WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 1356/09R

BEFORE: A.G. Baker: Vice-Chair

HEARING: August 15, 2011, 2012 at Toronto
Written
Post-Hearing completed January 26, 2012

DATE OF DECISION: December 7, 2012

NEUTRAL CITATION: 2012 ONWSIAT 2705

DECISION UNDER APPEAL: Worker request for reconsideration of *Decision No. 1356/09* dated August 20, 2010

APPEARANCES:

For the worker: D. Yogasundram, Lawyer

For the employer: T. Bergeron Lucha, Lawyer

Interpreter: Not applicable

REASONS

(i) Introduction

[1] The following decision considers a request for reconsideration of *Decision No. 1356/09*, dated August 20, 2010.

[2] The issue in *Decision No. 1356/09* was entitlement for psychotraumatic disability benefits and if allowed full LOE from July 17, 2007 due to a March 2, 2006 accident to the worker's right knee. The worker argued entitlement for psychotraumatic disability benefits both on the basis that the right knee injury caused the worker's psychiatric disability or aggravated the worker's psychiatric disability. The Panel, after reviewing the evidence, found on a balance of probabilities that the worker's knee injury was not a significant contributing factor in the development of or aggravation of his psychiatric conditions.

(ii) The reconsideration test

[3] The *Workers' Compensation Act* and the *Workplace Safety and Insurance Act* (WSIA) provide that the Appeals Tribunal's decisions shall be final. However, sections 70 and 92 of the *Workers' Compensation Act* and section 129 of the *Workplace Safety and Insurance Act* provide 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.

[4] 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 *Decisions No. 72R* (1986), 18 W.C.A.T.R. 1; *72R2* (1986), 18 W.C.A.T.R. 26; *95R* (1989), 11 W.C.A.T.R. 1; and *850/87R* (1990), 14 W.C.A.T.R. 1.

[5] As discussed in *Decision No. 871/02R2*, 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.

[6] 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.

[7] 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]

[8] 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) Decision

[9] I note first that according to the Tribunal's Practice Direction: Reconsiderations, the Tribunal has determined that as a general practice, it is not advisable to reconsider a decision after more than six months has passed since the date of the decision. A delay of more than six months in making a reconsideration request is a factor which may be weighed in deciding whether it is advisable to reconsider the decision. I find however that the worker did in fact file his application within the six month time period. There was a delay by the worker in obtaining representation and filing submissions of some 10 months beyond the appeal decision. However, I did not find that time period to be egregious and there was no indication from the employer's submissions as to why it would have been prejudiced by that delay. As such, I do not find that delay would be a factor which would be weighed in deciding whether it is advisable to reconsider the decision.

[10] Turning to the submissions made in this case, I noted the submissions from the employer made in January of 2012. Given the below ruling, I did not find it necessary to cite those submissions in any substantial manner. Suffice to say that employer generally opposed the application in their submissions.

[11] In regard to the submissions from the worker's representative, a June 29, 2011, letter summarized the worker's position, stating that the Panel:

1) incorrectly and unreasonably construed Dr. Bruun-Meyer's opinion as not supporting entitlement, when in fact the opinion did support entitlement for the worker;

2) did not apply the correct legal test in determining whether the worker's workplace injuries exacerbated the pre-existing delusional disorder diagnosed by Dr. Margulies, which test correctly applied would have supported a finding of entitlement;

3) did not properly distinguish between the 2 diagnoses made by Dr. Margulies (chronic Major Depressive Disorder and persecutory type Delusional Disorder), and therefore erred in law and process by not addressing whether the worker had entitlement for his depression, distinct from the delusional disorder; and

4) did not properly consider the evidence and come to a reasonable conclusion.

[12] It was submitted that if one or more of these fundamental errors were corrected, the worker would have likely been granted entitlement for psychotraumatic impairment. It was further submitted that the need to re-open the decision to correct these errors outweighs the need for finality in the Tribunal's decision-making and any prejudice to the accident employer.

