CITATION: Dorcil v. Wawanesa Insurance et al, 2026 ONSC 1446
COURT FILE NO.: DC-24-776-JR
DATE: 20260311

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: SONIA DORCIL, Applicant

AND:

WAWANESA INSURANCE and LICENCE APPEAL TRIBUNAL, Respondents

BEFORE: Matheson, Muszynski and Brownstone JJ.

COUNSEL: *Michael Brill*, for the Applicant

Elizabeth Scott, for Wawanesa Insurance

Morgana Kellythorne, for Licence Appeal Tribunal

HEARD: February 26, 2026, at Toronto

ENDORSEMENT

[1] This is an application for judicial review of the Licence Appeal Tribunal (the Tribunal) decision dated November 15, 2024 and related decision dated May 29, 2024.

[2] The applicant, Sandra Dorcil, was involved in a motor vehicle collision on May 24, 2018 and made a claim to her automobile insurer, Wawanesa Insurance, for various benefits under the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10, a regulation made under the *Insurance Act*, R.S.O. 1990, c. I.8 (*SABS*). Wawanesa determined that the applicant had not sustained a catastrophic impairment and was therefore not entitled to access an increased level of benefits under the policy.

[3] The applicant applied to the Tribunal to resolve the dispute with Wawanesa.

[4] The seven-day hearing took place before Tribunal Adjudicators, Amar Mohammed and Jeremy Roberts, between January 2, 2024 and January 10, 2024. The applicant sought a declaration that she sustained a catastrophic impairment under Criterion 7 which requires impairments or a combination of impairments that result in a whole person impairment (WPI) of 55% or more: *SABS* at s. 3.1(1)7. An individual's WPI is assessed in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th Edition (1993) (the AMA Guidelines).

[5] On May 29, 2024, the Tribunal released its decision concluding that the applicant's accident-related impairments resulted in a 51% WPI and, accordingly, finding that the applicant had not sustained a catastrophic impairment (the Merits Decision): *Dorcil v. Wawanesa Insurance*, 2024, CanLII 49032 (ON LAT).

[6] The applicant requested reconsideration of the Merits Decision. On November 15, 2024, the Tribunal released the decision of Adjudicator Mohammed dismissing the applicant's request for reconsideration (the Reconsideration Decision): *Dorcil v. Wawanesa Insurance*, 2024 CanLII 115447 (ON LAT).

[7] On this application for judicial review, the applicant seeks an order quashing the impugned decisions and remitting the matter back to the Tribunal for a new hearing before different adjudicators.

Issues raised by the applicant

[8] The applicant raised a preliminary concern about delay in the release of the Tribunal decisions. The Merits Decision and the Reconsideration Decision were each released over three months after the respective hearings. The applicant submits that this delay standing alone increases the likelihood that the decisions are unreasonable. There was no legal authority provided to support the applicant's submission that a delay in the release of written reasons of this duration results in an unreasonable decision or one that is procedurally unfair, nor are we persuaded to reach that conclusion having reviewed the record and Tribunal decisions in this case.

[9] The applicant's main issue is that the Tribunal unreasonably rejected evidence related to her accident-related sleep impairments. The applicant's position is that her accident-related sleep impairments resulted in a 9% WPI based on expert evidence. The Tribunal found that the applicant had not established that any sleep impairments were accident-related and, on this basis, declined to attribute any WPI rating to sleep impairment.

[10] Had the Tribunal accepted the applicant's position, she would have surpassed a rating of 55% WPI and been deemed to have sustained a catastrophic impairment.

