



Citation: Prasow v. RSA Insurance Company, 2024 ONLAT 23-004505/AABS-R

RECONSIDERATION DECISION

Before: Kate Grieves

Licence Appeal Tribunal File Number: 23-004505/AABS

Case Name: Cole Prasow v. RSA Insurance Company

Written Submissions by:

For the Applicant: Sophie Luesby, Counsel
L. Craig Brown, Counsel

For the Respondent: Kamil Podleszanski, Counsel

OVERVIEW

- [1] On April 10, 2024, the applicant requested reconsideration of the Tribunal's decision dated March 21, 2024 ("decision").
- [2] In the decision I found that, at the time of the accident, the applicant knew or ought reasonably to have known that he was operating his motorcycle while it was not insured under a motor vehicle liability policy. Therefore, the respondent was not liable to pay an income replacement benefit pursuant to section 31(1)(a)(i) of the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (including amendments effective June 1, 2016) ("*Schedule*").
- [3] Given that this decision was released after August 21, 2023, this reconsideration is governed by the *Licence Appeal Tribunal Rules, 2023* ("*Rules*"). The grounds for a request for reconsideration are found in Rule 18.2 of the *Rules*. To grant a request for reconsideration, the Tribunal must be satisfied that one or more of the following criteria are met:
 - a) The Tribunal acted outside its jurisdiction or committed a material breach 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; or
 - c) There is 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.
- [4] The applicant seeks reconsideration under Rule 18.2(b) asserting a significant error in the Tribunal's interpretation of law and facts, such that the Tribunal would likely have reached a different decision had the error not been made.
- [5] The applicant does not specify the relief requested, other than he seeks reconsideration. The respondent submits that the applicant has not discharged his onus to establish a valid ground for reconsideration. The respondent submits that there were no errors of law or fact that would likely have affected the result and that the applicant is using the reconsideration process as an opportunity to re-argue his case. The respondent submits that the request for reconsideration should be dismissed.

RESULT

- [6] The request for reconsideration is dismissed.

ANALYSIS

- [7] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.
- [8] The applicant submits that I erred in my application of the contextual objective test, overlooked critical facts of the case, and improperly distinguished relevant case law.
- [9] The contextual objective test requires assessing what an ordinary person with the applicant's age, education, and background could reasonably have known about their motorcycle's insurance status under the circumstances.
- [10] The applicant submits that in coming to my decision, I overlooked "critical aspects" of the applicant's case: (a) that the certificate of insurance was accepted by the ministry of transportation ("MTO") and the motorcycle dealership; (b) inaccurately assessed his insurance knowledge based on superficial factors like age and education without due regard for his actual expertise; and (c) failed to recognize the significance of the substantial investment as evidence of his genuine belief in being insured.
- [11] I find the applicant's submissions is largely a request to re-weigh the evidence, which is not grounds for reconsideration. I did consider the applicant's submission that the certificate was accepted by the MTO and dealership: see paragraphs 8, 20, 27 and at paragraph 30 where I found that the fact that a government office or dealership relied on the insurance card was not persuasive evidence that it was reasonable to think that he had purchased valid insurance. Having considered all of the evidence together, I was not persuaded that an ordinary person with his age, education, and background would reasonably believe that they held a valid policy of insurance.
- [12] The applicant submits that I improperly distinguished the case of *Bakir v. Dominion*, 2018 ONFSCDRS 20 (CanLII) ("*Bakir*"). I disagree. I am not bound by *Bakir*, and the legal test referenced in *Bakir* is distinct from that which has been applied by the Tribunal – the contextual objective test – which the applicant agreed is the applicable test. I followed the Tribunal decision in *Hines v. TD Insurance Meloche Monnex*, 2021 CanLII 45296 (ON LAT) ("*Hines*") where the Tribunal applied the correct test and found that the reliance of a government office acceptance of an insurance card was not persuasive evidence that it was

reasonable for an individual with the applicant's education and experience to believe that he held a valid insurance policy.

- [13] The applicant submits that I assumed that the applicant knew more about insurance than he did and unfairly suggested an expertise the applicant did not have based on his demographic and educational background. I find no errors of fact or law by considering the applicant's age, education, and background. That is the correct legal test to be applied, as set out at paragraph 7 of the decision, and as recognized by the applicant in his submissions. If I had applied a subjective analysis, that would have been an error of law.
- [14] The applicant also submits that I failed to give appropriate weight to the fact that the applicant made a significant financial commitment by paying for the insurance card. Again, the reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. I did note at paragraph 18 that the applicant reportedly paid \$2,000.00 for the insurance card. I considered the totality of the evidence submitted by both parties, but ultimately found that on a balance of probabilities, the applicant knew or ought reasonably to have known that he was operating his automobile while it was not insured.

CONCLUSION & ORDER

- [15] The applicant's request for reconsideration is dismissed.

Kate Grieves
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: July 31, 2024