[13] The worker's representative also provided a further lengthy 81 paragraph submission that is not repeated in full here. However, I reviewed the submission and noted the background cited, as well as the medical information and the ultimate ruling reached in the decision in question. The submission also again summarized the worker's bases for requesting a reconsideration.

[14] It is notable that the threshold for reconsideration is high. I also note that nowhere in the worker's submissions was there new evidence introduced that was not available at the time of the original hearing, and that would have likely changed the outcome of the decision. Rather, the submission in large part attempted to re-argue the original appeal.

1. Argument regarding incorrectly and unreasonably construing Dr. Bruun-Meyer's opinion as not supporting entitlement

[15] The submission from the worker addressed Dr. Bruun-Meyer's opinion, cited in part at paragraph 31 of the original decision, and in which the doctor concluded the workplace injury did not cause the worker's depression. The worker's counsel submitted that the Panel misunderstood the doctor's opinion and that references to a workplace incident are distinct from those regarding the workplace injuries. It was submitted this stemmed from the nature of the mandate given by the employer's disability insurance carrier when the doctor was retained for the opinion. The submission then embarks on a dissection of the employer's solicitation of the opinion, and the doctor's response, as well as the Panel's conclusions based on Dr. Bruun-Meyer's opinion. It was submitted that the doctor's report distinguished the worker's 2006 onset of depression attributed to right knee difficulties and the subsequent workplace dispute in 2007.

[16] It was also submitted that the Panel erred when it inferred that the worker had prior mood difficulties and received medication prior to the 2006 onset of knee problems. Rather, it was submitted that Dr. Bruun-Meyer significantly related the onset of the worker's depression to his right knee injury, when it was found that his mood changed following his difficulties with his right knee from March 2006. The assault suffered by the worker was also at issue, and it was submitted that the doctor did not opine on the assault that occurred more than a year after the onset of the worker's depression and after being prescribed anti-depressant medication. It was in

sum submitted there was no reasonable basis to not consider the right knee injury to be a significant factor in the onset of the worker's depression.

[17] It was also further submitted that Dr. Bruun-Meyer's report is relied on to corroborate Dr. Margulies opinion regarding a pre-existing delusional disorder. It was submitted it therefore led to a reduced emphasis on the role of the workplace injuries in exacerbating any such pre-existing condition. Further, it was submitted that there were a number of physicians in this case that also provided supportive reports, including those of Dr. Sharma, Drs. Swierczek and Marley, as well as Dr. Hastings.

[18] With respect to Dr. Bruun-Meyer's report, the submissions made were in relation to how that opinion was viewed by the Panel and in light of the balance of the medical reporting on file. Such arguments were available to the worker and his original counsel at the oral hearing in this matter and prior to the post-hearing process being completed. Further, the Panel addressed squarely in the original decision the question of the worker's pre-existing psychiatric difficulties. In fact, a similar argument was raised by the worker's counsel in the original submissions and cited in the original decision for example at paragraph 26 as follows:

> [26] The submission continued by stating that the assessment ignored the fact that the basis for the worker having felt persecuted in the workplace was largely due to his injuries. Further, it was submitted that the doctor did not offer evidence of psychiatric difficulties in the absence of the work injuries. The worker's counsel submitted that, if there was a pre-existing condition of significance, that "…natural justice clearly demands, that the condition be made out on the basis of clear medical evidence that is not subject to a foundation based upon doubt, speculation or assumption." The worker's counsel finally submitted that:
>
> > Finally, the basic facts of the claim remain simple, regardless of the spin taken. There is absolutely no evidence whatsoever, apart from the fact that the IW has always been a "loner", and in reality not much more than that and a single clinical note, to support a pre-existing psychotic disorder. There is no prior history of psychiatric care. The first time psychiatric symptoms are recorded, based completely and exclusively upon the record, and assuming for a moment, but never accepting, the "malignant significancy", constitutes a psychiatric symptom, and not a simple genuine complaint about the frustrations of a complicated return to work process, was AFTER an injury at work, and was not followed by anything of tremendous significance until a second injury. The temporal relationship alone supports causation.

