

**Tribunals Ontario  
Safety, Licensing Appeals and  
Standards Division**

Box 250  
Toronto ON M7A 1N3  
Tel: 1-844-242-0608  
Fax: 416-327-6379  
Website: [www.slasto-tsapno.gov.on.ca](http://www.slasto-tsapno.gov.on.ca)

**Tribunaux décisionnels Ontario  
Division de la sécurité des appels en matière  
de permis et des normes**

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## RECONSIDERATION DECISION

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**Before:** Robert Watt

**Date:** December 18, 2019

**File:** 18-003385/AABS

**Case Name:** ██████████ vs. Travelers Insurance

**Written Submissions by:**

**For the Applicant:** Lawson Hennick, Jewell Radimisis Jorge LLP

**For the Respondent:** Sirius Biniaz, Schultz Frost LLP

## OVERVIEW

- [1] This Request for Reconsideration arises from a decision of the Licence Appeal Tribunal (the "Tribunal") denying that the applicant's claim that his injuries were outside the Minor Injury Guidelines and therefore he was not entitled to additional medical benefits. The applicant now asks that I reconsider the Tribunal's order and order a new hearing.
- [2] Pursuant to s. 17(2) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5, the Executive chair delegated to me, her responsibility to decide this matter.
- [3] As explained below, the reconsideration is dismissed.

## FACTS

- [4] The applicant filed a Request for Reconsideration in this matter on June 4, 2019 in respect of a decision dated December 17, 2018.
- [5] The applicant applied to the Tribunal on the issues of whether the applicant : sustained predominantly minor injuries as defined under the *Schedule*; is entitled to medical and rehabilitation benefits in the amounts of \$1,783.64 and \$1653.53, for chiropractic treatment; is entitled to the cost of an examination in the amount of \$1,995.32 for a psychological assessment.. The matter proceeded to an in- writing hearing with a cross examination of the applicant on his affidavit.
- [6] The applicant requests that the decision be reconsidered on the basis that; the Tribunal acted outside its jurisdiction; the Tribunal violated the rules of natural justice or procedural fairness; the Tribunal made several significant errors of law and fact such that the Tribunal would likely have reached a different decision had the error not been made.

## DECISION AND REASON

- [7] Rule 18.1 requires a request for reconsideration to include the reasons for the request, specifying the applicable criteria under rule 18.2.
- [8] Under rule 18.2, one or more of the following four grounds needs to be established
  1. The Tribunal acted outside its jurisdiction or violated the rules of natural justice;
  2. The Tribunal made a significant error of law or fact such that the Tribunal would likely have received a different decision;

3. The Tribunal heard false evidence or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or
4. There is new evidence that could not have reasonably been obtained earlier and would have affected the result.

[9] The Rule affords the Tribunal the ability to remedy serious breaches of procedural fairness or errors that materially affect decisions.

[10] 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

## **ANALYSIS**

### **The Tribunal acted outside its jurisdiction and violated the rules of natural justice or procedural fairness.**

[11] The applicant submits that the Tribunal acted outside its jurisdiction and violated the rules of natural justice or procedural fairness. The applicant failed to provide any argument on this point.

[12] I find therefore that the Tribunal did not act outside its jurisdiction and did not violate the rules of natural justice or procedural fairness.

### **The Tribunal made several significant errors of law and fact such that the Tribunal would likely have reached a different decision had the error not been made**

[13] The applicant's position is that his injuries should be taken out of the MIG, as he was assessed with chronic pain syndrome which is not an associated sequelae to a minor injury. His position is that the Tribunal erred in fact in assessing the evidence in determining that the applicant's injuries were covered under the MIG. His position is that other medical reports support Dr. Brown's report, finding that he suffered from chronic pain.

[14] There were two main reasons the Tribunal set out, for not following the reasoning in Dr. Brown's report. The first reason was that the Tribunal accepted the other doctors' reports which contradicted the findings set out in Dr. Brown's report and the applicant's own admissions as set out in paragraph [21] and [22] of the decision to arrive at its conclusion that the applicant's injuries fell within the MIG. Dr. Allen, Dr. Lavis, Dr. Rabinovitch all diagnosed the applicant with soft tissue

injury. The applicant's own evidence was accepted that he had not further pain as set out in paragraph [22] of the decision. The second reason was that there was no evidence submitted by Dr. Brown or any other doctor to show that the chronic pain was a separate and distinct issue from the applicant's minor injuries and not a clinically- associated sequelae. The Tribunal and courts have held that a chronic pain diagnosis does not automatically remove an insured from the MIG if the insured cannot prove on a balance of probabilities that the said diagnosis is separate and distinct, for the minor accident-related injuries.<sup>1</sup>

[15] As the applicant was found not to be outside the MIG, the treatment plans were in excess of the MIG limit and therefore not reasonable and necessary.

[16] The Tribunal also canvassed the issue of psychological impairment which might take the applicant out of the MIG. The Tribunal came to the conclusion based on the evidence that the applicant did not suffer from a psychological impairment.

[17] The Tribunal looked at all of the medical evidence and interpreted that evidence in relation to the issues before it. The Tribunal on a reconsideration is not required to question the weight that an adjudicator assigns to evidence. The adjudicator is entitled to prefer some pieces of evidence over other pieces of evidence. A reconsideration is also not an opportunity to reargue arguments previously argued and that failed before the Tribunal.

[18] I find that the Tribunal made no significant errors of law and fact such that the Tribunal would likely have reached a different decision had the error not been made.

## CONCLUSION

[19] For the reasons noted above, I **dismiss** the applicant's Request for a Reconsideration.



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**Robert Watt**  
**Adjudicator**

**Released:** December 18, 2019

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<sup>1</sup> Aviva Canada Inc. v Maverick Sleep 2018 CarswellOnt 11921 P-17-00034 July 10, 2018/Scarlett V. be lair Co. 2013 CarswellOnt 17362 Nov 28, 2013(