[11] The applicant submits that the Tribunal's decisions are unreasonable because:

a) The Tribunal erred when stating that the applicant's sleep impairment was "not rateable".

b) The Tribunal erroneously concluded that the applicant relied on the expert report of Dr. Parekh (a psychiatrist) to establish a 9% WPI rating for sleep impairment, when it was in fact Dr. Gomez-Vargas (a neurologist) who proffered this evidence.

c) If the Tribunal had issues with a 9% WPI rating, it ought to have concluded that the applicant's sleep impairment produced a WPI rating at something less than 9% as opposed to finding that there was no WPI rating for sleep impairment.

d) Without a rebuttal neurology report from Wawanesa, the Tribunal should have deferred to Dr. Gomez-Vargas's conclusion rating the applicant's sleep impairment at 9% WPI.

e) The Tribunal did not adequately consider evidence from the applicant's family physician or daughter regarding sleep impairment which provided corroboration for the sleep impairment rating of 9% put forward by Dr. Gomez-Vargas.

Standard of Review

[12] The applicant seeks judicial review of the Merits Decision and the Review Decision. The presumptive standard of review on a judicial review application is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (*Vavilov*), at paras. 23-25. To succeed on the application for judicial review, the applicant bears the burden of demonstrating that the decisions were unreasonable.

[13] The Supreme Court of Canada has confirmed that "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85.

[14] While the applicant alleges the Tribunal made legal errors, in our view, the arguments advanced by the applicant are more appropriately characterized as raising questions of mixed fact and law.

Analysis

[15] In our view, the applicant has failed to demonstrate that the Tribunal's decisions are unreasonable for the reasons that follow.

(a) The Tribunal did not err when stating that the applicant's sleep impairment was "not rateable"

[16] In the Merits Decision, the Tribunal found that the applicant did not meet her burden to prove that she suffered from a "rateable" sleep impairment. This was addressed in the Reconsideration Decision. The Tribunal acknowledged that the use of the term "rateable" or "not rateable" did not clearly communicate the Tribunal's findings. The Tribunal explained that the evidence establishing the 9% WPI rating for sleep impairment "was not persuasive" and "was not accepted because of the applicant's inconsistent reporting regarding sleep impairment and a lack of causal evidence linking this impairment to this accident": Reconsideration Decision at para 21.

[17] Contrary to the applicant's assertion, the Tribunal acknowledged that sleep impairment was rateable under the AMA Guidelines but found that there was not an adequate evidentiary foundation to justify a rating in this case. In our view, the Reconsideration Decision resolved any confusion with respect to the use of the term "rateable" in the Merits Decision.

(b) The Tribunal did not rely on the expert report of Dr. Parekh to establish a 9% WPI rating for sleep impairment

[18] The applicant's concern that the Tribunal was under the mistaken belief that the applicant was relying on the evidence of Dr. Parekh (a psychiatrist) to establish the 9% rating for sleep impairment is misguided.

[19] There were two sets of catastrophic impairment reports originating from the applicant before the Tribunal. Each set of reports included multiple assessments from health care providers from different disciplines. Each set of reports has its own 'executive summary' that provided an overview of the findings of each assessor. In the Merits Decision, the Tribunal referred to the author of an executive summary, Dr. Getahun, that provided a summary of various reports. Dr. Getahun referred to the 9% WPI rating for sleep impairment rating, but not specifically to Dr. Gomez-Vargas. The Tribunal does not attribute the origin of the 9% WPI rating for sleep impairment rating to Dr. Parekh in the Merits Decision but does refer to the applicant having made complaints related to sleep to Dr. Parkeh.

[20] In the Reconsideration Decision, the Tribunal notes that the 9% WPI rating for sleep impairment referred to in Dr. Getahun's executive summary clearly originated from Dr. Gomez-Vargas's report, which was before the Tribunal. The Tribunal acknowledged that it could have "better referenced the originating assessor's report rather than the executive summary": at para 22.

[21] The Tribunal's reference to Dr. Getahun's executive summary as opposed to Dr. Gomez-Vargas's originating assessment was sufficiently explained in the Reconsideration Decision. It is clear that the Tribunal understood that the 9% WPI rating for sleep impairment originated from a neurologist, Dr. Gomez-Vargas.

(c) It was reasonable for the Tribunal to conclude that the applicant did not sustain any accident related-sleep impairment

[22] In the request for reconsideration and on the judicial review, the applicant submits that the Tribunal should have rated the applicant's accident-related sleep impairment at something less than a 9% WPI.

