Decision No. 1287/13R, [2017] O.W.S.I.A.T.D. No. 957

Ontario Workplace Safety and Insurance Appeals Tribunal Decisions

Ontario Workplace Safety and Insurance Appeals Tribunal

Toronto, Ontario

Panel: J.B. Lang, Vice-Chair

Heard: March 14, 2017 by written submissions.

Decision: April 18, 2017.

Decision No. 1287/13R

[2017] O.W.S.I.A.T.D. No. 957 | 2017 ONWSIAT 1139

[Names of Parties are Not Published]

(20 paras.)

Case Summary

Tribunal Summary:

Reconsideration (consideration of evidence).

The worker's application for reconsideration of Decision No. 1287/13, *[2015] O.W.S.I.A.T.D. No. 66* was denied. The hearing panel considered the evidence and came to a reasonable conclusion.

Cross-reference:

Decision No. 1287/13, *[2015] O.W.S.I.A.T.D. No. 66*.

Statutes, regulations and rules cited:

Worker's Compensation Act, R.S.O. 1990, c. W. 11.

On appeal from:

Worker request for reconsideration of Decision No. 1287/13 dated January 13, 2015.

Appearances

For the worker: Self Represented.

For the employer: Did Not Participate.

Interpreter: N/A.

DECISION NO. 1287/13R

REASONS

(i) Introduction to the reconsideration proceedings

1 The worker requests a reconsideration of Tribunal *Decision No. 1287/13*, *[2015] O.W.S.I.A.T.D. No. 66* dated January 13, 2015. In that decision, a Panel of this Tribunal allowed the worker's appeal in part. The Panel granted the worker initial entitlement for a laceration to the finger of her right hand that had occurred on April 5, 1990. The Panel found that there was no evidence that the worker had suffered a permanent impairment resulting from this injury. The Panel found that the worker was entitled to Loss of Earnings (LOE) benefits for one week as a result of this accident. The Panel denied the worker's appeal for initial entitlement for a bilateral hand condition known as Reynaud's Phenomenon. The Panel found that the evidence did not establish a causal connection between the worker's bilateral hand condition and the work she performed as a Kitchen Assistant with the accident employer.

2 The worker had commenced her employment as a Kitchen Assistant with the accident employer in December 1988. The employer operated a kitchen preparing meals for the airline industry. The worker had initially filed a claim with the Board on December 30, 1997 claiming benefits for the laceration of her finger as well as that for her bilateral hand condition. This application was made inactive by the Board in May 1998 due to a breakdown in communications. The worker's claim was reactivated in December 2003 and the Board conducted an investigation into her claim. In a ruling dated June 18, 2004, a Claims Adjudicator with the Board denied the worker initial entitlement. The worker appealed and in a decision dated July 28, 2010, an ARO with the Board upheld the Claims Adjudicator's ruling. As noted above, a Panel of this Tribunal in *Decision No. 1287/13* granted the worker initial entitlement for the laceration to her finger but denied the worker entitlement for a bilateral hand condition known as Reynaud's Phenomenon.

3 I note that the worker has represented herself through most of her interactions with the Board and before the ARO and the Panel of this Tribunal which adjudicated her appeal. The worker is also representing herself in this Request for Reconsideration.

4 The worker filed a Notice of Appeal with the Tribunal on June 16, 2015. In that notice, she stated that she wanted the Tribunal to "decide about my compensation." In a letter dated June 24, 2015, an Associate Counsel for the Tribunal Chair advised the worker that WSIAT decisions are final decisions but that there is a process for requesting a reconsideration. Counsel included excerpts from the Tribunal's Practice Directions as well as a copy of a leading Tribunal decision which dealt with the grounds for reconsideration. Counsel also suggested that the worker consider obtaining a representative to assist with preparing her Request for Reconsideration and provided information on finding a representative.

