

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

RECONSIDERATION ORDER PO-4252-R

Appeal PA19-00430

Workplace Safety and Insurance Board

April 26, 2022

Summary: The appellant requested a reconsideration of Final Order PO-4240-F, claiming there was a fundamental defect in the adjudication process. In this Reconsideration Order, the adjudicator finds the appellant has not established the grounds for reconsidering Final Order PO-4240-F under section 18.01 of the *Code* and she denies the reconsideration request.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended; *IPC Code of Procedure*, sections 18.01(a) and (c).

Orders and Investigation Reports Considered: Orders PO-2538-R, PO-3062-R, PO-4213-I and PO-4240-F.

OVERVIEW:

[1] This reconsideration order relates to Final Order PO-4240-F, which followed Interim Order PO-4213-I. These orders were issued in Appeal PA19-00430, involving an individual, the appellant, and the Workplace Safety and Insurance Board (the WSIB). The appellant had filed a request for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the WSIB for information relating to his brother¹ and two identified claims.

[2] The WSIB located responsive records and granted the appellant full access to

¹ The appellant is acting on behalf of his brother.

them. The appellant appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario (the IPC), claiming additional responsive records ought to exist.

[3] During mediation, the appellant clarified his request, by way of letter to the WSIB, to include information relating to his brother and his claims and the information that may have been lost or omitted. The appellant also asked that all claims adjudicators and the heads of department sign a declaration that this information is complete and accurate and provide a list of all omitted, lost, withheld and other documents not provided. The WSIB claimed the clarified request was outside the scope of the original request. At the end of mediation, the issues under appeal were the reasonableness of the WSIB's search and the scope of the appellant's request.

[4] Mediation did not resolve the issues and the appeal was moved to the adjudication stage of the appeal process and I conducted an inquiry under the *Act*. In Interim Order PO-4213-I, I found that a portion of the appellant's clarification letter was within the scope of his original request, but the remainder of the clarification was not. I also found the WSIB failed to establish that it conducted a reasonable search for records responsive to the appellant's request and I ordered it to conduct another search.

[5] The WSIB conducted a further search, but did not locate any additional responsive records. The WSIB submitted an affidavit that summarized the searches it conducted in response to the appellant's request. I then invited the appellant to make representations in response to the WSIB's representations. The appellant submitted representations on the WSIB's search and made a number of submissions regarding alleged bias on my part.²

[6] In Final Order PO-4240-F, I found the WSIB had conducted a reasonable search for responsive records. I also found the appellant did not establish there is a reasonable expectation of bias on my part. I dismissed the appeal.

[7] Shortly after Final Order PO-4240-F was issued, the appellant submitted a reconsideration request. The appellant was provided with an opportunity to make written submissions in support of his reconsideration request, with reference to the reconsideration grounds set out in section 18.01 of the IPC's *Code of Procedure* (the *Code*). The appellant submitted representations. I reviewed the appellant's representations and determined that I did not need to seek representations from the WSIB.

² I note the appellant did not raise the allegation of bias in the context of my inquiry or Interim Order PO-4213-I. Rather, the appellant's allegation of bias related to the WSIB's compliance with the interim decision. Given these circumstances, I decided to consider the appellant's allegation of bias in this final order. I also note that I did not seek the WSIB's position on the allegation of bias.

[8] For the reasons that follow, I find the appellant has not established any basis upon which I should reconsider Final Order PO-4240-F. I deny his reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Final Order PO-4240-F?

[9] The IPC's reconsideration process is set out in section 18 of the *Code* which applies to appeals under the *Act*. In particular, sections 18.01 and 18.02 state as follows:

18.01 The Commissioner may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

[10] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, the adjudicator reviewed the case law regarding an administrative tribunal's power of reconsidering, including the Supreme Court of Canada's decision in *Chandler v. Alberta Association of Architects*.³ With respect to the reconsideration request before him, the adjudicator concluded,

[T]he parties requesting reconsideration... argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect.... In my view, these arguments do not fit within any of the criteria enunciated in section 18.01 of the *Code of Procedure*, which are based on the common law set out in *Chandler* and other leading cases such as [*Grier v. Metro Toronto Trucks Ltd.*].⁴

³ [1989] 2 SCR 848 (SCC).

⁴ 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to re-litigate these issues to obtain a decision more agreeable to the [institution] and the affected party. As Justice Sopinka comments in *Chandler*, “there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals.” I have concluded that this rationale applies here.

This approach has been adopted and applied in subsequent IPC decisions.⁵ For example, in Order PO-3062-R, the adjudicator was asked to reconsider her finding that the discretionary exemption in section 18 of the *Act* did not apply to the information in the records at issue in that appeal. The adjudicator determined the institution’s request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating,

It ought to be stated up front that the reconsideration process established by this office is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal...

