained catastrophic mental and behavioural impairments, as a result of the accident, without any analysis of their pre-accident state. It is only through this comparison that one can measure the accident-related impairment.

- [20] The only source of pre-accident evidence for this hearing is the Applicant's self reports and a summary of the collateral interview with the Applicant's ex-partner, with whom he continues to live and work. While collateral interviews are a crucial component of a catastrophic impairment assessment, I give the collateral interview little weight in this case because it is not supported by contemporaneous medical evidence. The clinical notes and records ("CNRs") from the Applicant's family physician, the walk-in clinic he attends, or treating mental health practitioner, such as a psychologist or psychotherapist, could support or refute the reports of the Applicant and his ex-partner, but they are not in evidence. Overall, I find self-reports and a collateral interview, without contemporaneous evidence to support it, holds very little weight.
- [21] The methodology in Dr. Eisen's report, dated May 10, 2024, is sound and in stark contrast to Dr. Herschorn's report. Dr. Eisen is a physician whose assessment included a fulsome review of the Applicant's medical records. Dr. Eisen personally assessed the Applicant, in addition to reviewing the Applicant's medical records, including pre-accident records. Dr. Eisen personally assigned the impairment ratings and did not rely on the ratings provided by other assessors.
- [22] I put more weight on Dr. Eisen's report because it considers the Applicant's pre-accident status when measuring the extent of any accident-related mental and behavioural impairments, whereas Dr. Herschorn's reports attribute virtually all of his mental and behavioural impairments to the accident. This attribution is in contrast to the Applicant's own acknowledgement to Dr. Eisen that some impairments pre-date the accident. For example, Dr. Eisen documented that the Applicant reported experiencing panic attacks following the accident, characterized by palpitations and chest discomfort, but that the Applicant also had difficulty distinguishing between panic attacks and arterial fibrillation, which pre-dates the subject accident. Similarly, Dr. Eisen noted that the Applicant reported that he has a temper and can become angry and irritable, which long pre-dates the accident, and that it has driven away friends prior to the accident. Dr. Eisen highlighted that the Applicant attributes many factors to the breakdown in his relationship beyond the accident. Dr. Eisen noted that the loss of a child and grandchild played a part in the Applicant's relationship problems.

[23] I further prefer Dr. Eisen's opinion because a finding of moderate impairments in all four spheres is validated by the limited psychological and/or psychiatric care undertaken by the Applicant. Since the accident, the Applicant was referred by his family physician, Dr. Livshin, to Dr. F. Yaroshevsky, psychiatrist, to address mental health issues. Dr. Yaroshevsky recommended that the Applicant engage in counselling and consider psychotropic medication. Similarly, social worker Tolmatshov also recommended psychotherapy for the Applicant. Yet, there is no indication or record demonstrating that he engaged in any counselling. Moreover, the Applicant reported to Dr. Eisen that his family doctor prescribed psychotropic medication but that he stopped taking the medication because he felt that the risk outweighed the benefits. In my view, choosing not to take medication or engage in psychological treatment following the accident further indicates that the Applicant's accident-related mental and behavioural impairments are unlikely to significantly impede useful functioning and thus, not a marked impairment.

Limited contemporaneous evidence

[24] I find that the Applicant has not provided contemporaneous evidence to support the findings outlined in his catastrophic impairment reports. The lack of contemporaneous evidence makes it difficult to assess the credibility of the Applicant's reports, and the subsequent findings of the experts because there is virtually no evidence before me to corroborate the reports.

[25] As noted above, the Applicant has not provided his family physicians CNRs. I recognize that, according to the submissions before me, the Applicant's family physician's CNRs may be illegible and that the cost to transcribe the CNRs may be a barrier for the Applicant. However, the CNRs are not before me to make a determination that they are illegible, and despite legibility issues, the CNRs would nevertheless show the frequency of the Applicant's visits following the accident and any referrals made by the family physician, which would support the Applicant's claim that since the accident he has developed serious and enduring psychological impairments.

