CITATION: Jendrika v. Intact Insurance Company, 2025 ONSC 652
DIVISIONAL COURT FILE NO.: 531/22
DATE: 20250130

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

D.L. Corbett, LeMay and Shore JJ.

B E T W E E N :	)	
Brenda Jendrika	)	Appellant Self-represented
Appellant	)	
- and -	)	
Intact Insurance Company	)	David Koots, for the Respondent
Respondent	)	
Licence Appeal Tribunal	)	Morgana Kellythorne for the intervenor
Intervenor	)	
	)	**HEARD:** In writing.

LeMay J.

[1] The Appellant, Brenda Jendrika, was in a motor vehicle accident on December 4th, 2016. She was subsequently denied benefits by the Respondent, Intact Insurance, and appealed that decision to the Licence Appeal Tribunal ("the LAT"). On May 20th, 2022,

the LAT issued a decision denying the Appellant Income Replacement Benefits ("IRB's") as well as certain medical and rehabilitation benefits under the *Statutory Accidents Benefits Schedule ("SABS")*. The Appellant sought an extension of time to bring a reconsideration application. That extension of time was also denied. Then, the Appellant sought a reconsideration of the LAT's decision denying her an extension of time to file a reconsideration application of the merits decision. That request was also denied by the LAT.

[2] The Appellant appeals all these decisions to this Court. For the reasons that follow, I would dismiss the Appellant's appeal of all of the LAT's decisions.

Background

[3] The Applicant was involved in a motor vehicle accident on December 4th, 2016. She sought various benefits under the *SABS* from the Respondent. These benefits, which included IRB's, physiotherapy and various assessments, were denied by the Respondent. She appealed this decision to the LAT, and the appeal was addressed in writing.

[4] On May 20th, 2022, the LAT denied the Appellant's claim. The LAT found that the Appellant had failed to prove her claim that she was entitled to IRB's for either the first 104 weeks after her car accident or at any point after the 104-week period had passed. The LAT also concluded that the treatment plans were not payable as they were not reasonable and necessary. Finally, the LAT concluded that there was no basis for the payment of interest or an award as there were no benefits that were unreasonably withheld or delayed.

[5] On June 1st, 2022, the Appellant filed a notice of motion before the LAT. She requested a ten-day extension to the time limit for filing a request for reconsideration of the May 20th, 2022, decision. Under Rule 18.1 of the *Licence Appeal Tribunal, Animal Care Review Board and Fire Safety Commission Common Rules of Practice and Procedure, Version I (October 2, 2017*) ("the *Rules")*, a party has twenty-one days to file a reconsideration application. For the Appellant, that deadline arrived on June 10th, 2022.

[6] The Appellant was seeking an extension of time because her representative was preoccupied with other submissions that were due on May 27th, 2022. No explanation of why the reconsideration request could not be completed between May 27th, 2022, and June 10th, 2022, was provided to the LAT by the Appellant.

[7] A hearing for the motion to extend time was originally scheduled by the LAT for June 21st, 2022. The Respondent was not available for that date, and a new hearing date of July 18th, 2022 was set. A timetable for materials was also set by the LAT. On July 14th, 2022, the Appellant filed the materials in support of her request for a reconsideration.

[8] The Appellant's motion for an extension of time to file the reconsideration application was heard on July 18th, 2022. On July 20th, 2022, the LAT released reasons dismissing the Applicant's request. The LAT applied a four-factor test that is set out in its' case-law and determined that the extension of time should be denied.

[9] The Appellant sought reconsideration of the July 20th, 2022, decision. This reconsideration request was brought in a timely way. On August 15th, 2022, the LAT dismissed this request on jurisdictional grounds. Specifically, the July 20th, 2022, decision denying an extension of time to file a reconsideration application was not a decision that finally disposed of an appeal. Rule 18.1 of the *Rules* sates that reconsideration requests will only be accepted for LAT decisions that finally dispose of an appeal.