The appellant’s reconsideration request

[11] The appellant’s request for reconsideration states that in making my decision in Final Order PO-4240-F, I erred in the following ways:

- I failed to consider the appellant’s submissions and evidence,
- There was misconduct on my part,
- Deceit on the part of the IPC, WSIB, the Adjudication Review Officer, and me,
- Findings were contrary to the evidence presented by the appellant and made without support,
- I contravened the *Ontario Human Rights Code* and the *Charter of Rights and Freedoms*,
- I acted outside of the “scope of duties” and acted “contrary” to my duties,
- I withheld information and ruled “in contradiction of natural justice”, and
- I refused to address my own bias.

⁵ See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

The appellant submits that these errors amount to a fundamental defect in the adjudication process as per section 18.01(a) of the *Code*.

[12] In addition to the examples itemized above, the appellant submits that I made a finding that the WSIB had sought "all the required parties" in its search without any evidence to support this finding. The appellant is particularly concerned that the WSIB did not contact a specific case manager.

[13] The appellant also takes issue with my not amending Interim Order PO-4213-I due to the WSIB's delay in compliance and for not sharing the materials submitted by the WSIB with the appellant. The appellant also alleged that the IPC advised him that "it was improper for WSIB to contact [the appellant] about the order." However, the appellant states that I instructed the WSIB to contact the appellant and inform him about the delay in compliance. The appellant states that this is in "direct contradiction" with the previous communication referred to and was "an improper and biased and secret and prejudicial with WSIB (ex parte)." The appellant states the WSIB informed the appellant of the delay with reasons that the appellant believes were "false, and designed to mislead and written in a calculated and provocative manner."

[14] The appellant states that I did not take any action upon receiving the WSIB's correspondence, which he alleges I knew was false. The appellant also states that I "chastised" him and improperly restricted the adjudication to scope only.

[15] The appellant also alleges that the written policies, procedures and practices⁶ are "a pro-institutional bias" and violate the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms*. The appellant alleges I have shown "a pro WSIB bias in [my] actions and omissions and language and that this bias is obvious to any reasonable and right-thinking person." The appellant submits I should have addressed deceit in Final Order PO-4240-F and did not answer the appellant's questions in a "responsive, forthright and truthful manner."

[16] The appellant refers to the grounds of reconsideration in sections 18.01(a) and (c) of the *Code*. Specifically, he argues there was a fundamental defect in the adjudication process (section 18.01(a)), but states that some of the reasons summarized above could also be considered a clerical error, accidental error or omission (section 18.01(c)).

Analysis and Findings

[17] I have reviewed the appellant's reconsideration request and find he has not established that the grounds for reconsideration in section 18.01(a) and/or (c) could apply here.

⁶ The appellant did not identify which policies, practices and procedures. However, I assume the appellant is referring to the IPC's policies, practices and procedures, such as the *Code*.

[18] It appears the appellant takes issue with the manner in which the WSIB complied with Interim Order PO-4213-I. Interim Order PO-4213-I was issued on November 5, 2021. I ordered the WSIB to conduct a further search for records responsive to the appellant's access to information request. I also ordered the WSIB to provide me with an affidavit sworn by the individual(s) who conducted the searches by January 7, 2021.

[19] On January 6, 2021, the WSIB submitted a request to vary the compliance date of Interim Order PO-4213-I to allow it an additional week to complete the further search and submit the affidavit. In response, I advised the WSIB that I would *not* grant the WSIB an extension or vary the order. I also advised the WSIB to contact the appellant directly about its delay. The WSIB advised the appellant of same by email dated January 6, 2022. I note that the appellant was not advised that it was inappropriate for the WSIB to contact the appellant and inform him about the delay in compliance as he claims.

[20] The WSIB completed its search and submitted its affidavit regarding the searches it conducted on January 13, 2022. In Final Order PO-4240-F, I stated as follows:

Deadlines imposed by the IPC, particularly those set out in an order, must be respected. For the WSIB to request an extension of time one day before the deadline set out in the order does not reflect well on it. However, as the WSIB has now completed the search required by Interim Order PO-4213-I, I will not be addressing the issue of compliance further.⁷

[21] I acknowledge the appellant's dissatisfaction with the slight delay in the WSIB's compliance with Interim Order PO-4213-I. However, contrary to the appellant's claims, the WSIB's request for an extension and my denial of that extension request were communicated to the appellant promptly. There was no evidence before me, nor did the appellant provide any, to suggest that the WSIB's reasons for the delay were false. In consideration of all the circumstances, I am not satisfied the appellant has established there was a fundamental defect in the adjudication process in the manner in which I addressed the WSIB's delay in compliance with Interim Order PO-4213-I.

[22] The appellant repeats his allegation of bias on my part in his reconsideration request. Any reasonable apprehension of bias would be a ground for reconsideration of Final Order PO-4240-F for the purpose of section 18.01(a) of the IPC's *Code* as it would constitute a fundamental defect in the adjudication process. The appellant submits I "refused" to address my own bias in Final Order PO-4240-F. The appellant's claim is incorrect. I refer the appellant to Issue A in Final Order PO-4240-F, in which I considered the appellant's allegation of bias and found the appellant had not established I was biased or that there was a reasonable apprehension of bias in my

⁷ Order PO-4240-F, paragraph 11.

adjudication of his appeal.