[19] It was therefore evident that the submissions made in the reconsideration application were in fact an attempt to relitigate the precise issue raised at the original hearing. That issue was in fact to what extent did the worker's workplace knee injuries play a role in the onset of his psychiatric difficulties. That question was squarely answered in the original decision, and I note again the Panel's finding in paragraph 27 of the decision that "While the worker's knee injuries are evident, and they may well have played some minor role, we did not find them to have been significant contributing factors to the worker's psychiatric difficulties."

[20] It was also evident that, despite the submission that there was no evidence of a pre-existing psychiatric condition involving depressive symptoms prior to the work injuries, the Panel clearly cited such evidence from Dr. Hastings in Paragraph 28 of the decision, stating:

> [28] In that regard, the Panel focused on the psychiatric reporting on file. Of particular note was the reporting of Dr. Hastings, psychiatrist, in April of 2007, after the worker was voluntarily hospitalized. The doctor assessed the worker and noted he presented

> with workplace stress and conflict, which was noted as longstanding and managed until leaving work due to a work injury. While the worker reported a number of factors, including feeling harassed in the workplace, the doctor noted that the worker had a background with at least a three year history of concerns. The doctor stated:
>
> > ... I wonder about the possibility of an underlying psychotic disorder predating his work injury. He does describe some depressive symptoms, though not clearly sufficient symptoms consistent with a major depressive episode, consequently my working diagnosis is that of an adjustment disorder with depressed mood with the possibility of an underlying or emerging depression. This certainly occurs in the context of significant work stress. Additionally, there may well be an underlying psychotic disorder, possibly a delusional disorder, persecutory type.

[21] The Panel also noted the reporting from Dr. Sharma, psychiatrist, and from Dr. Marley, the worker's family doctor. Such reporting was noted in concert with the reporting from Dr. Bruun-Meyer and Dr. Piccolo, Board Psychologist, who had the benefit of reviewing much of the medical evidence from the other specialists noted. Dr. Piccolo's findings were also cited in the decision at paragraph 32 and 33, as follows:

> [32] The Panel also noted the reporting of Dr. Piccolo, Board Psychologist, in July of 2007. The doctor reviewed the medical information and concluded the worker suffered a "… psychotic disorder of a persecutory nature that predates the work accident and, in my opinion, is not compatible with it." While gathering further information about the worker's medical history was recommended, the doctor found that there was "… a pre-existing psychological condition, which, based on the current reports on file, I rate as moderate." There was also a recommendation for a referral for comprehensive assessment if there were further questions regarding compatibility of the worker's condition.
>
> [33] Dr. Piccolo also reviewed the reporting from Dr. Bruun-Meyer and Dr. Sharma and maintained the same opinion. In brief, that the worker was reacting to workplace stressors, noting the report from Dr. Hastings regarding the worker's perceptions of the work demands and environment. Again, a comprehensive assessment was recommended if questions persisted regarding compatibility.

[22] As such, it was evident in more than one report that the worker was found to have had a pre-existing disorder, and the Panel did not in my view come to an unreasonable decision in that regard. The Panel also evidently noted the findings from Dr. Bruun-Meyer as follows:

> [31] However, we also noted the report of Dr. Bruun-Meyer, psychiatrist, who provided an assessment for the worker's private insurer in June of 2007. The doctor's opinion noted the worker did not have a history of depression and noted the worker reported increased symptoms of depression after his more recent knee injury. That said, the doctor also opined that the work injury did not cause the worker's depression given he was already having mood difficulties and receiving medication. The doctor noted the worker did react with increased symptoms, but also noted other issues prior to his return to work. That included being charged with assault in late March 2007. The doctor concluded by stating:
>
> > [The worker] is suffering from major depressive disorder at present. The incident at his workplace, whatever the disparate perceptions of the parties involved may be, worsened his mood and is perceived by [the worker] as traumatic. While it did not cause his depression, it escalated his mood difficulties, with brief suicidal thoughts occurring. As evident from the affect he displayed when describing the event during our assessment, [the worker] perceives it as traumatic, but his mood state was already fragile and less resilient with untoward events that he may have coped with at another time. He was depressed, anxious, and angry when returning to

> work, a state that made him more responsive to workplace issues that others may not have perceived in the same light.