Procedural History

[10] The Appellant originally only appealed the August 15th, 2022, decision. However, it was clear that the Appellant was challenging the substantive decision. As a result, a case conference was convened before Corbett J. on November 7th, 2022. Corbett J. directed that the Notice of Appeal was to be amended to include the appeal of the substantive decision and the original reconsideration decision.

[11] Materials were exchanged between the parties and the matter was scheduled for a hearing before this panel on June 26th, 2024. Shortly before the hearing, the Appellant sought an adjournment for health reasons. That adjournment was granted by this panel on June 24th, 2024, on terms that this panel was seized of the case and the hearing would proceed in writing. Although the parties had already provided factums, we granted the parties the opportunity to provide further written submissions. The Appellant was given until July 19th, 2024, to provide additional submissions of no more than ten pages and the Respondent then had until August 16th, 2024, to provide responding submissions of no more than ten pages.

[12] On July 3rd, 2024, the Appellant stated that she was having difficulties preparing her submissions, given her medical condition. She requested "a few extra months" to prepare her submissions. The Respondent indicated that it was opposed to the extension of the timelines for these materials. The Panel provided further directions on July 5th, 2024, stating that the panel had considered all of the circumstances when it granted the Appellant's last-minute request for an adjournment and that the terms were peremptory. A further extension was refused.

[13] The Panel's directions prompted a further request for an extension, which came from the Appellant's husband. The basis for the extension was that the Appellant had been hospitalized. We heard nothing further from the Appellant. As a result, on December 11th,

2024, we sent the Appellant a further direction providing her with a deadline of January 10th, 2025, to provide any additional submissions to the Court. She was advised that there would be no extension to this deadline for any reason and that, if no submissions were received, then the Panel would proceed to make a decision based on the materials that it had.

[14] No further submissions were received from the Appellant by January 10th, 2025, or to date.

Positions of the Parties

[15] The Appellant argues that the LAT improperly denied her reconsideration application and should have reconsidered their decision and granted her IRB's and medical and replacement benefits that she was seeking in the original proceeding. She also sought an award and interest. In the alternative, she argues that the original decision had errors in law and fact that require this Court to intervene. Finally, the Appellant argues that she was denied procedural fairness.

[16] The Respondent argues that this Court does not have the jurisdiction to consider an appeal from an interlocutory order such as a reconsideration decision. Further, the Respondent argues that the Appellant's complaints are all related to the weighing of evidence and, as such, are not appealable to this Court.

Issues

[17] The Appellant's appeal raises the following issues:

a) Does this Court have the jurisdiction to consider the LAT's denial of the Appellant's reconsideration application?
b) Was the Appellant denied procedural fairness by the LAT?
c) Is there an error of law in the LAT's decision to deny the Appellant benefits?

[18] I will deal with each issue in turn.

Issue #1- Jurisdiction

[19] The Appellant argues that the LAT acted improperly in its time extension and reconsideration decisions. I have serious doubts about the efficacy of that submission. However, this Court does not have the jurisdiction to consider an appeal from an interlocutory decision of the LAT. In this case, I am of the view that both the time extension and reconsideration decisions are interlocutory decisions and not final ones. These two

decisions do not resolve the merits of the case on a final basis. Therefore, they are not the proper basis for an appeal to this Court.

[20] The starting point for the analysis of this issue is section 11(6) of the *Licence Appeal Tribunal Act 1999,* S.O. 1999, c. 12, Sch.G, ("*LATA*") which states:

> (6) An appeal from a decision of the Tribunal relating to a matter under the *Insurance Act* may be made on a question of law only. 2014, c. 9, Sched. 5, s. 5 (3).

[21] This Court has repeatedly found that this section does not provide for appeals of interlocutory orders. *Penney v. Co-operators General Insurance Company* 2022 ONSC 3874 at paras. 8-17, *Grewal v. Peel Mutual Insurance Co.,* 2022 ONSC 4082 and *Rao v. Wawanesa Mutual Insurance Company* 2024 ONSC 39.