[26] I find no contemporaneous counselling or psychiatric records before me. The lack of records either indicates that the Applicant never treated his psychological or psychiatric impairments, that they do not support his reports to assessors, or that his impairments are not at the level described by social worker Tolmatshov in the CAT reports. Similarly, the Applicant never produced a prescription summary for the period following the accident, as confirmed by the Respondent in its submissions. A prescription summary would confirm the medications he was prescribed following the accident and whether he filled those medications.

[27] Overall, the absence of contemporaneous evidence, such as the CNRs from treating healthcare practitioners, causes me to question the veracity of the Applicant's self-reports because they are not reflected in other records. Likewise, the absence of pre-accident medical records also raises concerns over the Applicant's pre-accident state, making it virtually impossible to gauge the level of mental and behavioural impairment he suffers from and thus, meet his onus to demonstrate that he sustained a catastrophic impairment.

The Applicant suffers a moderate impairment in social function ("SF")

[28] I find that the Applicant has not demonstrated on a balance of probabilities that he suffers from a marked impairment in the sphere of SF.

[29] I agree with the Respondent that OT Lindgren fails to consider the Applicant's baseline limitations with social functioning prior to the accident, which the Applicant acknowledged during the IEs. For example, the Applicant's assessors never opined on his pre-accident mental and behavioural state, yet Dr. Eisen noted that the Applicant had issues with temper prior to the accident and the Applicant admitted that he had a temper, could become angry and irritable prior to the accident, and that these issues drove his acquaintances away prior to the accident. While the Applicant's assessors say he is less patient and easily irritated than he was before the accident, there are limited reports elsewhere of this and no reports of him fighting or having altercations within his community. I acknowledge the reported complaints that the Applicant is irritable at his place of employment, and that he is too tired to speak with customers after 6 p.m.. However, I do not consider those complaints to amount to a marked impairment given that the Applicant admitted to being impatient prior to the accident and there are no examples of inappropriate social interactions during the assessment of him. Overall, OT Lindgren does not accurately compare the Applicant's pre and post accident functioning in SF.

[30] I find that OT Lindgren overstates the Applicant's impairment in SF. For example, OT Lindgren reported that the Applicant never leaves his place of residence. Yet, in the same report states that the Applicant drives within the community, and that he even offered to go for a walk instead of completing some of the assessment activities. This indicates that he can and will leave his house and that reports of never leaving the home are exaggerated. Similarly, OT Lindgren stated that the Applicant lost relationships due to his irritability, frustration, anger, and overall difficulties with psycho-emotional symptoms. It is highlighted that the Applicant's common-law marriage broke down following the accident. However, the Applicant continues to live and work with his ex-partner, suggesting that they can

maintain much of their relationship, but for romance and intimacy. With respect to the Applicant's other relationships, Dr. Eisen reported that the Applicant maintains relationships with his family members and speaks with his grandchildren every few months and his brother regularly.

- [31] I find that the Applicant's post-accident interactions with strangers, or people he is less familiar with, do not indicate a marked impairment in SF because they show that his impairment levels are compatible with some, but not all, useful functioning. As noted, the Applicant continues to work with his ex-partner following the accident, which includes customer interactions. This does not indicate a significantly impeded social function. Likewise, following the accident the Applicant independently hired a cleaner and, according to Dr. Eisen, negotiated a working arrangement with the cleaner. By all accounts the Applicant acted appropriately during the catastrophic impairment assessments, but for his irritability with assessors regarding some of the tasks he was asked to do. To me, this does not reflect a marked impairment in social function because the Applicant's impairments are compatible with some, but not all useful functions.
- [32] Overall, the Applicant reports impairments in social function that I find to be compatible with some, but not all useful functioning. This is in harmony with a moderate impairment. Accordingly, I find on a balance of probabilities that the Applicant does not suffer from a marked impairment in the sphere of SF.
- [33] Having determined that the Applicant does not suffer from a marked impairment in social function and given that he has been rated as having only a moderate impairment in activities of daily living, it follows that the Applicant does not suffer from marked impairments in three of the four domains. Therefore, I find that he does not meet the criteria for a catastrophic impairment.

CONCLUSION AND ORDER

- [34] The Applicant has not sustained a catastrophic impairment as a result of the accident.
- [35] The application is dismissed.

Released: July 7, 2026



**Brian Norris
Vice-Chair**