Citation: [F.C] v. Aviva General Insurance, 2022 ONLAT 19-003936/AABS-R

RECONSIDERATION DECISION

Before:	Asad Ali Moten
Date of Order:	04/07/2022
Licence Appeal Tribunal File Number:	19-003936/AABS
Case Name:	[F.C] v. Aviva General Insurance

Written Submissions by:

For the Applicant:	Dharshika Pathmanathan
For the Respondent:	Geoffrey Keating

BACKGROUND

[1] The respondent seeks a reconsideration of an April 27, 2021 decision (the "Decision") in which I determined that the applicant's injuries fell outside the minor injury guideline (the "MIG"). I further determined that the applicant was entitled to disputed medical benefits in the amounts of $4,587.58, $1,299.31 (less approved amounts) and $5,290.74, plus applicable interest.

[2] The respondent submits that in making the Decision, I erred in law such that I would have likely reached a different decision had the error not been made. Specifically, that (a) I did not identify an injury suffered in the accident that would have been prevented from maximal recovery due to a pre-existing condition; and (b) I did not analyse how or why the pre-existing condition could impact recovery.

RESULT

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

ANALYSIS

[4] The grounds for the request of reconsideration are contained in Rule 18 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 (the "Common Rules"). A request for reconsideration will not be granted unless one or more of the criteria are met.

[5] The respondent relies on Rules 18.2(b) of the Rules, which provides for reconsideration where the Tribunal has made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made. The respondent argues that I have made two errors of law:

a. Error 1 – not identifying the accident-related minor injury

b. Error 2 – not analysing how or why the pre-existing issue could impact maximal recovery

[6] I will examine each of these grounds in turn.

a. Error *1 – accident-related minor injury not identified by Tribunal*

[7] The respondent argues that paragraph 10 of the Decision does not specify which injuries were accident-related, but instead simply lists a number of injuries that the applicant suffered. As a result, according to the respondent, there is no

foundation to conclude that the applicant could not recover from her injuries within the MIG.

[8] I disagree for the following reasons.

[9] First, the respondent provides no authority for its assertion that to not identify an accident-related injury is an error of law. An error of law requires a misapprehension of the test to be applied. The *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "Schedule") identifies at section 18(2) the test for whether a pre-existing condition can remove an applicant from the MIG. Nowhere in that provision is the Tribunal required to identify the accident-related injury. Rather, the case the respondent cites in support of its argument cites the test as requiring the applicant to establish:

a. there was a pre-existing medical condition;

b. the pre-existing medical condition was documented by a health practitioner before the accident; and,

c. the pre-existing condition will prevent maximal recovery from the minor injury if the person is subject to the $3,500 limit.

[10] In other words, there is nothing in the test about identifying the accident-related injury. Nonetheless, the respondent's argument has a logical consistency. The Tribunal cannot compare the status of an applicant before and after an accident if it does not identify the after. To be able to say that a pre-existing condition will affect an applicant from getting better from an accident-related injury, one would generally have to know what the accident-related injury is.

[11] This leads to the second reason I disagree with the respondent. The Decision sufficiently identifies the accident-related injury. While the respondent points to paragraph 10 to say no accident-related injury is identified, it ignores paragraphs 9 and 11 of the Decision. The three paragraphs, read together indicate that the applicant was in a car accident; as a result suffered injuries to, among other things, her coccyx; and the injury to her coccyx was an exacerbation of a subluxation of her coccyx that she had previously suffered. Further, paragraph 17, while a restatement of the applicant's position, makes it clear what accident-related injury is at issue. Paragraphs 20 and 21, when read together, again indicate that the accident-related injury is a worsening of her subluxated coccyx.

[12] Having adequately identified the accident-related minor injury, I dismiss this ground for the reconsideration request.

b. Error 2 – not analysing how or why the pre-existing issue could impact maximal recovery

[13] The respondent argues that the Decision does not "…specify how or why the identified pre-accident issue could prevent the Applicant…" from achieving maximal recovery under the MIG. In other words, according to the respondent, I stop at simply listing the evidence in support of my conclusion.

[14] Again, I disagree. The Decision lists the evidence that I found compelling, as required by section 18(2) of the Schedule, with respect to the existence of the pre-existing injury ***and*** the effect of the pre-existing injury on recovery under the MIG. Paragraphs 24-26 of the Decision detail what I was required to consider, what evidence I found integral in that consideration, and why I drew the conclusion I did from the evidence.

[15] The respondent's position is not supported by the case law it cites. An examination of the analysis undertaken in those cases shows a level of analysis comparable that undertaken in the Decision. The respondent may wish for a different analysis, but that does not mean that the analysis it got is insufficient.

[16] Having adequately analyzed how and why the pre-existing injury prevents maximal recovery under the MIG, I dismiss this ground for the reconsideration request.

CONCLUSION

[17] For the reasons noted above, the respondent's request for reconsideration is dismissed.

Released: April 7, 2022

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Asad Ali Moten
Adjudicator