[23] This position was not raised at the original hearing. It is with the benefit of hindsight that the applicant argues that the Tribunal should have reasonably concluded that the applicant's rating for sleep impairment was 4-5%. This would result in a WPI rating of 55-56% and, accordingly, a declaration that the applicant sustained a catastrophic impairment under Criterion 7.

[24] We reject this submission. The applicant is minimizing the requirement before the Tribunal to demonstrate that her impairments were accident related. The Tribunal's basis for not accepting any accident-related sleep impairment rating was due to a "lack of causal evidence" and "inconsistency in reports of sleep complaints": Merits Decision at para. 23.

(d) It was reasonable for the Tribunal to reject the 9% WPI rating for sleep impairment provided by Dr. Gomez-Vargas

[25] The applicant submits that the Tribunal should have accepted the evidence of Dr. Gomez-Vargas because Wawanesa did not have a neurology expert to support the opinion that the applicant's accident-related sleep impairment rating was a WPI of 9%. The Tribunal directly addressed this issue in the Reconsideration Decision and determined that the applicant could not meet her onus to prove that she sustained a catastrophic impairment by pointing to a perceived weakness of Wawanesa's position: para 30.

[26] Further, the Tribunal provided detailed reasons for rejecting Dr. Gomez-Vargas's 9% WPI rating for sleep impairment, including: the applicant never made sleep complaints to him; his first report does not provide any sleep impairment rating and his second report provides a 9% WPI rating for sleep impairment but does not provide any reasons or analysis for doing so: Reconsideration Decision at paras 24 – 26.

(e) The Tribunal's decisions are not rendered unreasonable by failing to refer to every piece of evidence before it

[27] The applicant takes the position that the Tribunal failed to consider evidence from her family physician and daughter that support a 9% WPI rating for sleep impairment.

[28] In the Merits Decision the Tribunal referenced the family physician's records and noted that the first mention of sleep complaints was two years after the accident, which conflicted with reports to Dr. Parkekh that sleep issues started immediately following the collision. Evidence from the applicant's daughter about her mother's sleep complaints was not referenced at all in the Merits Decision.

[29] In the Reconsideration Decision, the Tribunal acknowledged that it did not provide further analysis on the family physician's records and the omission relating to the daughter's evidence. However, the Tribunal also correctly noted that it was not required to address every piece of evidence and all submissions made by the parties. It went on to note that failing to do so "is not an error such that it would likely have changed the result": at para 32.

[30] The hearing before the Tribunal took place over seven days. There were many issues in dispute at the hearing aside from whether the applicant sustained an accident-related sleep impairment. A number of witnesses testified for each party. There was a voluminous written record.

[31] As noted in *Vavilov*, "administrative decision-makers are not required to consider and comment on every issue raised by the parties in their reasons": at para 301 citing *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), [2011] 3 SCR 708. Further, "[to] impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice": *Vavilov* at para 128.

[32] In our view, neither alleged omission concerns a key issue or central argument. The applicant has not satisfied the burden of showing that the decisions are unreasonable for rejecting the applicant's position about when the first sleep complaint was made to the family physician or by not specifically referencing anecdotal evidence from the applicant's daughter.

Conclusion and Costs

[33] The applicant's submissions at the reconsideration stage and before this court are largely an attempt to re-argue her original case. This is not the purpose of an application for judicial review.

[34] The Tribunal identified the correct legal principles and applied those principles to the evidence in a manner that produced reasons that are justified, transparent and intelligible: *Vavilov* at para. 100. The applicant has not demonstrated that the Tribunal's decisions were unreasonable. The application for judicial review is dismissed.

[35] As agreed to by the parties, costs are payable by the applicant to Wawanesa in the fixed amount of $11,000 inclusive of HST and disbursements.

Matheson J.

Muszynski J.

Brownstone J.

Date: March 11, 2026