5 On June 26, 2015, the worker filed a Request for Reconsideration form with the Tribunal. In a letter to the worker, dated July 14, 2015, the Tribunal notified the worker that she had not provided any reasons with her Request for Reconsideration. On July 20, 2015, the worker filed a new Request for Reconsideration form in which she made the following statement:

> I don't agree with decision has been made. I would like receive (illegible) compensation for my pain and suffer. If possible I would like for my case to be reexamined.

6 On August 18, 2015, the Tribunal advised the worker that the form she had filed on July 20, 2015 did not contain sufficient reasons for the Tribunal to process her request. The Tribunal included new copies of the information it had provided in its correspondence of June 24, 2015. The Tribunal's correspondence of August 18, 2015 was returned as undeliverable. On September 28, 2015, the Tribunal re-sent the correspondence to the worker's new address.

7 In a handwritten letter dated October 25, 2016, the worker provided additional reasons for her Request for Reconsideration. The worker stated that she felt she deserved a minimum of $15,000.00 as compensation for the injury she sustained in 1990. This injury caused her severe pain which affected her ability to care for her three children and her father. She felt that she had been mistreated by her employer because she was new to Canada, did not know her rights and spoke little English. She stated that she was threatened with being fired if she reported the accident to the Board. She stated that following the laceration to her finger, she was required to work in unsanitary conditions and was not provided with protective gloves. She stated that she acquired a painful infection in her hand which never healed properly and that due to the accident, she has been unable to maintain employment. She is seeking compensation for the years of stress and pain she has endured as a result of the accident.

(ii) The reconsideration test

8 The *Workplace Safety and Insurance Act (1997)* provides that the Appeals Tribunal's decisions shall be final. However, section 129 of the *Workplace Safety and Insurance Act* provides that the Tribunal may reconsider its decisions "at any time if it considers it advisable to do so." Because of the need for finality in the appeal process, the Tribunal has developed a high standard of review, or threshold test, which it applies when it is asked to reconsider a decision.

9 Generally, the Tribunal must find that there is a significant defect in the administrative process or content of the decision which, if corrected, would probably change the result of the original decision. The error and its effects must be significant enough to outweigh the general importance of decisions being final and the prejudice to any party of the decision being re-opened. The threshold test has been discussed in some detail in *Decision Nos. 72R*, *[1986] O.W.C.A.T.D. No. 323 (1986), 18 W.C.A.T.R. 1*; *72R2*, *[1986] O.W.C.A.T.D. No. 386 (1986), 18 W.C.A.T.R. 26*; *95R*, *[1989] O.W.C.A.T.D. No. 621 (1989), 11 W.C.A.T.R. 1*; and *850/87R*, *[1990] O.W.C.A.T.D. No. 221 (1990), 14 W.C.A.T.R. 1*.

10 As discussed in *Decision No. 871/02R2*, *[2006] O.W.S.I.A.T.D. No. 2971*, one of the fundamental concepts which guides the entire Tribunal process is a duty of fairness. The Tribunal has gone to considerable lengths, in spite of limited resources, to promote a fair process. The threshold test and the role of the reconsideration process must be understood in the context of the Tribunal's processes generally. Most parties have the option of an oral hearing, which is a hearing "de novo" at the Tribunal. This is very unusual at the final level of appeal within any adjudicative system. The Tribunal invests considerable resources in preparing cases for hearing and assisting parties to identify the issues in dispute so that parties can in turn be fully prepared for the hearing. The reconsideration process should not be so generally available that it undermines the important role of the original hearing or the finality of decisions which are reached after a fair hearing process.

11 Because of limited resources, the Tribunal must also carefully balance its processes to ensure that parties awaiting their first hearing are not penalized because of the expenditure of scarce resources on reconsideration requests.

