

CITATION: Kennedy v. Workplace Safety and Insurance Appeals Tribunal, 2026 ONSC 2192
DIVISIONAL COURT FILE NO.: DC-25-00000432-0000
DATE:20260416

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt A.C.J., Shore and Brownstone JJ.

BETWEEN:)	
)	
Kenneth Kennedy)	Kenneth Kennedy, Self-represented
)	
Applicant)	
)	
– and –)	
)	
Workplace Safety and Insurance Appeals Tribunal)	<i>Scott Murray and Rebecca Woodrow</i> , for the Respondent
)	
Respondent)	
)	
)	HEARD at Toronto: April 13, 2026

L. Brownstone J.

- [1] Mr. Kennedy brings this application for judicial review of three decisions of the Workplace Safety and Insurance Appeals Tribunal (referred to below as WSIAT or the tribunal) dated October 8, 2020, February 22, 2022, and February 13, 2025.
- [2] The decisions arise from two injuries Mr. Kennedy suffered while at work as a shredding specialist. The first injury occurred on August 27, 2008, when the arm of a bin tipper, or the bin tipper itself, struck Mr. Kennedy’s shoulder. That injury is not at issue in this application. The second injury occurred on October 1, 2008, when an auger arm of the shredder moved and hit Mr. Kennedy in the face.
- [3] Mr. Kennedy applied for benefits. The Workplace Safety and Insurance Board (the Board) found that Mr. Kennedy had suffered a shoulder contusion in the first incident, and a facial contusion in the second. The Board denied Mr. Kennedy’s claims for ongoing entitlements relating to his right shoulder injury, his facial contusion, injuries to his eyes, ears, headaches, and dizziness, loss of earning benefits beyond March 10, 2010, and psycho-traumatic disability benefits.

- [4] There followed three WSIAT decisions. The appeal decision issued on October 8, 2020 (the first decision) allowed Mr. Kennedy's appeal in part. Mr. Kennedy sought reconsideration of this decision twice, resulting in decisions dated February 22, 2022, (the first reconsideration decision) and February 13, 2025, (the second reconsideration decision).
- [5] The reconsideration decisions both found Mr. Kennedy had not met the threshold for reconsideration and his requests were dismissed.

The WSIAT decisions

- [6] In its first decision, WSIAT allowed Mr. Kennedy's appeal with respect to the facial contusion and dismissed the appeal in all other respects. The Tribunal reviewed the medical evidence before it and made the following decisions:
- a. WSIAT upheld the Board's decision regarding the shoulder injury from the August 2008 incident. WSIAT found that Mr. Kennedy's entitlement to benefits for a permanent impairment to the right shoulder had not been established.
 - b. With respect to the October 1, 2008, injury, the WSIAT found the medical evidence demonstrated that after the incident, Mr. Kennedy suffered pain, including in the face, ear, and temporomandibular joint (TMJ), as well as swelling. WSIAT allowed Mr. Kennedy's appeal from the Board decision denying him compensation for this injury. WSIAT found Mr. Kennedy had ongoing entitlement for a soft tissue injury to his TMJ. WSIAT referred the nature and extent of his entitlements back to the Board for further determination.
 - c. WSIAT rejected Mr. Kennedy's claim for compensation for headaches, dizziness, post-concussion syndrome and depression arising from the October injury. The tribunal noted that these symptoms were first mentioned close to a year after the incident.
 - d. WSIAT also rejected Mr. Kennedy's arguments that his workplace injuries caused his loss of earnings after he lost his job in March 2010. To be entitled to loss of earnings benefits, the worker's loss of earnings must result from a compensable injury. WSIAT found there were no medical restrictions arising from the October 1, 2008, accident that would prevent Mr. Kennedy from obtaining employment in his pre-accident field and he was therefore not entitled to loss of earnings benefits for this injury.
 - e. The tribunal also rejected Mr. Kennedy's claim that he suffered psycho-traumatic disability from the incidents. The WSIAT found a psychiatric referral was made only after Mr. Kennedy was involved in a car accident in September 2010. It found these psycho-traumatic symptoms were not related to his workplace injuries.
- [7] Mr. Kennedy applied for reconsideration of this first decision. Mr. Kennedy raised the following issues in his request for reconsideration:

- a. On August 27, 2008, it was the bottom of the bin, not the arm, that struck his shoulder;
- b. With respect to the October incident, Mr. Kennedy advised that he injured his head and jaw, not his face.
- c. The first decision misnamed the physician who had seen him in 2008.
- d. Mr. Kennedy also wanted the tribunal to consider a new report from his physician stating that Mr. Kennedy's depression, post-concussion syndrome, PTSD and chronic pain are a result of his original 2008 injury.

[8] In the first reconsideration decision, the tribunal noted that reconsideration is discretionary and that a high threshold is required for a decision to be reconsidered. The reconsideration process is intended to be used where there is a fundamental error of law or process which, if corrected, would likely result in a different decision, or where there is substantial new evidence, previously unavailable, that would likely result in a different decision.

[9] The tribunal found the threshold test for granting a reconsideration request was not met, and that the request amounted to a re-arguing of the initial case. The tribunal found that none of the clarifications would have affected the outcome. Whether it was the arm of the tipper or the bottom of the bin that struck Mr. Kennedy's shoulder would make no difference to the tribunal's analysis or outcome, which was based on the medical evidence before it. Similarly, the clarification that it was Mr. Kennedy's head and jaw, not his face, that were struck in the October 1, 2008, incident would not have changed the analysis or the outcome, which was based on a review of the medical evidence. Finally, although the name of the physician was incorrect, the content of the notes was correctly reviewed and relied upon in the first decision. The first reconsideration decision ordered that the name of the physician be corrected in the first decision.