[23] Again, I noted the submission that the Panel could not have reasonably drawn an inference in this case other than that the worker's injuries were causally related to the worker's depression, and exacerbated by return to work efforts. I also noted the Panel went on to consider the reporting from Dr. Swierczek, who related an escalation in the worker's difficulties after the worker's failed attempt to return to work in 2007. It was evident from the reporting of Dr. Swierczek in the original decision, that the doctor related the worker's condition to his work injuries. There was also a further report from Dr. Piccolo that opposed that finding, as noted by the Panel:

> [38] However, Dr. Piccolo also provided a further report in March of 2008, which reviewed the medical reports to that point. The doctor noted there were several non-compensable personal and work stressors which could account for the development of the depression and persecutory ideas. Therefore, the doctor indicated that the previous opinion stood.

[24] It was therefore evident that there were a number of medical reports on file that diverged in regard to what extent the worker's psychiatric condition could be related to work injuries or incidents. I did not find there to have been conclusions reached by the Panel that were unreasonable in that regard, and in my view, much of the submission on behalf of the worker that critiqued Dr. Bruun-Meyer's reporting was in fact an attempt to simply re-argue the case. Accordingly, I find the arguments relating to Dr. Bruun-Meyer's reporting do not meet the reconsideration threshold test.

2. Argument regarding Dr. Margulies' reporting

[25] I also noted the further submissions surrounding the report from the Tribunal Assessor Dr. Margulies. This report and independent medical opinion was obtained post-hearing.

[26] It was submitted in regard to the reporting from Dr. Margulies, that the Panel did not adequately address whether the workplace injuries aggravated the worker's pre-existing delusional disorder. The submission focused particularly on paragraph 48 of the decision in which it was noted that the doctor found it "impossible to state the extent to which the right knee injury may have worsened what was clearly described as a pre-existing delusional disorder." It was submitted the Panel then failed to appropriately address the statement by Dr. Margulies that the worker's left knee injury "may have been an exacerbating factor" and "may have exacerbated the pre-existing delusional disorder." Again, it was noted the doctor stated it was impossible to gauge the extent of any such impact.

[27] This finding by Dr. Margulies was a particular focus in the submissions from the worker's counsel. The Supreme Court of Canada ruling in *Snell v. Farrell* [1990] 2 S.C.R. 311 was noted as standing for the principle that "causation need not be determined with scientific precision." The submissions continue by making a leap from the findings of Dr. Margulies, who indicated it was impossible to indicate the extent of the impact of the worker's injuries, to submitting therefore, that there was an equal possibility that workplace injuries materially exacerbated the worker's disorder. In my view, such a leap was not borne out by the evidence cited in the original decision. As such, I was not persuaded either that the worker should have been extended the benefit of the doubt.

[28] In that regard, I was not persuaded that this matter was similar to *Decision No. 1815/04*, that was cited as a case in which it was impossible to decide one way or another based on the medical evidence. As noted in *Decision No. 136/03R:*

> [9] The statutory provision (and Board policy) regarding benefit of doubt has been discussed at length in Tribunal case law. The benefit of doubt is not a substitute for evidence. It applies only when an adjudicator has already found based on evidence presented that the evidence for and against is approximately equal. It is not a question of whether other possibilities exist or whether doubt exists. Where a conclusion can be drawn on the evidence on the basis of the balance of probabilities – i.e. one conclusion being more probable than another – the benefit of doubt does not apply.