12 It is instructive to refer to *Decision No. 871/02R2*'s analysis of the threshold test that a reconsideration request must meet and the reasons for this:

> Section 123 of the Workplace Safety and Insurance Act provides that a decision of the Appeals Tribunal under the Act is final. While the Appeals Tribunal does have the discretionary power to reconsider its

> decision under section 129 of the Act, this remedy is an exceptional one. Because the integrity of the appeal process and the finality of Tribunal decisions are important considerations in any reconsideration application, the standard of review or threshold which must be met in the reconsideration process is a high one. Although some representatives may advise their clients that a reconsideration application is merely a routine step in the WSI appeal process, this advice is wrong. The reconsideration process is a special remedy and the Tribunal's power to reconsider is invoked only in unusual circumstances; it is not intended as a routine process for any party or representative unhappy with a Vice-Chair or Panel decision. To treat reconsiderations as a routine, insignificant process would effectively undermine the statutory principle of finality, suggest that parties could routinely discount the original hearing process, and put successful parties at risk of multiple proceedings. To be successful on a reconsideration application, an applicant must discharge the onus to satisfy the Tribunal that an otherwise final decision should be reopened. Essentially, an applicant must:
>
> (a) demonstrate that there was a fundamental error of law or process which, if corrected, would likely produce a different result, or
>
> (b) introduce substantial new evidence which was not available at the time of the original hearing and which would likely have resulted in a different decision had this substantial evidence been introduced at the original hearing.
>
> Any error and its resulting effects must be sufficiently significant to outweigh the importance of decisions being final and the prejudice to any party of the decision being re-opened. [emphasis in original]

13 The Divisional Court has reviewed and upheld the Tribunal's reconsideration process in *Gowling v. Ontario Workplace Safety and Insurance Appeals Tribunal*, [2004] O.J. No. 919 (Div.Ct). In particular, the Court found that:

> because a reconsideration is distinct from an appeal, a high threshold test is required to balance the interests of the Tribunal and other parties, and the original adjudicator is in the best position to evaluate the proceedings to address natural justice allegations.

(iii) Analysis

14 The worker's Request for Reconsideration is based on her assertion that she is entitled to additional compensation from the Board. She has provided no new evidence to support this assertion. It is important to note that in *Decision No. 1287/13*, [2015] O.W.S.I.A.T.D. No. 66, the Panel granted the worker initial entitlement for the laceration she sustained on April 5, 1990. The Panel awarded the worker one week of Loss of Earnings benefits for this accident -- which was the length of time the worker had stated she was away from work. The Panel found that there was no evidence that the worker had suffered a permanent impairment because of the laceration of her finger. The worker has provided no new evidence that would challenge this conclusion.

15 In denying the worker entitlement for the bilateral condition in her hands, the Panel carefully reviewed the medical evidence that was presented. At the hearing, the worker had asserted that the condition in her hands was caused by having to regularly retrieve food items from a freezer. The Panel's conclusions with respect to this evidence were stated as follows:

> On the evidence before us, the Panel finds that there is no clear diagnosis of the worker's condition. Although after a physical examination, Dr. Willis and Dr. Stewart had the impression that the worker might be suffering from Raynaud's Phenomenon, the laboratory tests which each of these doctors requisitioned did not support such a diagnosis. Significantly, Dr. Willis was of the view, after researching the issue, that even if the worker did have Raynaud's Phenomenon, he could find no evidence that this condition was linked to working in a cold environment. In his view, the worker's condition was more likely a secondary condition related to some other illness.

16 In my view, the worker has not provided any new evidence that would challenge the Panel's finding with respect to her bilateral hand condition.

17 I find that the worker has not demonstrated that there was a fundamental error of law or process in *Decision No. 1287/13* which, if corrected, would likely produce a different result. I also find that the worker has not introduced any new evidence which would affect the Panel's decision.

18 Accordingly, I find that the Tribunal's threshold test for granting a reconsideration request has not been met.

DISPOSITION

19 The Tribunal's threshold test for granting a reconsideration request has not been met.

20 The worker's Request for a Reconsideration of *Decision No. 1287/13* is denied.

DATED: April 18, 2017

SIGNED: J.B. Lang

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