Citation: Abdi v. BelairDirect Insurance Company, 2025 ONLAT 23-005786/AABS-R

RECONSIDERATION DECISION

Before:	**Rachel Levitsky, Adjudicator**
Licence Appeal Tribunal File Number:	**23-005786/AABS**
Case Name:	**Deeq Abdi v. BelairDirect Insurance Company**
Written Submissions by:	
For the Applicant:	Hamoody Hassan, Counsel
For the Respondent:	Kyle McNerney, Counsel

OVERVIEW

[1] On April 23, 2025, the applicant requested reconsideration of the Tribunal's decision dated April 2, 2025 ("decision").

[2] In the applicant's initial written hearing submissions, he requested an adjournment to an in-person hearing, which I denied. In my decision, I also found that the applicant had not established that he was involved in an "accident", pursuant to s. 3(1) of the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). As such, I found that the respondent was entitled to terminate the payment of benefits to the applicant pursuant to s. 53, which states that an insurer may terminate the payment of benefits if the insured person has wilfully misrepresented material facts with respect to the application for the benefit, and if the insurer provides the insured person with a notice setting out the reasons for the termination.

[3] I also found that the respondent was entitled to a repayment of benefits paid, pursuant to s. 52(1)(a), plus interest. Section 52(1)(a) states that a person is liable to repay to the insurer any benefit paid as a result of an error on the part of the insurer, the insured person, or any other person, or as a result of wilful misrepresentation or fraud.

[4] The grounds for a request for reconsideration are found in Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* ("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.

[5] The applicant seeks reconsideration pursuant to Rule 18.2(a) and (b). He argues that I failed to exercise my discretion to grant an adjournment of the written hearing to an in-person hearing date. He is seeking an order to cancel the decision, or an order for "an in-person (or electronic) rehearing on the matter".

[6] The respondent submits that the reconsideration request should be dismissed.

RESULT

[7] The applicant's request for reconsideration is denied.

ANALYSIS

[8] 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.

The Tribunal did not make commit a material breach of procedural fairness – Rule 18.2(a)

[9] The applicant submits that I committed a material breach of procedural fairness by "failing to exercise" my discretion to grant an adjournment to an in-person hearing. For the following reasons, I find that the applicant has not established that to be the case.

[10] The applicant acknowledges that the lack of an oral hearing is not, in and of itself, a breach of procedural fairness. However, relying on *Khan v. University of Ottawa*, 1997 CanLII 941 (ONCA) ("*Khan*"), he notes that the courts have recognized an inherent weakness of written materials where the credibility of a claimant or witness is at issue. He submits that a claimant should be afforded the ability to make oral submissions in circumstances where credibility is a factor in the decision-making process. He also argues that, although my decision was not framed in terms of credibility, his credibility was the core of the dispute and ought to have been assessed. The applicant also submits that his change of counsel contributed to his inability to bring a motion for an adjournment in a timely manner.

[11] The facts before me are different than the ones in *Khan*. In *Khan*, the appellant was never given the opportunity to make oral submissions, as individuals could only make oral submissions on new matters not contained in their written submissions. In this case, the applicant requested an oral hearing for the first time in his written hearing submissions, despite having an opportunity to request one at the case conference or in the months leading up to the hearing.

[12] At paragraph 9 of my decision, I indicated the following:

> The applicant acknowledges that requests for an electronic or in-person hearing should be made by a motion in writing. However, he does not provide a compelling explanation as to why he failed to bring a motion or notify the Tribunal at all prior to the hearing itself. He knew as of the date of the case conference on January 4, 2024, that the hearing would be proceeding in writing. There is no indication in the CCRO that a hearing in person was ever requested, or that the applicant opposed a written hearing. The CCRO also states that the parties agreed that no affidavit evidence would be filed. The applicant knew that the respondent would be relying on reports from an engineer, as his sole production request at the case conference was the complete file that the engineer relied upon.

[13] At paragraph 10, I also noted that the applicant advised the Tribunal by telephone on May 30, 2024, that he had obtained new counsel. However, it was not until August 14, 2024, that a Declaration of Representative was filed.

[14] The applicant was aware of the nature of the dispute at the time he filed his application with the Tribunal. The applicant could have requested an oral hearing at the case conference or at any other point leading up to the hearing. I note that he does not allege that this was an error on the part of his previous counsel.

