



Citation: Zia v. Economical Insurance Company, 2022 ONLAT 20-014022/AABS - R

RECONSIDERATION DECISION

Before: Rebecca Hines

**Licence Appeal Tribunal
File Number:** 20-014022/AABS

Case Name: Huzaifa Zia v. Economical Insurance Company

Written Submissions by:

For the Applicant: Terio Francis, Counsel

For the Respondent: Yann Grand-Clement, Counsel

OVERVIEW

- [1] This reconsideration request follows a Tribunal decision dated May 9, 2022, in which I determined that the applicant was not entitled to a non-earner benefit (NEB) or an award.
- [2] The applicant has requested a reconsideration of my decision regarding my finding in relation to the above. The applicant argues that I made a significant error of fact and/or law such that I would have reached a different result had the error not been made. In particular, the applicant submits that I failed to consider relevant evidence in my analysis regarding the applicant's entitlement to the NEB and an award.
- [3] The respondent submits that my decision is correct. Further, that the applicant's reconsideration request is an attempt to relitigate issues which already failed at the hearing.

RESULT

- [4] After reviewing the applicant's submissions, I order as follows:
 - (i) The applicant's reconsideration request is dismissed.

RECONSIDERATION CRITERIA

- [5] The grounds for a request for 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 (Effective February 7, 2019 ("Rules"))*.
- [6] Rule 18.2 states that 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] The applicant relies on Rule 18.2 (b) and argues that I made an error of law or fact that would impact the outcome of my decision.
- [8] The following remedies are available to the Tribunal on a request for reconsideration:
- (i) dismiss the request;
 - (ii) confirm, vary or cancel the decision or order; or
 - (iii) order a rehearing on all or part of the matter.
- [9] The applicant requests that I vary my decision and make a finding that he is entitled to one or more of the following remedies:
- a) He is entitled to payment of NEBs from November 2, 2020 to January 14, 2022;
 - b) He is entitled to payment of NEBs from November 2, 2020 to July 5, 2021;
 - c) He is entitled to an award under s.10 of *Ontario Regulation 664* because the respondent unreasonably withheld or delayed payment of NEBs equivalent to 50% of the issues in dispute;
 - d) In the alternative, an order for a new hearing on the NEB issue before a different adjudicator.

ANALYSIS

Did I make an error of law or fact such that I would likely have reached a different decision?

- [10] I do not find that I erred in law which would have led to a different result.
- [11] The applicant alleges that I erred in law by misapprehending the evidence, specifically by failing to consider evidence validating many of the applicant's post-accident limitations in my analysis of the NEB issue. In particular, the applicant alleges, I ignored evidence in relation to the applicant's physical restrictions and academic limitations, and further that, I did not apply more weight

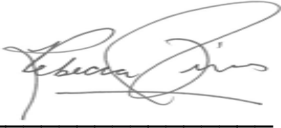
to activities that were more important to the applicant pre-accident such as being a student, which is a requirement set out in Heath¹. I find the applicant's reconsideration request has no merit for the following reasons.

- [12] As a starting point, in paragraphs [12] to [23] of my decision I provide fulsome reasons and a detailed analysis regarding my finding on the applicant's entitlement to the NEB. Further, the applicant failed to point out specific evidence on this reconsideration request regarding his physical limitations that I failed to consider or misapprehended in my decision. In addition, the applicant's allegation that I ignored the fact that he was receiving academic accommodation is not accurate. In paragraph [17] of my decision, I specifically address the academic accommodation issue. Ultimately, I determined that the applicant did not meet his onus in establishing entitlement to the NEB. In my view, the applicant simply disagrees with my decision. That is not grounds for reconsideration.
- [13] The applicant also argues that I erred in my finding that he is not entitled to an award. Specifically, he submits that I failed to consider the fact that the respondent terminated the applicant's NEB without a medical opinion and did not conduct an insurer examination for six months. I addressed the applicant's argument in relation to this in paragraph [48] of my decision. The applicant has failed to demonstrate that I erred in law on the award issue that would result in an alternative decision.
- [14] It is well established law that the threshold for reconsideration is a high one. The purpose of the reconsideration process is not for the losing party to relitigate issues that already failed at the hearing. In my view, that is what the applicant has attempted to do in this reconsideration request.
- [15] The applicant has failed to convince me on a balance of probabilities that I made an error of fact and/or law which would result in an alternative decision on both the NEB and award issues.

¹ Heath v. Economical Mutual Insurance Company, 2009 ONCA 391 (CanLII) at para.50.

CONCLUSION

[16] The applicant's request for reconsideration of my decision is dismissed.

A handwritten signature in black ink, appearing to read 'Rebecca Hines', is positioned above a horizontal line.

Rebecca Hines
Adjudicator
Tribunals Ontario – Licensing Appeal Tribunal

Released: August 17, 2022