Citation: Vespa v. Aviva Insurance Company, 2021 ONLAT 19-006030/AABS-R

RECONSIDERATION DECISION

Before:	**Avril A. Farlam, Vice Chair**
Date of Order:	07/22/2021
Tribunal File Number:	19-006030/AABS
Case Name:	Kathleen Vespa v. Aviva Insurance Company

Written Submissions by:

For the Applicant:	Gjergji Laloshi, Paralegal
For the Respondent:	Eric Grossman, Counsel

OVERVIEW

[1] This request for reconsideration was filed by Kathleen Vespa ("applicant"). It arises out of a decision dated August 10, 2020 ("Decision") in which the Tribunal found the applicant is not entitled to a medical benefit in the amount of $2,738.00 for chiropractic services in a treatment plan (OCF-18) submitted on May 4, 2017 and denied on July 24, 2017 ("disputed treatment plan") from Aviva Insurance Company ("respondent").

Applicant's Reconsideration Request Made Under Outdated Rule

[2] The applicant submits as one of her two grounds for reconsideration, that the Tribunal made "significant" errors of law and fact such that the Tribunal would have likely reached a different decision had the error not been made under Rule 18 of the "Common Rules". This wording comes from a previous version of Rule 18 (b) which has now been replaced by Rule 18.2 (b) of *The Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version I, October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 February 7, 2019* ("Rules"). Rule 18.5 provides that Rule 18, as amended, applies to any reconsideration of a decision issued after February 7, 2019. The Decision was released August 10, 2020. Therefore, this reconsideration is governed by Rule 18 of the Rules, as amended and the respondent should have made its reconsideration request under Rule 18.2 (b) of the Rules, as amended.

[3] Although neither party made submissions on this error, I am of the view that the failure of the applicant to request reconsideration under the current Rule 18.2(b), as amended, should not be fatal to her reconsideration request. In order to avoid putting the applicant to the expense and delay of re-filing the reconsideration request under the amended Rule 18.2(b) and putting the respondent to the expense and delay of re-filing it's response, pursuant to Rule 3.1(a) and (b) of the current Rules I am allowing the applicant's reconsideration request to proceed. I find that allowing the applicant's reconsideration request to proceed is necessary to facilitate a fair, open and accessible process and to allow effective participation by both parties and to ensure an efficient, proportional and timely resolution of the reconsideration proceeding. I will consider the applicant's grounds for reconsideration under Rule 18(b) to be made under Rule 18.2(b), of the current Rules, as amended.

[4] The applicant seeks an Order setting aside the Decision and ordering the respondent to pay the disputed treatment plan with interest.

RESULT

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

ANALYSIS

[6] The grounds for a request for reconsideration to be allowed are contained in Rule 18.2, as amended. The applicant makes this request under Rule 18.2 (b), as amended, which is "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" and under Rule 18.2 (a) which is that the Tribunal acted outside its jurisdiction or violated the rules of procedural fairness.

[7] In particular, the applicant submits that the Tribunal failed to consider important and materially relevant evidence submitted by the applicant and erred in fact by suggesting chiropractic treatment was not recommended.

[8] The respondent disagrees and seeks an Order affirming the Decision.

[9] The applicant filed reply submissions.

[10] Having reviewed the Decision, I find no errors of law or fact in the Decision, including any errors of law or fact such that the Tribunal would likely have reached a different result had the error not been made.

[11] I find no errors of law or fact in the Decision regarding the consideration of evidence in paragraph 77. The adjudicator considered and weighed the relevant medical evidence. In paragraph 76 of the Decision, particular focus was placed on the applicant's treating physicians together with the s. 44 physicians and their solutions for the applicant's ailments are listed. It was in this context that the adjudicator noted in paragraph 77 that the chiropractic treatment was not recommended. It was open to the Tribunal, on the evidence before it in this particular case, to make the finding in paragraph 78 that the applicant has not demonstrated why the specific treatments outlined in the disputed treatment plan are reasonable and necessary to treat the applicant's injuries. I find no error of fact or law in doing so.

[12] I find no errors of fact or law in the Decision from the fact that the adjudicator relied on the evidence of Dr. Jarozynski, the applicant's treating orthopaedic surgeon. In paragraph 73 it is acknowledged that the applicant's last visit with Dr. Jarozynski was in August 2016. The consideration and weighing of the relevant medical evidence is the mandate of the adjudicator. The findings of fact made and the ultimate conclusion on whether the applicant had met her burden

of proof were open to the adjudicator to make on the evidentiary record at the hearing and I find no error in them.

[13] Most of the applicant's submissions on reconsideration involve the nature of the applicant's injuries. These submissions were made at the hearing and cannot be re-argued on reconsideration.

[14] Having reviewed the Decision, I find that the Tribunal did not act outside its jurisdiction or violated the rules of procedural fairness.

[15] I find the Tribunal did not act outside its jurisdiction. The applicant made no specific submissions in support of this ground.

[16] The applicant submits that there is no reference in the Decision to the opinion of applicant's expert Dr. Dwyer which supports the notion that Dr. Dwyer's opinion was not considered by the adjudicator. It is well established that an adjudicator need not refer to every piece of evidence, submission or precedent referred to by the parties in submissions. Not doing so does not indicate it was not considered. The Decision contains a lengthy and detailed review, consideration and weighing of the medical evidence put forward by the parties which amply supports the conclusion reached in the Decision.

[17] The applicant also submits that the description of the applicant's injuries and limitations does not include all body parts giving the appearance of bias and a breach of the rules of natural justice. At the same time, the applicant states that she is "…by no means insinuating the Vice-Chair (*sic*) is biased".

[18] I find no error in the adjudicator's description of the applicant's injuries which gives the appearance of bias and a breach of the rules of natural justice. Paragraphs 52, 53 and 54 of the Decision reference numerous injuries identified in the disputed treatment plan. This description of the applicant's injuries was put forward by her at the hearing and the adjudicator was entitled to rely on it. Paragraphs 56, 57, 58, 62, 64, 65, 66, 68, 69, 70, 72 and 75 of the Decision contain further descriptions of the applicant's alleged injuries and sequelae taken from the applicant's medical records. Taken as a whole, the Decision reflects that the adjudicator had an appropriate understanding of the applicant's alleged injuries. Further, the applicant does not specify what body part or ongoing limitations she believes was not considered.

[19] I find that the applicant has not established her grounds for reconsideration. The grounds for reconsideration of a Tribunal Decision are limited and specific. In order to succeed on a reconsideration request, at least one of the grounds must

be proven. Here, because the applicant requested reconsideration, the onus is on the applicant to establish her grounds and she has not done so. Instead, the applicant's submissions appear to raise many of the same arguments made at the hearing. A reconsideration is not an opportunity to reargue one's case or an appeal.

CONCLUSION AND ORDER

[20] For the reasons noted above, I dismiss the respondent's request for reconsideration of the Tribunal's Decision dated August 10, 2020.

Avril A. Farlam
Vice Chair
Tribunals Ontario – Licence Appeal Tribunal

Released: July 22, 2021