[22] In Rao*,* the Court stated (at paras. 24-25):

> [24] There is also the decision of this Court in *Grewal v. Peel Mutual Insurance Company*, 2022 ONSC 4082. In *Grewal*, an appeal was quashed because the LAT decision at issue was not final. The LAT decision denied a request to add a punitive damages claim to a *SABS* application at an early stage of the LAT process. A reconsideration of that LAT decision had already been denied. Although the facts in *Grewal* are different, it supports the conclusion that LAT decisions denying a reconsideration do not automatically give rise to a right of appeal to this Court. The LAT Decision denying reconsideration of the denial of an extension of time was interlocutory and did not give rise to a right of appeal to this Court. I do not have to decide whether a reconsideration decision can ever be final – that case is not before me.
>
> [25] I conclude that only the Merits Decision gives rise to a right of appeal in this case.

[23] *Rao* leaves open the possibility that, in some circumstances, a reconsideration decision might be a final decision. This is not that case. In this case, the reconsideration decision is not of the merits of the case. It is a reconsideration of the decision denying an extension of time to file a reconsideration decision. That is clearly an interlocutory issue. Similarly, the lime limits decision is interlocutory.

[24] Since neither the extension decision nor the reconsideration of that decision are final decisions, I conclude that this Court does not have jurisdiction to consider them. I would dismiss the Appellant's appeal of both of those decisions. The remaining two issues shall be considered in reference to the decision on the merits only.

Issue #2- Procedural Fairness

[25] I understand that the Appellant is arguing that she was denied procedural fairness in part on the basis that there was no oral hearing prior to the merits decision and that there were violations of procedural fairness. The precise nature of the Appellant's concerns are not completely clear.

[26] Procedural fairness is reviewed on a standard of correctness. However, Tribunals are owed considerable deference on their procedural decisions. This is because administrative tribunals have the experience and expertise to balance handling the need to ensure fair participation for all parties with the prompt determination of proceedings on their merits. *Wei v. Liu* 2022 ONSC 3887.

[27] In other words, when scrutinizing the procedural choices of a Tribunal, the reviewing Court cannot insist on the "optimal" procedure from various options that meet the standard for procedural fairness. The court is required to respect the procedural choices made by the Tribunal. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 27, *Council of Canadians With Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 231.

[28] In this case, it was open to the Tribunal to proceed by way of written submissions. The Appellant has not shown that an in-person hearing was necessary for the adjudicator to develop a full appreciation of the evidence. Further, the adjudicator's decision shows that she analyzed the evidence in the record before her in accordance with the relevant principles. The adjudicator also explained why she preferred certain evidence over other evidence. Therefore, I would give no effect to this argument.

Issue #3- The Merits

[29] As noted above, an appeal of a decision of the LAT under the *Insurance Act,* is limited to questions of law. The standard of review of questions of law is correctness: *Housen v. Nikolaisen,* 2002 SCC 33 at para. 8, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[30] Questions of fact, and questions of mixed fact and law are not reviewable on appeal, unless there is an extricable error of law. *Gore v. Rusk*, 2022 ONSC 2893 at para. 39.

[31] In this case, the Appellant points to a number of errors that she says are errors of law. However, none of these alleged errors are actually errors of law. For example, the Appellant argues that the fact that the adjudicator stated that the notes of one of the doctors were handwritten and difficult to read is not an error of law. It is a statement about the quality of the factual evidence before the adjudicator.

[32] The Appellant also argues that the adjudicator erred in law because she "provided insufficient reasons for why she preferred…" the evidence of various doctors tendered by the Respondent over the evidence of the Appellant's doctor. I reject this argument for two reasons. First, it is difficult to see how a decision of which doctor's report an adjudicator prefers amounts to a question of law. Deciding what evidence is more compelling is almost always a question of fact. Second, in reaching her conclusions, the adjudicator sets out significant detail from the report and provides explanations such as one of the doctors was "more comprehensive in his findings" to support her conclusions as to what evidence she should accept.