[29] The benefit of the doubt only applies when the evidence is found to be approximately equal in weight. Such was not the case in the original decision at issue in this matter. Further, I disagree with the assertion that a potential contribution that is impossible to gauge can in some way balance the evidence on file in its entirety, such that the worker would be given the benefit of the doubt.

[30] A possible contribution does not mean the evidence is approximately equal in weight. The Panel found in paragraph 50 of *Decision No. 1356/09* on a balance of probabilities that the worker's knee injuries were not significant contributing factors to his psychiatric conditions. Paragraph 49 also confirmed that the Panel found the knee injuries were not significant contributing factors in the worker's psychological disorder and depression.

[31] I would also note that the Panel did in fact directly address in the decision the extent to which the worker's injuries either directly caused or aggravated the worker's psychiatric difficulties at paragraph 49 of *Decision No. 1356/09.* As the submission from the worker's counsel noted, Dr. Margulies also answered questions and found that the worker's disorder would have developed and become symptomatic even in the absence of his work injuries.

[32] Dr. Margulies had the medical information and findings from the Panel to review in coming to the above opinion and answers to the Panel's questions. I also note again that such arguments were open to the worker at the original hearing and there is no new medical information cited. Again, this appears to me to be an attempt to relitigate the appeal by again challenging the assessor's conclusions, something that the worker has already had full and fair opportunity to do in the original proceeding. Accordingly, I find that the argument that the Panel did not apply the correct legal test in determining whether the worker's workplace injuries exacerbated his pre-existing delusional disorder does not meet the threshold test.

[33] It was also submitted that, had the Panel taken a closer look, it would have found that the opinion relied on from Dr. Margulies was not founded on a "satisfactory characterlogical profile" and without an "etiology for the diagnoses" and "progression of the conditions diagnosed." I again note the extensive reporting from Dr. Margulies who had the full medical record and interviewed the worker. However, on review of the above noted excerpts and decision, I found no reason to doubt that the doctor provided an expert and unbiased medical report based on the information available to the Panel, including the worker's own testimony. I also again note that such arguments were available to the worker in the original appeal, and in my view are not a basis for reconsideration.

[34] The submissions from the worker's counsel continued by citing that portion of the assessor's report which indicated there was deterioration in the worker's condition in 2006, with wider somatic complaints by early 2007. The clinical notes from the worker's family doctor

were also cited as supportive of the causal connection between the work injuries and the onset of the worker's anxiety and depression, as in a clinical note from Dr. Marley in November of 2006. The subsequent prescription of anti-depressants was also noted in March of 2007 before the "parking garage incident".

[35] It was further submitted there was a worsening of the worker's symptoms in 2006 and into 2007 as a result of the worker's knee injury. It was also submitted that Dr. Margulies was unclear in regard to the basis for that worsening initially in the medical opinion, but then connected the worsening to the worker's injury when asked a direct question by the Panel. It was also submitted that even Dr. Hastings had raised a potential relationship between an escalation in the worker's delusional disorder and the work injury in 2006. It was submitted therefore that there was a significant contribution from the work injuries to the worker's psychiatric difficulties, and that "… the Panel had a duty to apply the law on possible causation and exacerbation…" such that the worker would be entitled to psychotraumatic benefits. Again, it was submitted that the evidence could not have been considered any more than of equal weight.

[36] Of course, the potential or possible relationship raised by either Dr. Hastings if one accepts such a conclusion, and from Dr. Margulies, does not in fact meet the legal test of being a significant contributing factor. As noted by Dr. Margulies, it was "impossible, on the basis of available information, to in any way objectify the extent by which [the worker's] right knee injury may have worsened the pre-existing delusional disorder." Again, this evidence was available at the original hearing, and was noted in the balance of the original decision. It was also the basis in my view for a reasonable conclusion from the Panel, that there was no significant contribution from the work injuries to the worker's psychiatric difficulties.

