Citation: Del Grosso v. Intact Insurance Company, 2023 ONLAT 20-013318/AABS - R

RECONSIDERATION DECISION

Before:	**Brian Norris, Adjudicator**
Licence Appeal Tribunal File Number:	**20-013318/AABS**
Case Name:	**Christopher Del Grosso v. Intact Insurance Company**

Written Submissions by:

For the Applicant:	Andrew A. Iacobelli, Counsel
	Asher G. Honickman, Counsel
For the Respondent:	Kadey B. J. Schultz, Counsel
	Colin MacDonald, Counsel

BACKGROUND

[1] This request for reconsideration was filed by the Applicant in this matter. It arises out of a decision in which I found that the Applicant made a material misrepresentation in his application for automobile insurance and was excluded from receiving income replacement benefits ("IRBs") as a result. I also found that the Applicant was liable to repay $72,881.74 to the Respondent, representing payments made to the Applicant that he was not entitled to receive.

[2] The Applicant seeks an Order to cancel the initial decision so that the issue may be reconsidered upon a complete evidentiary record. Or, in the alternative, the Applicant seeks an Order overturning my Order for repayment, due to a lack of jurisdiction.

RESULT

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

BACKGROUND

[4] The Applicant was involved in a motor vehicle accident in Michigan and sought benefits from his Ontario insurer, pursuant to section 59(2)2 of the *Schedule*. However, after adjusting the Applicant's claim, the Respondent determined that the Applicant materially misrepresented his accident history in his Application for Insurance. The Respondent then cancelled the policy and requested a repayment of benefits paid. The Applicant disagreed with the Respondent's determination and request and applied to the Tribunal for resolution of the dispute.

[5] I agreed with the Respondent and found that the Applicant materially misrepresented his accident history in his Application for Insurance. I also found that "Work Loss Benefits" ("WLBs") were akin to "Income Replacement Benefits" ("IRBs"). As a result of my findings, I determined that the Respondent was entitled to the repayment of benefits, pursuant to section 52 of the *Schedule*, plus interest.

ANALYSIS

[6] The grounds for a request for reconsideration to be allowed are contained in Rule 18 of the Tribunal's Common Rules of Practice and Procedure. 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 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.

[7] 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. Reconsideration of a decision is not an opportunity to relitigate the issues when a party disagrees with the previous decision. Reconsideration is not a venue to tender new evidence unless the evidence was unavailable for the initial hearing and would likely affect the result if admitted, which would fall under criterion (d).

[8] The Applicant advances his request for reconsideration pursuant to criteria (a), (b), and (d).

[9] Regarding criterion (a), the Applicant submits that I acted outside my jurisdiction by ordering the repayment of WLBs. The Applicant also characterized this as an error in law, pursuant to criterion (b). The Applicant further submits that I committed a factual error when I found that he committed a willful misrepresentation, and that my finding was made without sufficient or relevant evidence. Lastly, the Applicant submits that the decision was made without affording him an opportunity to be heard, which implies that the rules of procedural fairness were violated. Alternatively, he argues there was evidence that was not before me when I rendered my decision such that I would likely have reached a different result had the error not been made pursuant to criterion (d). The Respondent disagrees and submits that none of the criteria for reconsideration have been met.

Procedural Fairness

[10] I find no violation of procedural fairness in how the hearing was conducted and the notice of the issues given to the Applicant.

[11] The Applicant submits that he never received fair notice that the Tribunal would make a definitive finding on the intentionality of the misrepresentation. He also contends that my finding that he committed willful misrepresentation was made without sufficient and relevant evidence. The Respondent submits that the issue of whether the Applicant's misrepresentations were willful and material has always been before the Tribunal. It further submits that the decision was made with a proper evidentiary record, and that the Applicant had the opportunity to file an Affidavit for the hearing but chose not to do so. It submits that the Applicant is not permitted to put forward, on reconsideration, new evidence that was available to him at the time of the hearing.

[12] I agree with the Respondent that material misrepresentation has been at issue since the Respondent terminated the Applicant's entitlement to benefits and requested a repayment. The Respondent wrote to the Applicant on November 19, 2019 and advised that the benefits were being terminated due to material misrepresentation made on his Application for Insurance, and requested repayment. The issue is also noted in the Respondent's response to this Application and in its Case Conference Summary. Further, the Tribunal's Order dated June 15, 2021 expressly states that the issue before the Tribunal is whether the Applicant is excluded from receiving benefits and required to repay benefits because of material misrepresentations made in his insurance application. To me, it is clear from the evidence that a finding on whether the Applicant made a material misrepresentation was an inevitable outcome of the hearing and it was incumbent on the Applicant to prepare accordingly for it.

[13] Additionally, I agree with the Respondent that the Applicant must put his best case forward at the first instance and that his complaints of procedural unfairness are unfounded. The Applicant had an opportunity to provide affidavit evidence at the initial hearing as contemplated by the Tribunal's Order. There is nothing in the Order that barred the Applicant from filing an affidavit to support his position. While the Applicant submits that he was unable to provide his evidence in a 1-day hearing, he neglects to appreciate that he could have requested an additional hearing day, or in the alternative, requested a full hearing on the issue whereby he would be subject to direct and cross examination. In this case, he chose not to do so.