[15] At the written hearing, I had before me the applicant's sworn testimony from his Examination Under Oath ("EUO"), as well as a signed statement he provided to the respondent. As I indicated at paragraph 30 of my decision, the applicant did not explain what information would have been missing from his sworn testimony that would have impacted the findings of Michael Jenkins, the respondent's expert engineer. Likewise, in his reconsideration request, he has not explained what information was missing or different from his EUO that he could only have provided by in-person testimony and would have impacted my decision, such that my refusal to grant the adjournment request resulted in a material breach of procedural fairness.

[16] In *Khan*, the success of the appellant depended on the committee's acceptance of her statement. In this case, my decision was not dependent on whether I chose to believe a statement provided by the applicant. My decision hinged on the fact that the conclusions of Mr. Jenkins were fundamentally at odds with key descriptors of the accident made by the applicant under oath and in his sworn statement. At paragraph 38 of my decision, I wrote the following:

> In my view, the applicant has not provided a compelling reason for me to discount the findings in Mr. Jenkins' report with respect to the speed of the vehicles and mechanism of the accident. Further, he has not provided an opinion from an expert that would challenge Mr. Jenkins' conclusions, despite admitting that he has been in receipt of this report since May 2021.

[17] The applicant also relies on *Sandhu v. The Personal Insurance Company*, 2023 CanLII 58474, where the Tribunal stated that documentary evidence does not remotely compare to testifying under oath. However, that decision does not stand for the proposition that an in-person hearing must be granted if requested by a party. In the present case, the applicant was content to proceed with his hearing in writing until after the respondent's submissions had already been filed. Further, the applicant did testify about the circumstances of the incident under oath through an EUO, and the transcript of that evidence was before me.

[18] The applicant argues that an adjournment to an in-person hearing would have enabled the examination of witnesses to obtain corroborative testimony. He submits that, at paragraph 39 of my decision, I found that the applicant failed to provide compelling corroborative evidence, and that an adjournment of the hearing to an in-person hearing date would have enabled the examination of witnesses to obtain corroborative testimony.

[19] At paragraph 15 of my decision, I wrote:

> The applicant also submits that, as affidavit evidence is not permitted at this hearing, the driver of the vehicle, Ahmed Muhyadin Ali, should be called as an essential witness in person. However, the applicant's former counsel agreed at the case conference that no affidavits would be submitted as evidence, and the applicant has not alleged that he erred in doing so. I see no reason why, during the case conference, he could not have instead requested the ability to file an affidavit from Mr. Ali as part of this hearing. Further, despite being in possession of evidence from Mr. Ali, specifically a self-reported collision report which apparently included his description of the accident, the applicant failed to provide it as evidence in this hearing. I am not satisfied that Mr. Ali's in-person testimony is crucial where the applicant appears to have felt it was not necessary to produce evidence from Mr. Ali that he had in his possession.

[20] The applicant has not persuaded me that it was a material breach of fairness for me to decline his request where he had the prior opportunity to request an oral hearing, request that affidavit evidence be filed, or file evidence containing information from Mr. Ali, and yet decided not to do so.

[21] I accordingly find that the applicant has not established that I acted outside my jurisdiction or committed a material breach of procedural fairness by denying his request to adjourn the proceeding to an in-person hearing.

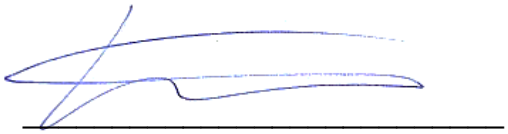
The Tribunal did not make an error of law or fact – Rule 18.2(b)

[22] The applicant also submits, in the alternative, that I made an error of law by "failing to exercise" my discretion to grant an adjournment to an in-person hearing date.

[23] Aside from making a general statement that I erred, the applicant has not provided submissions on what specific error of fact or law he believes I made, or how such an error would have likely impacted the hearing result. As such, I find that he has not established that I made an error of fact or law such that I would likely have reached a different result had the error not been made.

CONCLUSION & ORDER

[24] The applicant's request for reconsideration is denied.



Rachel Levitsky
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

Released: August 6, 2025