CITATION: Abboud v. Intact Insurance Co., 2025 ONSC 3416
DIVISIONAL COURT FILE NO.: 087/24
DATE: 20250619

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, Lococo and Kurke JJ.

B E T W E E N :	)	
	)	
Fawzi Abboud	)	*Frank E. McNally*, for the Appellant
	)	
Appellant	)	
	)	
- and -	)	
	)	
Intact Insurance Company	)	*Tessie Kalogeras and Colleen MacKeigan*,
	)	for the Respondent
Respondent	)	
	)	**HEARD at Toronto:** October 21, 2024
	)	by videoconference

REASONS FOR DECISION

D.L. Corbett J.

[1] The Appellant, Mr Abboud, appeals the decision of the License Appeal Tribunal ("LAT") dated August 11, 2023 (2023 CanLII 72642 (ON LAT)), and the Reconsideration Decision of the LAT dated December 29, 2023 (2023 CanLII 123464 (ON LAT)), denying his claim to be catastrophically impaired and denying related benefits claims.

[2] The original LAT decision turned on an analysis of the expert evidence related to catastrophic impairment. The LAT determined that the Appellant's expert evidence was conclusory and failed to include a path of reasoning that explained the expert's opinion. The Respondent's expert did provide an analysis that explained their opinion, and the LAT found the opinion persuasive and supported by the factual record. Therefore, the LAT concluded that the claim for catastrophic impairment had not been proven by the Appellant.

Analysis

(a) The Original LAT Decision

[3] The LAT correctly found that the Appellant bore the onus to establish catastrophic impairment (Decision, paras. 9, 20), and that the Appellant's claim to be catastrophically impaired could be established under either Criterion 7 or Criterion 8, as reflected in the Appellant's "OCF-19" submitted in support of his claim (Decision, paras. 6-8).

[4] In respect to the claim under Criterion 8, the LAT held (at Decision, paras. 10-11):

> … Dr Ofokansi's evidence on catastrophic impairment is restricted to only the OCF-19. There are no complementary reports or analyses prepared by Dr Ofokansi that would speak to what Dr Ofokansi relied on to conduct the determination. In fact, the rationale for Dr Ofokansi's finding is just one sentence on the OCF-19 that reads "[the Appellant's] accident caused post-traumatic stress disorder and major depressive disorder (persistent and severe), with extreme impairments in functioning across all domains."
>
> This evidence alone is insufficient to meet the [Appellant's] burden of proof. Dr Ofokansi provides no medical evidence whatsoever to explain why the [Appellant's] impairments are determined to preclude useful functioning (i.e., an extreme impairment). In fact, there is no description of the [Appellant's] performance in any of the areas of functioning to explain an extreme rating. In short, there is only an unsubstantiated conclusion.

[5] In respect to the claim under Criterion 7, the LAT held (at Decision, para. 19):

> Similarly, the applicant has failed to prove he is catastrophically impaired under Criterion 7. Although Dr. Ofokansi indicates that Criterion 7 is applicable to the applicant, the rationale for catastrophic impairment provided by Dr. Ofokansi is limited only to factors associated with Criterion 8. Put differently, there is no mention whatsoever of WPI—there are only references to two mental or behavioural disorders that relate to domains of functioning, which I interpret as relevant to Criterion 8 per the *Schedule*. As such, Dr. Ofokansi offers no medical evidence or basis for applying Criteria 7 to the applicant's case, and did not provide a WPI rating. I can therefore only conclude the applicant has not met his burden to prove catastrophic impairment under Criterion 7.

[6] The balance of the Appellant's claims were dismissed because of the dismissal of his claim to be catastrophically impaired (Decision, para.

(b) The LAT Reconsideration Decision

[7] The Appellant sought reconsideration of the Decision pursuant to Rule 18.2(a) and (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).* These provisions state that the LAT may grant a request for reconsideration where:

> 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….

[8] The Appellant argued that Reconsideration should be granted under Rule 18.2(a) because the LAT's reasons were inadequate, giving rise to a denial of procedural fairness, and because the LAT's finding "that the OCF-19 was inadequate" was not raised at the hearing and thus was not a fair basis on which to make the Decision. On reconsideration, the LAT concluded that the original reasons were sufficient and explained the basis on which the claim had been denied: the Appellant's expert evidence fell short of establishing the claim of catastrophic impairment. The LAT found that the decision did not turn on inadequacies in the OCF-19 and that the Appellant had a fair opportunity to make arguments before the hearing tribunal.

[9] The Appellant argued that the LAT failed to consider most of the Appellant's evidence and as a consequence failed to fairly consider the merits of the case. On reconsideration, the LAT concluded that the hearing adjudicator referenced the evidence necessary to explain his decision that the Appellant had failed to prove his case: he had not produced an opinion from a physician that was entitled to weight in respect to the issue of whether he was catastrophically impaired.

This Appeal

[10] The Appellant essentially reargues before this court the submissions he argued on Reconsideration. He submits that the reasons below were inadequate and that the hearing tribunal failed to consider most of the evidence he provided at the hearing.

Analysis

[11] The LAT was required to provide reasons sufficient for appellate review, and it was required to consider all the evidence and submissions made by the parties. I am satisfied that the reasons are sufficient and that the LAT referenced all the evidence and arguments that it needed to reference in order to explain its decision. Therefore, for the reasns that follow, I would dismiss the appeal.