[14] The evidence referred to by the Applicant could have been obtained prior to the hearing by due diligence. In his reconsideration submissions, the Applicant contends that he provided correct information to an insurance broker, who procured the policy on his behalf prior to his involvement in an at-fault accident, and that he signed the policy the day after that accident. However, as I noted

above, the Applicant could have put this evidence before the Tribunal at the initial hearing by way of affidavit evidence or he could have sought a full hearing on the issue and called himself as a witness.

[15] The Applicant's complaints that he was not permitted an opportunity to speak to the evidence are unfounded and are, ultimately, an attempt to relitigate the issue, which is not a valid ground for reconsideration.

Jurisdiction

[16] I maintain my finding in the initial decision that the Tribunal has jurisdiction over the dispute.

[17] The Applicant submits that I acted outside of my jurisdiction when I ordered a repayment of WLBs. He submits that the jurisdiction of section 52(1) is restricted to a benefit described in the regulation and that WLBs are not described in the *Schedule*. To the Applicant, the repayment of WLBs is an issue to be address in the Superior Court. He submits that the Respondent issued a statement of claim in this regard on December 21, 2020, implying that the Superior Court is the correct venue. The Respondent submits that the Tribunal has jurisdiction pursuant to section 52 of the *Schedule* to order the repayment of benefits pursuant to section 59.

[18] I find that this is an attempt to relitigate the issue in the preliminary issue hearing. In paragraph 30 of the initial decision, I found that regardless of whether the benefits are called IRBs or WLBs, they are both paid under the *Schedule*. My finding was made following submissions from both parties, which included submissions on jurisdiction. At paragraph 13 of the initial decision, I found that the legal resolution of disputes pertaining to entitlement to benefits under the *Schedule* fall within the purview of the Tribunal pursuant to sections 280(1), and 280(2) of the *Insurance Act*. Further, I found that section 280(3) restricts the parties from bringing a proceeding in any court with respect to a dispute described in section 280(1), other than an appeal from a decision of the Tribunal or an application for judicial review.

Error of Fact

[19] I find no error of fact in my finding that the Applicant committed an act of material misrepresentation.

[20] The Applicant submits that there was no direct evidence of intent or fraud before the Tribunal, and, instead, I based my decision on a single piece of circumstantial

evidence. He further submits that findings of fraud are not to be made lightly and section 31(1)(b) of the *Schedule*, requires knowledge or intent. The Respondent submits that the Applicant had an opportunity to submit evidence on the intentionality of his actions or inactions but chose not to do so and that it is improper to put forward new evidence that was available to him at the time of the initial hearing. The Respondent further submits that sections 31 and 52 of the *Schedule* are unambiguous and there is no requirement for either knowledge or intention to apply the test.

[21] I find that the Applicant is again attempting to relitigate the issue. At paragraph 16 of the initial decision, I found that the Applicant's omissions on his Application for Insurance were material as they relate to the Respondent's decision to engage in the contract of insurance. At paragraph 17 I concluded that it was improbable that the Applicant's omission was inadvertent or innocent in any way, considering the timing. My finding that he committed willful misrepresentation was based on the evidence before me, and I found that the evidence favoured the Respondent on a balance of probabilities. If the Applicant had other evidence relevant to the issue, it was incumbent upon him to present that evidence at the initial hearing.

Evidence Not Before the Tribunal

[22] I find that the Applicant has not met his burden to demonstrate that there is relevant evidence not before the Tribunal in the initial hearing, that could not have been obtained previously, and that would likely have affected the outcome.

[23] The Applicant submits that I heard no evidence of the chain of events leading up to the procurement of the insurance policy, and implies that had I heard the evidence, it would affect the outcome of the initial decision. He submits that evidence in a related tort action demonstrates that he provided the information prior to his at-fault accident but signed the document after the at-fault accident. However, he is unable to produce that evidence as it is from another party, and he is unable to locate his own copies. The Respondent disagrees with the Applicant's application of the deemed undertaking rule and submits that there is no possible exposure against the tort parties if the evidence is produced. The Respondent also discussed the fact that the Applicant signed the attesting document that endorsed an inaccurate accident history.

[24] I find that the evidence discussed by the Applicant does not meet the threshold to warrant reconsideration. I agree with the Respondent that one must assume that the person endorsing a document agrees with the accuracy of the information and, if it is inaccurate, would correct the record prior to endorsing it. Following his

endorsement, the Applicant made no effort to correct the record. His suggestion now, after first-instance, that his actions were unintentional are, therefore, without merit.

[25] Further, the Applicant has not demonstrated that the evidence was unavailable to him for the initial hearing. The Applicant provides no information or evidence which suggests that he attempted to procure this evidence for the initial hearing. He simply states that he is unable to provide it due to tort evidence rules. Additionally, he has not demonstrated any effort to obtain the document or call the witness. As noted earlier, it is incumbent on the Applicant to put his best foot forward at the initial hearing. Considering these facts and omissions, I conclude that the evidence discussed by the Applicant would not likely have affected the outcome of the initial decision.

CONCLUSION

[26] For the reasons noted above, the request for reconsideration is dismissed.

Brian Norris
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: May 23, 2023