Citation: Feller v. Economical Insurance Company, 2024 ONLAT 21-014434/AABS-R

RECONSIDERATION DECISION

Before:	**Harry Adamidis**
Licence Appeal Tribunal File Number:	**21-014434/AABS**
Case Name:	**Regina Feller v. Economical Insurance Company**

Written Submissions by:

For the Applicant:	Kateryna Vlada, Paralegal
For the Respondent:	Kayly Machado, Counsel

OVERVIEW

[1] On December 29, 2023, the applicant requested reconsideration of the Tribunal's decision dated December 11, 2023 ("decision").

[2] In the decision, I found that the applicant's injuries are predominantly minor as defined in s. 3 of the *Statutory Accident Benefits Schedule* – Effective September 1, 2010 (including amendments effective June 1, 2016) (the "*Schedule*"), and that she was not entitled to an Income Replacement Benefit ("IRB"), the treatment plans in dispute, nor interest.

[3] The grounds for a request for reconsideration are found in Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* ("Rules"). 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 committed a material breach 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; or

c) 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] The applicant requests reconsideration under Rule 18.2(c). She submits that new evidence that was not previously before the Tribunal would have affected the result.

[5] The applicant seeks a new finding that her injuries are not predominantly minor as defined by s. 3 of the *Schedule*.

RESULT

[6] The request for reconsideration is dismissed.

ANALYSIS

[7] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the

categories in Rule 18.2. In particular for this case, Rule 18.2(c) considers whether there is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously, and would likely have affected the result.

[8] I find that the applicant has not established that the evidence she is advancing as grounds for reconsideration meets the test set out in Rule 18.2(c).

[9] The applicant submits that an MRI examination was conducted on December 9, 2023. The findings of this MRI and the commentary provided by a radiologist establish that the applicant's injuries satisfy the requirements of s.18 of the *Schedule*. The applicant argues that this is newly available medical information that was not available when the hearing took place in June, 2023.

[10] According to the respondent, the applicant has not demonstrated why she could not have obtained this evidence before the hearing date. It submits that this new evidence does not establish grounds for reconsideration under Rule 18.2(c).

[11] The written hearing was scheduled to take place on June 9, 2023. The MRI is dated December 9, 2023. As such, this evidence was not before the Tribunal at the time of the hearing.

[12] The test in Rule 18.2(c) is that the evidence could not have been obtained previously. Merely obtaining the evidence at a later date does not satisfy this test. The applicant has not explained why she could not have obtained this evidence before the hearing. For this reason, I find that the applicant has not established grounds for reconsideration under the provisions of Rule 18.2(c).

[13] I further find that even if the evidence the applicant seeks to admit on reconsideration met the test in Rule 18.2(c), it would likely not have affected the result.

[14] According to the applicant, the commentary on the MRI by Dr. Frederick Lan, radiologist, identifies a spinal fissure which was not seen in the previous MRI from 2016. The applicant submits that this new evidence establishes that she had a pre-existing injury that was worsened by the accident. The applicant asserts that she has satisfied the requirements of s. 18 of the *Schedule* and should be removed from the MIG.

[15] The respondent submits that the MRI does not establish that the applicant's pre-existing condition was aggravated by the accident.

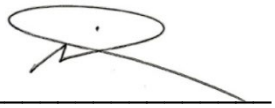
[16] I note that s. 18(2) of the *Schedule* states:

> Despite subsection (1), the limit in that subsection does not apply to an insured person if his or her health practitioner determines and provides compelling evidence that the insured person has a pre-existing medical condition that was documented by a health practitioner before the accident and that will prevent the insured person from achieving maximal recovery from the minor injury if the insured person is subject to the limit or is limited to the goods and services authorized under the Minor Injury Guideline. (emphasis added)

[17] The applicant must show that her pre-existing condition will prevent her from achieving maximal recovery from her accident related injury. The applicant makes no submissions on this point. As such, she does not address a necessary element of 18(2) of the *Schedule*. Consequently, I find that even if the new MRI could be considered under Rule 18(2)(c), the applicant has not adequately established that it would likely have affected the result of the hearing.

CONCLUSION & ORDER

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



Harry Adamidis
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: May 16, 2024