[37] There were also further submissions that attempted to distinguish the worker's depressive difficulties from his delusional disorder. It was submitted that the Panel did not properly distinguish the two conditions and, it was submitted therefore that the Panel "…erred in law and process by not specifically applying any test for entitlement to the onset of the worker's depressive condition."

[38] Of course, the submission also noted well the extensive excerpt from Dr. Margulies that was also relied upon in reaching the below noted conclusions. Further, it was evident that the medical information and the report from Dr. Margulies, as well as the Panel's conclusions, addressed both conditions. (See for example paragraph 49 which addresses both the worker's psychological disorder and the worker's depression.) I did not view the original decision as failing to consider entitlement to benefits in that regard, and it was evident from the Panel's findings that they came to a reasonable conclusion after addressing the medical evidence related to the worker's psychiatric difficulties on a whole. In my view, these were attempts to reargue the appeal and not in my view a basis for a substantial procedural or legal error on the part of the Panel.

[39] Nevertheless, the worker's submissions continued by addressing the basis for Dr. Margulies' report, and that the Panel again did "… not differentiate between the worker's pre-existing condition, its worsening, and the onset of the depressive condition." There was also a submitted deficiency in the medical reporting from Dr. Margulies in that the worker's marriage breakdown was in part relied upon in reaching the opinion on the worker's depression. It was

submitted the marriage breakdown did not come until August of 2007, and therefore long after the onset of the worker's depression.

[40] This was again a further argument open to the worker at the original hearing and in the course of post-hearing submissions after receipt of Dr. Margulies report. I also note on review of the cited excerpt from the report from Dr. Margulies, that the "…Reasons for the development of this depressive disorder are multifactorial in nature …". I also note that the doctor did not cite when the marriage breakdown occurred, but did clearly raise in his report noted at paragraphs 40 and 41 of *Decision No. 1356/09* that "It is not known whether his marriage broke down, as he has implied, because of factors related to his accident of March, 2006, or whether, undertaken under curious and unknown circumstances, would ever have been successful." I also noted that the doctor did cite the marriage breakdown as occurring in the "latter months of 2007" on page 6 of the report.

[41] As such, I did not view the doctor as having made a glaring omission in coming to the opinion provided. Nor did I find there to be an issue of credibility as to the worker's testimony, save that the medical information on file is also balanced along with that testimony. Thus, the medical information on file, the worker's testimony, and the Panel's findings were all provided to Dr. Margulies. I also note that Dr. Margulies interviewed the worker and again had access to the complete medical record, and provided an independent expert psychiatric report.

[42] I also note that, even if, as it was submitted, the marriage breakdown did not play a significant role in the earlier onset of the worker's psychiatric difficulties, it was evident that there were a range of potential contributors to the worker's psychiatric complaints. This was well noted by Dr. Margulies, who I note again was aware of the timing of the worker's marital problems. I also noted the further submissions that the Panel did not address the worker's depression specifically.

[43] In brief, that is simply not the case. As was noted from the balance of the original decision at paragraphs 42 to 50, the Panel not only addressed both the worker's delusional disorder, but also cited the worker's depression. The Panel also clearly dealt with both the issue of direct causation and the aggravation claim as follows:

> [42] In this case, the question is to what extent the worker's knee injuries have contributed to the worker's evident ongoing psychological difficulties and depression. There are reports from treating physicians and testimony from the worker that indicated a causal relationship exists, with particular note of the contemporaneous rise of more serious symptoms after the worker's 2006 knee injury. We again noted the reporting from Dr. Marley, Dr. Sharma, and Dr. Swierczek.
>
> [43] However, the Panel was not persuaded in this case that the knee injuries, particularly the 2006 injury, played a significant role in the onset of the worker's psychological problems. It was evident that the worker had pre-existing psychological problems that were related to his personal life and to work complaints and concerns. They were largely unrelated to his knee injuries. Those difficulties were the basis for what Dr. Hastings suspected was a psychotic and possible delusional disorder focused on the worker's persecution. That view was supported in the opinions from Dr. Piccolo.
>
> [44] We also noted the report from Dr. Bruun-Meyer, which acknowledged the lack of medical reporting of a history of depression and noted the increased symptoms after the right knee injury. However, as with the report from Dr. Hastings, Dr. Bruun-Meyer also noted the worker had been having mood difficulties and noted other difficulties, such as the assault in 2007. The doctor also quite clearly stated that the workplace accidents did

