Citation: Belanger v. Intact Insurance Company, 2022 ONLAT 19-013755/AABS - R

RECONSIDERATION DECISION

Before:	**E. Louise Logan**
Licence Appeal Tribunal File Number:	**19-013755/AABS**
Case Name:	**Ghislain Belanger v. Intact Insurance Company**

Written Submissions by:

For the Applicant:	David A. Wallbridge, Counsel
For the Respondent:	Jonathan Charland, Counsel

BACKGROUND

[1] On November 15, 2021, the respondent requested reconsideration of the Tribunal's Decision dated October 26, 2021, where the Tribunal determined, as a preliminary issue, that the applicant's dispute was not statute barred pursuant to s. 56 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)*[1] ("*Schedule*").

[2] The grounds for a request for reconsideration to be allowed are contained in Rule 18 of the Tribunal's *Common Rules of Practice and Procedure* ("Rules").[2] To grant a request for reconsideration, the Tribunal must be satisfied that 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.

[3] The respondent is seeking a reconsideration pursuant to Rule 18.2(b). The respondent requests that the Tribunal's Decision be varied to find the applicant is statute barred from proceeding with his application under s. 56 of the *Schedule.*

RESULT

[4] The respondent's request for reconsideration is granted. I vary the Tribunal's decision of October 26, 2021. I find that the notice delivered to the applicant on March 26, 2015 triggered the two-year limitation period in s. 56. The applicant is statute barred from proceeding with his application.

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[1] O. Reg. 34/10

[2] *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.

ANALYSIS

[5] In its October 26, 2021 decision, the Tribunal considered whether the applicant was statute barred from applying for income replacement benefits (IRB) pursuant to s. 56 of the *Schedule.* The Tribunal found at paragraph 21 that the delivery of the IRB denial letter dated March 26, 2015 was not done in accordance with section 64 of the *Schedule* until February 15, 2019. Therefore, the two-year limitation period for applying to the Tribunal to dispute the IRB denial did not expire until February 14, 2021. The Tribunal found at paragraph 24 that the applicant submitted his application on November 27, 2019, which was within the two-year time limit. As a result, the Tribunal found the applicant's dispute could proceed to a hearing.

[6] The respondent makes several interwoven arguments in support of its request for reconsideration under Rule 18.2 (b) including errors of both fact and law. The applicant opposes the reconsideration request and asserts there were no errors in the Tribunal's decision.

[7] In his submissions, the applicant also makes a number of arguments that do not fall within the grounds for this reconsideration under Rule 18.2(b). This includes the applicant's submissions regarding the adequacy of the content of the March 26, 2015 letter and notice, whether or not the respondent had established that the applicant had received and read the letter, and the applicability of the discoverability principles outlined in *Tomec v. Economical Mutual Insurance*[3]*.* It is well established that reconsideration is not an opportunity to re-argue one's case. As these are all arguments made at the initial hearing, I will not address them on reconsideration.

Error of Fact in the Date Applicant's Counsel Advised the Respondent he was Representing the Applicant

[8] The respondent submits the Tribunal erred in fact at paragraph 22 of the decision when it stated that "[t]he respondent did not dispute the fact that on January 20, 2015, the Applicant's counsel notified them that he was representing the Applicant." The respondent submits that the record is clear that applicant's counsel was retained on June 20, 2015, not January 20, 2015. The respondent submits this error is significant in that at the time of the denial of benefits on March 26, 2015, the applicant did not have counsel, and the insurer had no basis to send a copy of the notice of denial to anyone other than the applicant.

[3] 2019 ONCA 882.

[9] The applicant submits that the Tribunal made no error in its decision but does not specifically address the date error identified by the respondent.

[10] I agree with the respondent. I find the Tribunal made an error at paragraph 22 with respect to the date applicant's counsel notified the respondent that he was representing the applicant. I find that this date should have been June 20, 2015, not January 20, 2015.

[11] However, finding a factual error is not enough to grant a reconsideration. Rather, Rule 18.2 (b) requires the Tribunal to be satisfied that the error is such that the Tribunal would likely have reached a different result had the error not been made. I find it is clear from the analysis and reasons in the decision that the Tribunal correctly understood the date counsel advised the respondent he represented the applicant. In paragraph 22, the same paragraph that contains the date error, the Tribunal stated, "I also find that Intact was aware the applicant was represented by counsel on June 20, 2015". In addition, at paragraph 11 the Tribunal stated, "On June 20, 2015, the applicant retained counsel to assist him with his claim." These references, as well as the substance of the analysis and reasons in the decision, demonstrate the incorrect date reference was a typographical mistake rather than a significant error of fact.

[12] I find the incorrect date reference in the decision is not a significant error such that the Tribunal would likely have reached a different result had the error not been made, as required by Rule 18.2 (b).

Error of Law in the Application of ss. 56 and 64

[13] The respondent submits that the Tribunal erred in law in its application of sections 56 and 64. The respondent submits the Tribunal made a significant error of law in deciding the respondent was non-compliant with s. 64 of the *Schedule* until February 15, 2019, when it found as a fact that the respondent had delivered an adequate IRB stoppage letter to the applicant on March 26, 2015. The respondent submits that having found that the IRB stoppage letter sent on March 26, 2015 was delivered to the applicant, and having found that the applicant did not have a language barrier sufficient to extend the two-year limitation period, the Tribunal should have determined the applicant was statute barred under s. 56 from proceeding.

