



Citation: Adams v. Aviva Insurance Company of Canada, 2023 ONLAT 22-002323/AABS - R

RECONSIDERATION DECISION

Before: Tavlin Kaur

Licence Appeal Tribunal
File Number: 22-002323/AABS

Case Name: Tracy Adams v. Aviva Insurance Company of Canada

Written Submissions by:

For the Applicant: Kenneth Ciupka, Counsel
Brennan Kahler, Counsel

For the Respondent: Nicholas Maida, Counsel

BACKGROUND

- [1] This request for reconsideration was filed by the applicant in this matter. It arises out of a preliminary issue decision dated January 27, 2023 (“decision”) in which the Tribunal found that the applicant has not provided a reasonable excuse for the delay in reporting her intent to seek accident benefits. In her request, the applicant alleges that the Tribunal made a significant error of law and fact. The respondent disagrees and requests that the reconsideration be dismissed.

RESULT

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

ANALYSIS

- [3] The grounds for a request for reconsideration to be allowed are contained in Rule 18.2 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version 1 (October 2, 2017)*, as amended (“Rules”). A request for reconsideration will not be granted unless one or more of the criteria are met. For the purposes of this request, the applicant relies on the following ground:
- 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;
 - 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.
- [4] Under Rule 18.2, the threshold for reconsideration is high. The reconsideration process is not an opportunity for a party to ask the Tribunal to reweigh or reconsider evidence, nor is it an opportunity for a party to re-litigate its position where it disagrees with the decision or where it failed to clearly meet its burden at first instance.
- [5] I find that the applicant’s request for reconsideration does not establish grounds for reconsideration under Rule 18.2. I find she is attempting to re-argue her case. I reject her assertion that 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.

The Tribunal did not err under Rule 18.2(b)

The applicant is attempting to raise new arguments

- [6] The applicant submits that the Tribunal made an error of law in its application of section 32(1), section 34 and section 55(1)1 of the *Schedule* as it pertains to the statutory authority conferred onto it with respect to barring an insured person from applying to the Tribunal for a resolution of disputes in accordance with section 280(1) of the *Insurance Act*, R.S.O. 1990, c. I.8. The applicant argues that section 34 of the *Schedule* does not apply to section 32(1) and does not provide the insurer the recourse it applied in denying the payment of benefits to the applicant. Nor does it provide the Tribunal with the statutory authority to bar the Applicant's ability to apply to the Tribunal for dispute resolution. She states that, "the only venue of recourse for an applicant's failure to comply with s. 32(1) can be found at s. 32(1) [sic] of the *Schedule*."
- [7] The respondent submits that the Tribunal did not make an error of law. According to the respondent, the gist of the applicant's argument is that the only remedy available to an insurer for noncompliance with section 32(1) is that the insurer is entitled to delay paying or determining entitlement to a benefit in accordance with section 32(10), and that section 55(1)1 does not bar an application to this Tribunal due to non-compliance with section 32(1).
- [8] It is the respondent's position that this argument was not properly raised in the applicant's initial submissions and that the reconsideration process is not an opportunity to advance new arguments that the applicant could have made in her initial submissions but did not. The respondent submits that the applicant is attempting to relitigate this issue.
- [9] In my view, the applicant is attempting to raise new arguments in her reconsideration request. The applicant did not argue that section 34 of the *Schedule* does not apply to section 32(1) and that it does not provide the insurer the recourse it applied in denying the payment of benefits to the applicant. Nor did she argue that section 34 does not provide the Tribunal with the statutory authority to bar her ability to apply to the Tribunal for dispute resolution. The only reference to section 34 is found in paragraph 22 of the applicant's initial submissions where she states that, "section 34 of the SABS indicates that a person's failure to comply with a time limit set out in this Part [Part VIII] does not disentitle the person to a benefit if the person has a reasonable explanation."
- [10] The applicant's submissions do make references to sections 32(10) in paragraphs 21 and 23. However, the applicant did not make clear and cogent

submissions and nor did she provide any case law to support her argument. Paragraph 23 of her initial submissions seems to suggest that the respondent relied on section 32(10) to deny her claim for and entitlement to accident benefits. Moreover, based on my review of the respondent's initial submissions, they did not rely on section 32(10) to deny her claim. The applicant had the opportunity to submit the case law and advance the arguments in support of her position at the preliminary issue hearing. She failed to do so. Moreover, I am not obligated to address every single argument that a party advanced.

- [11] In any event, I do not agree with the applicant's interpretation of section 32(10). In my view, the purpose of section 32(10) is to provide the respondent with additional time to respond to a claim for benefits where an applicant fails without a reasonable explanation to notify the respondent of his/her intent to seek accident benefits as per section 32(1).
- [12] Moreover, I'm not persuaded by the applicant's position on section 55(1)1 and find that she is attempting to advance a new argument which she did not raise in her initial submissions. The applicant submits that section 55(1)1 only contemplates the "times prescribed by this Regulation" with respect to the submission of an application for benefits. It is her position that the former part of section 55(1)1 only confers upon this Tribunal the power to preclude an applicant from applying to the Tribunal for dispute resolution where "[t]he insured person has not notified the insurer of the circumstances giving rise to a claim for benefit." The fact remains that the Applicant has notified the insurer of the circumstances giving rise to a claim for benefits.
- [13] The reconsideration process is not an avenue for advancing new arguments that a party could but did not make at the hearing on the merits. The applicant points to no exceptional circumstances to warrant the new argument on reconsideration.
- [14] In my view, my application of the *Schedule* was correct. In paragraphs 7 to 9 of the decision, I explained the steps that have to be taken when an individual applies for statutory accident benefits. In paragraphs 10-18, I provided a clear and cogent analysis as to why I was not persuaded with the applicant's explanation for the delay.

Section 32(5)

- [15] In her reconsideration request, the applicant stated that "...the within matter necessitates an analysis of whether the Respondent complied with its obligations as set out at section 32(2)." In her initial submissions, she argued that the respondent failed to comply with section 32(2) of the *Schedule*. In my view, the applicant is attempting to reargue her position. As I determined that the applicant did not provide a reasonable explanation for the delay in notifying the respondent of her intent to seek accident benefits, it was unnecessary for me to conduct an analysis in relation to section 32(2) and 32(5).

CONCLUSION

- [16] For the reasons noted above, I deny the applicant's request for reconsideration.

Tavlin Kaur
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: May 31, 2023