> not cause the worker's depression. The report also noted that mood difficulties were escalated, but we were not persuaded that the knee injuries were significant in that regard.
>
> [45] This leads us, of course, to the argument that the work injuries triggered more severe difficulties, essentially causing serious aggravation of what was a condition that may have been at most minor. We also noted the submission that Dr. Margulies provided the above noted opinion in the absence of clear medical evidence and on the basis of what was stated to be speculation and assumption.
>
> [46] It was evident to the Panel that there were a number of medical reports and assessments that had been conducted that supported the findings of Dr. Margulies. We again note the reporting from Dr. Hastings, Dr. Bruun-Meyer, and Dr. Piccolo. We also note that the worker was examined/interviewed by Dr. Margulies. In that regard, it cannot be said that Dr. Margulies based the noted opinion on speculation or assumption, but on professional observations and previous reporting from psychiatric professionals and the worker's family doctor.
>
> [47] Further, it was our view that Dr. Margulies provided a very thorough report considering the worker's personal background, medical and accident reporting. That report considered the clinical record which was indicated to show a "delusional disorder" and depression which developed for a number of reasons. A key finding in that report, which the Panel agreed with, was that there was sufficient evidence to show that the disorder pre-dated the 2006 injury. As the doctor stated, the worker's psychiatric disorder was "… apparent no later than the latter months of 2004." A number of reasons for that finding were well described in the excerpts cited above, including personal, emotional and relationship difficulties. That included the noted marriage breakdown, which in the doctor's opinion, was a "major precipitant of the depressive illness."
>
> [48] It was also notable that Dr. Margulies addressed directly the nature of the worker's psychological difficulties. It was noted that the knee injuries may have been exacerbating factors, but the doctor clearly found that it was unlikely the 1997 left knee injury was significant in the development of the worker's delusional disorder, persecutory type. It was also found that the condition would have developed notwithstanding the 1997 injury. Similar findings were made for the right knee injury, again noting that it was more likely than not that the worker's paranoid perspective of the world was not documented prior to Dr. Marley's entries in December of 2004. The doctor also concluded it was impossible to state the extent to which the right knee injury may have worsened what was clearly described as a pre-existing delusional disorder.
>
> [49] In this case, and given the above noted findings, the Panel was not persuaded that the knee injuries in question were significant contributors to the worker's psychological disorder and depression. While they may have made some minor impact, we were not persuaded that they were a significant trigger for the development of psychological problems. As Dr. Margulies noted, after reviewing the evidence and interviewing the worker, it was more than likely the worker had a pre-existing delusional disorder that would have developed regardless of the knee injuries in question. Given that finding, we were not persuaded that benefits were in order for psychotraumatic disability in this case.
>
> [50] In conclusion, and on a balance of probabilities, the Panel was not persuaded that the worker's knee injuries were significant contributing factors to his psychiatric condition. Therefore, the worker is not entitled to psychotraumatic disability benefits, as such he is also not entitled to any related LOE benefits. The appeal is, therefore, denied.

[44] It was evident from the above conclusions that the Panel dealt with the entire nature of the worker's psychiatric condition on a direct and aggravation basis. I also found the Panel to have reasonably weighed the medical evidence on file. Further, no new evidence was submitted by the worker that was not already available at the time of the original appeal and would have changed the decision in this case.