[33] Indeed, as the Appellant herself notes in her factum (at paragraph 29) "the appellant's position is that it is not unusual for professionals like doctors to have different opinions on a medical condition." I accept that observation. However, the conclusion that flows from that observation is that it is the responsibility of the adjudicator to find, as facts, which medical reports are to be preferred. As long as the adjudicator is finding facts, and does not make an error of law, then this Court has no jurisdiction to intervene on an appeal. A misapprehension of the evidence is not an error of law unless the misapprehension is based on a wrong legal principle. *R. v. J.M.H.*, 2011 SCC 45, [2011] 3 S.C.R. 197, at para 29. No such misapprehension exists in this case.

[34] The Appellant also argues that the adjudicator improperly applied the test for determining whether the Appellant should be entitled to IRB's either during the first 104 weeks after her accident or in the post-104-week period. I reject this argument. The adjudicator properly set out the tests for the payment of IRB benefits in each period and applied those tests to the facts.

[35] The Appellant specifically asserted that the adjudicator failed to consider factors over and above those outlined in the relevant sections of the *SABS* and the decision should be set aside on that basis. The problem with that assertion is that it is contrary to the case law. In *Burtch v. Aviva General Insurance Company of Canada*, 2009 ONCA 479, (2009) 97 O.R. (3d) 550, the Court of Appeal found that the test for eligibility for IRB's is as set out in the regulations. In respect of the post-104-week disability test for IRB's, this Court considered the issue in *Traders General Insurance Company v. Rumball*, 2022 ONSC 7215 and stated (at para. 60):

> [60] I do not accept that *Burtch* incorporates any other disability test other than that set forth in s. 6 of the *Schedule.* While the Court of Appeal endorses reference to earlier jurisprudence, including cases from FSCO and now the LAT, as clarifying how specialized tribunals interpret and apply the *Schedule*, those decisions are not binding on the court. While those decisions include as part of the post-104 disability test a test that suitable employment means employment in a competitive, real-world setting, considering an employer's demands for reasonable hours and productivity

> and a test that the work should also be comparable in terms of status and wages, we do not accept that is the test set forth in the *Schedule.* As such this court, being bound by the decision of the Court of Appeal in *Burtch,* concludes that the only test to be applied in establishing an entitlement to post-104 IRBS is the one set forth in the *Schedule* and it does not include employment in a competitive, real-world setting, nor does it include any test that suitable employment should be comparable in terms of status and wages.

[36] From this passage, it is clear that the adjudicator articulated the correct test for post-104-week IRB's. It is also clear that she applied the correct test in respect of the pre-104-week IRB's. The appellant's issues with the adjudicator's decision in respect of IRB's are all disagreements with the factual conclusions that the adjudicator has reached.

[37] Finally, the Appellant argues that the adjudicator's conclusion that the Minor Injury Guideline ("MIG") was no longer in dispute was an error in fact, and that the adjudicator made an error in law and/or fact by failing to fulfill her role as a trier of fact by disregarding the MIG issue. I reject this submission. The adjudicator noted that neither party raised the MIG issue in their written submissions before her and there was no evidence directed to this point. On that basis, the adjudicator assumed that the applicability of the MIG was no longer in dispute and did not address the issue. The adjudicator was entitled to decide the case on the basis on which it was argued before her.

[38] For these reasons, the appeal of the decision on the merits is also dismissed.

Conclusion

[39] For the foregoing reasons, the Appellant's appeal is dismissed with costs payable by the Appellant to the Respondent in the all-inclusive sum of $5,000.00 within thirty (30) days of today's date.

"LeMay J."

I agree: "D.L. Corbett J."

I agree: "Shore J."

Released: January 30, 2025

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B E T W E E N :

Brenda Jendrika

Appellant

- and –

Intact Insurance Company

Respondent

REASONS FOR DECISION

Released: January 30, 2025