1. The Reasons Are Adequate

[12] The LAT's chain of reasoning is straightforward. The LAT correctly found that, to prove a claim of catastrophic impairment, the claim must be supported by an opinion from a physician: s. 45 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 ("*SABS Schedule*"), provides:

> (1) An insured person who sustains an impairment as a result of an accident may apply to the insurer for a determination of whether the impairment is a catastrophic impairment.
>
> (2) The following rules apply with respect to an application under subsection (1):

1. An assessment or examination in connection with a determination of catastrophic impairment shall be conducted only by a physician but the physician may be assisted by such other regulated health professionals as he or she may reasonably require.

[13] For the claim to be supported by an "assessment or examination" from a physician, the opinion must be accepted by the LAT. If the opinion is not accepted by the LAT, then the claimant has not met his burden to prove his case.

[14] The LAT treated Dr Ofokansi's assessment as being in evidence. The LAT found that the assessment was not supported by analysis and did not reference source opinions or medical data. Rather, it found that the assessment was entirely conclusory and thus should be given no weight. From this finding it followed that the Appellant had not met his statutory burden to support his claim with an "assessment or examination" from a physician.

[15] I see no error in principle in the LAT's reasoning on this point. A bald conclusion, unsupported by analysis, and without reference to supporting opinions and medical data on which it was based, may not be entitled to any weight: the law is well-established that a bald authoritative claim by an expert is not a sufficient basis for an expert opinion.

[16] The Appellant criticizes the LAT decision for failure to assess the evidence of psychologist Dr Reesor, or to review and analyse the medical data in the record. The LAT is not required to undertake such an exercise in the absence of the requisite medical assessment. This said, the LAT did review Dr Reesor's evidence to assess whether it was clear, from the record, that Dr Ofokansi had relied on that opinion as the basis for his own conclusory opinion. The LAT explained why it was not prepared to draw this inference (Decision, paras. 12-17), and this explanation is reasonable. It is clear law that the opinion of Dr Reesor, who is not a physician, is not sufficient to meet the test in s. 45 of the *SABS Schedule.* This line of analysis is consistent with the LAT's prior jurisprudence and the language of s. 45 of the *SABS Schedule*: *Lanzon* v. *Economical Insurance Co.,* 2023 CanLII 119806 (ON LAT); *Amoako* v. *Aviva Ins. Co. of Canada,* 2021 CanLII 124073 (ON LAT).

2. Failure to Consider the Appellant's Evidence

[17] On Dr Reesor's evidence, the Appellants suffers from serious impairments that are close to the border of the category of "catastrophic impairment". Dr Reesor would place the Appellant across the border, within the "catastrophic" category. But Dr Reesor is not a physician, and in the absence of an assessment from a physician, explaining their opinion with data, analysis, and/or reliance on supporting opinions from other health care professionals, Dr Reesor's evidence, and other supporting information, are insufficient to establish the claim. It is not for the LAT to undertake the work of an assessing physician, or to assess whether there is evidence in the record that could support a physician's conclusory opinion.

[18] The LAT explained why it found that there was no physician's assessment before it that was entitled to any weight, and why this deficiency was not cured by other evidence before it.

These findings explained the LAT's decision sufficiently, and there was no need for the LAT to refer to further evidence. I would not give effect to this argument.

3. Unavailability of Dr Ofokansi to Testify

[19] The Appellant argued that Dr Ofokansi's unavailability to testify was a basis on which the LAT should have considered the basis for Dr Ofokansi's conclusions in the rest of the evidence before the LAT. With respect, Dr Ofokansi's unavailability is not a basis on which the LAT could waive compliance with s. 45 of the *SABS Schedule*. Where an expert witness becomes unavailable, it may be open to the LAT to admit their opinion and to consider the absence of an opportunity to cross examine as a matter going to the weight to be ascribed to the opinion. In this case, however, the evidence was entirely conclusory, and the LAT found that it could not draw an inference about the basis for Dr Ofokansi's conclusions from the record. The LAT's analysis does not disclose an error of law.

[20] I appreciate that it creates an additional barrier for a claimant, but where their assessing physician is not available to testify, the claimant may have to retain another physician to complete an assessment. The LAT found that where, as here, the physician's assessment is entirely conclusory, the assessment is not entitled to any weight, and thus the claimant would have to retain another physician to conduct an assessment in order to prove their claim. I see no error in this conclusion.

4. The Sufficiency of the OCF-19 Was Not Raised as an Issue Before the LAT

[21] The Appellant argued that the LAT's decision is, in effect, a finding that the OCF-19 was deficient from the outset, an issue never raised by the Respondent and not argued before the LAT. I do not read the LAT's decision in this way. Rather, the LAT's reasoning contemplates that it would have considered additional reports and testimony from Dr Ofansi, had they been tendered by the Appellant.

[22] The LAT's decision was not to the effect that the claim to catastrophic impairment was never properly advanced, but rather, that on all the evidence before the LAT at the hearing, there was no physician's assessment entitled to any weight. I would not give effect to this argument.

Disposition

[23] I would dismiss the appeal, with costs in the agreed amount of $5,000, inclusive, payable by the Appellant to the Respondent within 30 days.

"D.L. Corbett J."

I agree: "Lococo J."

I agree: "Kurke J."

Released: June 19, 2025

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BETWEEN:

FAWZI ABBOUD

Appellant

– **and** –

INTACT INSURANCE COMPANY

Respondent

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Released: June 19, 2025