[10] The first reconsideration decision determined that Mr. Kennedy's new evidence did not meet the test for reconsideration on the basis of new evidence. The test requires that new evidence constitutes a new and unexpected organic or psychological fact that is of basic importance to the case. Here, the new medical note did not add anything new to what was previously before the tribunal.

[11] Therefore, other than correcting the physician's name in the first decision, the request for reconsideration was dismissed.

[12] Mr. Kennedy made a second request for reconsideration, which resulted in the second reconsideration decision. At this hearing, Mr. Kennedy submitted that the injuries he sustained were not only to his face and TMJ, but also to his head, ear, jaw, neck and upper back. Mr. Kennedy sought benefits for headaches and dizziness, psycho-traumatic disability, and loss of earnings. Mr. Kennedy referred to the incident report, a narrative of the October 1, 2008, incident, and medical records. The tribunal considered the medical records, both those that had been available to the tribunal previously and those that post-dated the first decision and the first reconsideration decision. The tribunal found the

evidence did not constitute significant new evidence as all the substantive information contained in the notes had been previously provided to and considered by the tribunal. The tribunal found that Mr. Kennedy's second reconsideration request was an attempt to re-argue the original appeal and therefore did not provide a sufficient basis for reconsideration. The threshold for reconsideration was not met and Mr. Kennedy's request was dismissed.

Analysis and disposition

- [13] Mr. Kennedy submits the WSIAT decisions are unreasonable. He does not raise any issues of procedural unfairness. Rather, he submits that the unfairness of the decisions lies in their results, as they unreasonably ignored significant evidence.
- [14] The applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.
- [15] In applying the reasonableness standard, the court is not to determine what decision it would have made were it the administrative decision-maker. Rather, the court begins with the tribunal's decision: *Vavilov*, at para. 83.
- [16] A decision is required to exhibit justification, intelligibility, and transparency; the reviewing court does not engage in a "treasure hunt for error": *Vavilov*, at paras 100 and 102.
- [17] Both this court and the Court of Appeal for Ontario have repeatedly emphasized the strength of the privative clause in the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Schedule A (the WSIA) and the corresponding high degree of deference to be afforded to the WSIAT: *Blatz v. Workplace Safety and Insurance Appeals Tribunal*, 2016 ONSC 7259 at para. 40; *Morningstar v. WSIAT*, 2021 ONSC 5576 at para. 37, *Liverpool v. (Ontario) Workplace Safety and Insurance Appeals Tribunal*, 2023 ONSC 2286 at paras. 28 and 29; *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719 at para. 22.
- [18] The WSIAT's decisions are final: WSIA s. 123(4). The tribunal has the discretion to reconsider its own decisions, if it considers it advisable to do so: WSIA s. 129. The tribunal's reconsideration process is not an appeal, but is a discretionary process. A high threshold must be met for reconsideration to succeed: *Gowling v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, [2004] O.J. No. 919 at para. 23.
- [19] Mr. Kennedy submits the WSIAT's decisions are unreasonable respecting the October 1, 2008, incident, as the decisions failed to properly consider his medical evidence. Mr. Kennedy submits that the tribunal ought to have considered his evidence that he was struck in the head on October 1, 2008, and shortly thereafter was diagnosed with a concussion, and later with chronic pain, depression anxiety and PTSD. Mr. Kennedy submits that the decisions are unreasonable in that they ignored the fact that the mechanism of injury was one continuous blow. The decisions unreasonably referred only to his face, not to his head as a whole. He has serious injuries within the region of impact but the tribunal unreasonably

excluded these injuries from its consideration. The decisions are unreasonable because they are not justified, not intelligible, and not within a range of reasonable outcomes. The decisions should be set aside.

- [20] I do not accept this characterization of the decisions. I find that the decisions are reasonable. The first decision carefully considered the medical evidence before it. It concluded that the Board had erred in its treatment of Mr. Kennedy's facial contusion. It found Mr. Kennedy suffered an injury to his TMJ and had ongoing entitlement for a soft tissue injury to his TMJ.
- [21] The WSIAT also considered Mr. Kennedy's claim related to headaches, dizziness, post-concussion syndrome and depression and found, on the basis of the evidence, that these symptoms were not related to his October 1, 2008, injury. While Mr. Kennedy disagrees with this finding, most of the evidence on which he now relies was before the tribunal at the first decision, and all of it was before the tribunal at the time of the second reconsideration decision. The tribunal found the evidence did not support Mr. Kennedy's claim and clearly explained its reasons for that finding. It found the symptoms Mr. Kennedy referred to arose after the car accident he was in, which was well after the workplace accident. The tribunal referred to the medical records in explaining when and how those symptoms were reported.
- [22] On reconsideration, the tribunal explained that the new evidence that had not been before the tribunal at first instance was not new evidence, but was in effect a repackaging of the evidence the tribunal had previously considered.
- [23] The decisions consider the evidence that was before the tribunal and explain the tribunal's conclusions. While the tribunal did not reach the conclusions Mr. Kennedy wished for, its decisions explaining its findings and conclusions are coherent, intelligible, and transparent. There are firm bases in the evidence for the conclusions the tribunal reached.
- [24] I would therefore dismiss the application for judicial review. The respondent seeks no costs and I would order none.

Brownstone J.

I agree

McWatt A.C.J.

I agree

Shore J.

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McWatt A.C.J., Shore, and Brownstone JJ.

BETWEEN:

Kenneth Kennedy

Appellant/Applicant

– and –

Workplace Safety and Insurance Appeals Tribunal

Respondent(s)

REASONS FOR JUDGMENT

L. Brownstone, J.

Released: April 16, 2026