[23] In addition, the appellant submits I demonstrated a “pro-institutional bias” and that there was deceit on my part. The appellant did not provide any evidence to support his claims. It is clear the appellant disagrees with the manner in which I conducted my inquiry and how I addressed the WSIB’s compliance with Interim Order PO-4213-I. However, disagreement with my decisions do not amount to evidence of bias or a reasonable apprehension of bias on my part. In particular, my finding that the WSIB has now conducted a reasonable search for records responsive to his request in Final Order PO-4240-F is not evidence of a “pro-institutional bias.” As stated above, the appellant did not provide any evidence to support his bias claim in his reconsideration request. In the absence of such evidence, I find the appellant has not established that there was bias or a reasonable apprehension of bias on my part.

[24] The appellant also submits that I contravened the *Ontario Human Rights Code* and the *Charter of Rights and Freedoms*, and acted outside of the scope of my duties and contrary to my duties. These allegations, if substantiated, would constitute a fundamental defect in the adjudication process as per section 18.01(a) of the *Code*. However, the appellant did not provide any evidence to support his claims. In the absence of any supporting evidence, I find the appellant has not demonstrated that I contravened either the *Ontario Human Rights Code* or the *Charter of Rights and Freedoms*. Similarly, I find the appellant did not demonstrate how I both acted outside the scope of my duties and contrary to my duties as an adjudicator with the IPC.

[25] I note the appellant claims, once again,⁸ that I restricted the adjudication to scope only. I refer the appellant to paragraph 16 of Final Order PO-4240-F in which I confirmed that the two issues under appeal at adjudication were the scope of the appellant’s request and the reasonableness of the WSIB’s search. I did not remove the issue of reasonable search from the scope of the appeal; in fact, in Interim Order PO-4213-I required the WSIB to conduct another search for responsive records and Final Order PO-4240-F addressed whether the WSIB conducted a reasonable search for responsive records. I will not address the appellant’s claim further as it is factually incorrect.

[26] Finally, the appellant submits I was wrong in finding that the WSIB had sought “all the required parties” in its search without any evidence to support this finding. The appellant is particularly concerned that the WSIB did not contact a specific case manager. I did not make this finding in Final Order PO-4240-F. Rather, I found as follows:

I accept the Director is an experienced employee knowledgeable in the request and the WSIB’s records holdings. I also accept the Director

⁸ See Final Order PO-4240-F, paragraph 16.

contacted other experienced employees knowledgeable in the request, the appellant, his brother and the identified claims to conduct the searches required. In addition, I accept the Director contacted the correct WSIB staff who adjudicated or reviewed the relevant claims to search their records.⁹

[27] I reiterate that, in the case of reasonable search, the *Act* does not require the institution to prove with absolute certainty that further records do not exist.¹⁰ The institution must provide sufficient evidence to show that it has made a reasonable effort and locate responsive records.¹¹ A reasonable search is one in which an experience employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.¹²

[28] In the case of Final Order PO-4240-F, I found the WSIB provided sufficient evidence in its affidavit to demonstrate it conducted a reasonable search for responsive records. I acknowledge the appellant's dissatisfaction with the results of the WSIB's search and believes it ought to have been more extensive and ought to have resulted in additional responsive records. In any case, I reviewed the parties' representations and the WSIB's affidavit and was satisfied that the WSIB conducted a reasonable search for records responsive to the appellant's request. Given these circumstances, I am not satisfied the appellant has established there was a fundamental defect in the adjudication process as per section 18.01(a) of the *Code*.

[29] Upon review of the appellant's reconsideration request, I find he has not provided any evidence to substantiate a finding that there was a fundamental defect in the adjudication process under section 18.01(a) of the *Code*. For similar reasons, I find the appellant has not provided sufficient evidence to demonstrate there was a clerical error, accidental error or other similar error in the decision under section 18.01(c) of the *Code*.

[30] Therefore, having considered the appellant's reconsideration request and submissions, I find he did not establish the grounds for reconsideration under section 18.01(a) or 18.01(c) of the *Code*. In reviewing the appellant's reconsideration request, I also considered whether any of his arguments might fit within section 18.01(b) of the *Code* and I find they do not. Accordingly, I find there is no basis upon which the IPC may reconsider Final Order PO-4240-F.

⁹ Final Order PO-4240-F at para 40.

¹⁰ Final Order PO-4240-F at para 38.

¹¹ Orders P-624 and PO-2559.

¹² Orders M-909, PO-2469 and PO-2592.

ORDER:

I deny the appellant's reconsideration request.

Original Signed by: _____

Justine Wai
Adjudicator

April 26, 2022 _____