[14] The respondent argues it is an error of law to interpret the *Schedule* to find that an otherwise compliant s. 64 notice is no longer compliant until it is delivered to counsel, when counsel had not been retained at the time the notice was first provided. An application of s. 64, in accordance with the modern approach to

statutory interpretation, does not include a requirement to re-deliver notice to counsel retroactively after an insured retains counsel. By creating a second obligation to provide notice to counsel, retroactively, the respondent submits the Tribunal is reading something into s. 64 that is not there. The respondent further submits that there is no ambiguity in s. 64 that allows for this interpretation. Had the Tribunal correctly interpreted s. 64, it would have found that the March 26, 2015 notice triggered the two-year limitation clock in s. 56, with the result being the applicant was precluded from disputing the IRB denial after March 26, 2017.

[15] The applicant submits that that Tribunal made no error in the decision. He argues that the Tribunal was correct in concluding that the two-year limitation period began on February 15, 2019. He submits that the case law cited by the respondent is either distinguishable, dated, or fails to address the current state of the law following *Fratarcangeli v. North Blenheim Mutual Insurance Co.*[4] The applicant argues that in *Fratarcangeli* the Divisional Court has given clear and unequivocal direction that pursuant to s. 7 of the *LAT Act* that the Tribunal has the power to extend the two-year limit for filing appeals in s. 56 of the Schedule, and that it is not a hard limit as submitted by the respondent.

[16] In reply, the respondent submits the decision in *Fratarcangeli* does not assist the applicant as the Tribunal did not invoke s. 7 of the *LAT Act* in its decision, but rather erred in its application of sections 56 and 64 of the *Schedule*.

[17] I agree with the respondent. I find the Tribunal made an error of law in its interpretation of s. 64 of the *Schedule* such that the Tribunal would likely have reached a different outcome had the error not been made for the following reasons.

[18] At paragraph 25 of the decision the Tribunal found that “Intact delivered an adequate IRB stoppage letter to the applicant on March 26, 2015.” Despite the finding that the March 26, 2015 letter was adequate, and that it was delivered to the applicant, at paragraph 23 the Tribunal states that “It would be unfair to allow the respondent to rely on the March 26, 2015 IRB stoppage letter to claim that the limitation period has expired when the respondent failed to provide a copy of the same to the applicant’s counsel within a reasonable period of time”. At paragraph 24, the Tribunal finds there is no dispute that a copy of the March 26, 2015 IRB stoppage letter was provided to the applicant’s counsel on February 15, 2019. The Tribunal concludes it is the February 15, 2019 delivery to

[4] 2021 ONSC 3997.

applicant's counsel, rather than the March 26, 2015 delivery to the applicant, that triggers the limitation period in s. 56.

[19] The Tribunal's decision does not discuss how this finding is consistent with the language of s. 64.

[20] I find it is an error of law to interpret s. 64 to find that an otherwise compliant notice must be delivered to counsel, who is retained after the notice is delivered, for it to remain valid. Section 64 does not include a requirement to re-deliver a notice to counsel after an insured person retains counsel. The Tribunal erred in reading this requirement into s. 64, and I agree with the respondent that there is no ambiguity in the section that allows for it.

[21] As noted above, Rule 18.2(b) requires the Tribunal to be satisfied that the error is such that the Tribunal would likely have reached a different result had the error not been made. I agree with the respondent that the error is significant. If the Tribunal had correctly interpreted s. 64, the triggering date for the two-year limitation period would have been March 26, 2015 rather than February 15, 2019, a difference of almost four years. As the applicant submitted his application to the Tribunal on November 27, 2019 this difference is significant in terms of his ability to dispute the IRB denial.

[22] I also agree with the respondent that the decision in *Fratarcangeli* does not assist the applicant as the Tribunal did not invoke its discretion under s. 7 of the *LAT Act* in the October 26, 2021 decision. The response to a request for reconsideration is not an opportunity to make new arguments about one's case. I find the applicant's s. 7 argument to be a new argument that was not part of the decision under review, and I will not consider it on reconsideration.

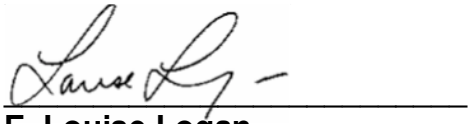
[23] I vary the Tribunal's decision of October 26, 2021. For the reason set out above, I find that the notice delivered to the applicant on March 26, 2015 started the two-year limitation period in s. 56. The applicant is statute barred from proceeding with his application.

Costs

[24] In his submissions, the applicant has made a request for costs pursuant to Rule 19. Given the outcome of the respondent's request for reconsideration, I decline to make an order for costs.

CONCLUSION

[25] I grant the respondent's request for reconsideration and vary the Tribunal's decision of October 26, 2021. I find that the notice delivered to the applicant on March 26, 2015 started the two-year limitation period in s. 56. The applicant is statute barred from proceeding with his application.



E. Louise Logan
Vice-Chair
Licence Appeal Tribunal
Tribunals Ontario

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