3. Argument regarding consideration of evidence and coming to a reasonable conclusion

[45] I also note that there were a number of further submissions from the worker's counsel that cited again the reporting of the worker's treating doctors, and also critiqued Dr. Piccolo's reporting and recommendation on file. The Panel's reasons were also submitted again as not distinguishing the questions of law and fact that were put before it to determine. There was a notable focus again on the immediate time period after the worker's 2006 knee injury. I find the worker's submissions are an attempt to relitigate the original appeal, and without any new evidence, legal or procedural error this is not a basis for reconsideration.

[46] The worker's counsel also submitted there was a failure to consider the worker's left knee recurrence in 2003 and subsequent surgery and lost time in 2004, contemporaneous with a time period on which Dr. Margulies places great weight on the worker's December 2004 complaint about 'politics of injury' at his workplace. This was related to the worker's psychiatric condition.

[47] I find there was no such failure to consider the left knee injury, again noting the medical record was entirely available to Dr. Margulies, who also clearly noted and took into consideration the left knee injury. As noted above from the original decision, the doctor stated in part "It is highly unlikely that the left knee injury and sequelae which [the worker] experienced starting in 1997 were significant factors in the development of a delusional disorder." Further on in that opinion, the doctor also stated "At the very most, the sequelae of his left knee injury may have been one stressor acting upon a pre-disposed individual who would have developed delusional disorder, notwithstanding said injury." Again, these comments preceded the finding by the doctor that it was impossible to indicate the extent of the impact from the worker's knee injuries on the worker's psychiatric condition. They also addressed the time period that included the sequelae from the worker's left knee injury. In my view, the opinion was also reasonably dealt with by the Panel as noted above.

[48] In the final paragraphs of the submission from the worker's counsel, it is submitted in brief that the Panel "peremptorily concluded the worker had a pre-existing condition" without specifying relevant time periods. Given the above review and consideration of the evidence and findings of the Panel, I did not view that as an accurate submission or basis for reconsideration.

[49] It was also submitted that the Panel "did not turn its mind to whether the worker's apprehensions about his ability to perform his job, and his concerns about his employment situation were rooted in fact." Again, given the above noted excerpts from the original decision and the medical opinions noted by the Panel, that submission is simply not accurate and is not in my view a basis for reconsideration.

[50] I also finally note the submission that the Panel has a duty to give reasons and set out a "true analysis of the evidence" and the citation of *Decision No. 970/01R*. It was submitted that the Panel's conclusions do not provide such an analysis and did not properly provide reasons that allow one to "understand how it came to its conclusions". Again, however, the submission turned to the medical reports on file and what I considered failed attempts in this application to raise substantial difficulties with either the reports of Drs. Bruun-Meyer or Margulies. The submission also again attempts to reargue the appeal by submitting that the balance of the medical evidence on file supports entitlement for the worker.

[51] However, I also finally conclude that I did not find any new evidence or any substantial defect in the evidence or analysis provided by the Panel. The Panel clearly addressed the two bases for causation that were advanced by the worker, and addressed the worker's entire psychiatric condition. That included both the depressive and delusional disorders claimed. I found no evident legal, procedural or evidentiary error that if rectified would have changed the outcome of the decision.

[52] Rather, I viewed the submission on behalf of the worker to be entirely an effort at re-litigating the appeal and an obvious disagreement by the worker with the outcome of the appeal. This is not the basis for allowing a reconsideration request. (See Tribunal *Decision Nos. 1569/06R* and *397/05R*.)

[53] In conclusion, it was evident that there was no substantial new evidence submitted which was not available at the time of the original hearing and which would likely have resulted in a different decision. Nor was a significant defect, error of law or process identified that, if corrected, would likely produce a different result. Accordingly, I find that the Tribunal's threshold test for granting a reconsideration request has not been met. For all of these reasons, this reconsideration request is dismissed.

DISPOSITION

[54] The worker's request to reconsider *Decision No. 1356/09* is denied.

DATED: December 7, 2012

SIGNED: A.G. Baker