

Safety, Licensing Appeals and
Standards Tribunals Ontario
**Automobile Accident Benefits
Service**

Licence Appeal Tribunal

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Tribunaux de la sécurité, des appels en matière
de permis et des normes Ontario
**Service d'aide relative aux indemnités
d'accident automobile**

Tribunal d'appel en matière de permis

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RECONSIDERATION DECISION

Citation: K.P. vs. Security National Insurance Company, 2020 ONLAT 18-007561/AABS

Before: Raj Sharda, Adjudicator

Date: September 22, 2020

File: 18-007561/AABS

Case Name: K.P. vs. Security National Insurance Company

Written Submissions by:

For the Respondent: Kamil Podleszanski, Counsel

For the Applicant: Ardi Deti, Counsel

OVERVIEW

- [1] On October 2, 2019, the Licence Appeal Tribunal (“Tribunal”) issued a final decision in this matter pursuant to *the Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (“Schedule”). I issued a decision in which the Tribunal found the injuries sustained by the applicant, K.P. to be predominantly minor and fell within the Minor Injury Guideline² (“MIG”). The Tribunal also found treatment plans for psychological therapy to be not reasonable and necessary. A physiotherapy plan was approved to the \$3,500.00, limit. The applicant, K. P., has filed a request for reconsideration of the Tribunal’s amended decision.
- [2] The basis for K.P.’s request for reconsideration is two grounds. Firstly, that once found to exist whether minor or major, psychological impairments cannot keep the person under the MIG. Secondly, the Tribunal made a significant error of law or by focussing on functional losses and not functional abnormalities when assessing whether the applicant had suffered a functional impairment as a result of the accident.
- [3] K.P. seeks an Order that the Tribunal vary its decision and find her injuries fall outside of the MIG and is not subject to limits on accessible medical benefits prescribed by Section 18 of the SABS.
- [4] Pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act*³, I have been delegated responsibility to decide this matter in accordance with the applicable rules of the Tribunal.

RESULT

- [5] I find that I erred in law and I vary my previous decision which found that the applicant’s impairments did not fall within the MIG. I now find that the applicant’s psychological impairments do not fall within the MIG. As such, she should not be subject to MIG limits on accessible medical benefits prescribed by section 18 of the SABS.

ANALYSIS

- [6] The grounds for a request for reconsideration are contained in Rule 18.2 of the *Tribunal’s Common Rules of Practice and Procedure*⁴. A request for reconsideration will not be granted unless one of the following criteria are met:

¹ Ontario Regulation 34/10

² Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

³ 2009, S.O. 2009, c. 33, Sched. 5.

⁴ *Common Rules of Practice and Procedure*, Tribunals Ontario – Safety, Licensing Appeals & Standards Division.

- 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;
- c) The Tribunal heard false evidence from a party or witness, which was discovered only after the hearing and likely affected the result; or
- d) There is new 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.

[7] It is submitted by K. P. that Rule 18.2 (b) applies. It is submitted that the Tribunal made an error of law such that the Tribunal would have likely have reached a different result had the error not been made.

Violation of Rule 18.2 (b)

[8] I find the Tribunal did make an error in law under Rule 18.2 (b).

[9] In support of its position that the Tribunal erred under Rule 18.2 (b). I have assessed whether a psychological impairment is within the Minor Injury Guidelines.

[10] K. P. submitted the following:

- i) The Tribunal concluded K.P. did suffer from a psychological impairment but it was minor in nature;
- ii) The applicant referred to several cases in paragraph 12 of its submissions. The referenced cases held that the Tribunal has found in many instances that a person with a psychological impairment should not be held within the MIG.

[11] The respondent submitted that the psychological impairment should be included in M.I.G. as it can be included in “any clinically associated sequelae to such an injury”.

[12] The respondent submits that since the psychological impairment is minor and is a clinically associated sequelae of the injuries resulting from the subject accident, therefore, the applicant’s injuries should be maintained within the M.I.G.

[13] I find that the applicant had previously reported the anxiety she was experiencing to her family doctor, and as a fact it is therefore not a clinically associated sequelae of an injury caused by the subject accident.

- [14] The psychological impairment which I found to exist was rooted in the applicant's previously documented anxiety.
- [15] The respondent's counsel agrees in his submissions that, psychological impairments which are not sequelae of a minor injury would exclude the applicant from M.I.G⁵.
- [16] He however then states that such psychological injuries must be severe.
- [17] I find in this case that, I erred in including the applicant's psychological injury within M.I.G., as it was not a clinically associated sequelae of her other minor injuries.
- [18] The psychological injury does therefore not fall within the M.I.G.
- [19] Based upon the above, I find that the applicant has met its onus and based on finding that an error in law did occur in my previous decision I will vary my previous decision in part.

CONCLUSION

- [20] The applicant's request for reconsideration is granted and paragraph 23 (a) of my previous order dated October 2, 2019 is varied as follows:

23 (a) The Applicant is removed from the MIG.

Raj Sharda
Adjudicator

Tribunals Ontario - Safety, Licensing Appeals and Standards Division

Released: September 22, 2020

⁵ Paragraph 33 of respondent's submissions