

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *L.N. v. Saskatchewan Government Insurance*,  
2004 SKAIA 004  
**Date:** 20040220  
**File:** 032 of 2003

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**BETWEEN**

**L.N., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**Theresa Charpentier, for the Applicant**  
**Daryl Mack, for the Respondent**

**Before:** **Ann Phillips, Q.C., Chair**  
**Beverley Cleveland, Commission Member**  
**Al Knippel, Commission Member**

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH  
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND  
OTHER IDENTIFYING INFORMATION.**

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Heard at Saskatoon, Saskatchewan  
November 5, 2003

## DECISION

[1] The Appellant, L.N., appeals two decisions of Saskatchewan Government Insurance (“SGI”) dated June 11 and July 12, 2002. These decisions went to mediation. SGI terminated the mediation by letter dated February 26, 2003.

[2] Very briefly, the issue is whether the Appellant, a hairdresser no longer capable of working for eight hours a day, should have been “determined” into the occupations of a file clerk or library clerk under section 132 of *The Automobile Accident Insurance Act* applicable to her injury in 1996 (the “old Act”).

### DETERMINATION OF EMPLOYMENT

[3] Under the no-fault provisions of the old Act,<sup>1</sup> if an injured worker is unable to return to his or her former job after two years of rehabilitation, SGI assesses the worker’s residual earning capacity, meaning “What are the worker’s present earning capabilities?” SGI is to consider the worker’s education, training, work experience, current abilities, etc. to “determine” what kind of occupation the person may be able to perform. If that occupation pays less than the former job, SGI pays the difference between the income earned at the former job and the worker’s current earning capacity.<sup>2</sup>

[4] The legal framework for this scheme is as follows:

#### **“Determination of Employment After Second Anniversary of Accident**

132 Following the second anniversary date of an accident the insurer may determine an employment for a victim of the accident who is able to work but who is unable because of the accident to hold the employment mentioned in section 112...<sup>3</sup>

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<sup>1</sup> The new Act employs the same general scheme, but the language has been slightly changed, and the numbering is different.

<sup>2</sup> SGI Personal Automobile Injury Insurance, Your Guide to No-fault Coverage, SLB 224 12/2002, 20 m 4 d, page 10.

<sup>3</sup> Section 112 applies to the Appellant, a fulltime earner at the time of her accident. Sections 113 and 131 apply to people who would have held more remunerative employment but for special circumstances, or people who were temporary earners, part time earners or non-earners.

### Factors Applicable to Determinations Pursuant to Sections 132 and 133

134 In determining an employment pursuant to section 132 or 133, the insurer shall consider the following factors:

- (a) the education, training, work experience and physical and intellectual abilities of the victim at the time of the determination;
- (b) any knowledge or skill acquired by the victim in a rehabilitation program approved pursuant to this Part;
- (c) whether the employment is available in the region of Saskatchewan in which the victim resides;
- (d) the employment that the victim is able to hold:
  - (i) a regular and full time basis; or
  - (ii) if it would not be possible for the victim to hold employment on a regular and full time basis, on a part time basis;
- (e) any other prescribed factors.”<sup>4</sup>

[5] There are no specific “prescribed factors” applicable under *The Personal Injury Benefits Regulations* (“PIBR”).<sup>5</sup>

[6] Section 17 of the PIBR states:

For the purposes of clause 134(c) of the Act, an employment is available to a victim in the region of Saskatchewan where the victim resides when, at the time the insurer determines an employment for the victim:

...(b) the employment or the category of employment exists and is likely to continue as an employment or category of employment within the foreseeable future.”

[7] Also, section 25 of the PIBR directs the reader to Appendix A when considering classes of employment and gross yearly employment income when an employment is determined under section 132, as follows:

“25 The classes of employment and the corresponding gross yearly employment incomes set out in Appendix A apply to calculating the gross yearly employment income pursuant to the following provisions of the Act:...

(f) Section 132 in the case of an employment determined pursuant to that section.”

#### “Appendix A, Classes of Employment, Determination of Level of Experience

1 For the purposes of Table 1 of this Appendix the insurer shall determine the level of experience that the victim has in the class of employment determined for the victim, in accordance with the following:

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<sup>4</sup> Section 133 refers to determination of employment for a student or a youth.

<sup>5</sup> Chapter A-35, Reg. 3 (effective January 1, 1995).

- (a) Level 1 means less than 36 months of experience immediately prior to the accident;
- (b) Level 2 means 36 months or more but less than 120 months of experience immediately prior to the accident;
- (c) Level 3 means 120 months or more immediately prior to the accident.”

[8] Where the victim is “determined” into an entirely new occupation, it will invariably be at the “Level 1” payment scale.

[9] Once a victim succeeds in obtaining employment in the “determined” job, her income replacement benefits are reduced according to a formula.

**“Reduction Where Income from Determined Employment is Less than Income Previously Computed by Insurer**

139(1) Subject to the other provision of this Division, the insurer shall reduce a victim’s income replacement benefit pursuant to subsection 2 if:

- (a) the victim is able to hold an employment determined for the victim pursuant to section 132 or 133; and
- (b) because of bodily injuries caused by an automobile arising out of an accident, the victim earns a gross yearly employment income from the employment that is less than the gross yearly employment income used by the insurer to compute the income replacement benefit that the victim was receiving before the employment was determined pursuant to section 132 or 133.

(2) The insurer shall reduce the victim’s income replacement benefit pursuant to subsection (1) by an amount calculated in accordance with the following formula:

$$\text{RIRB} = \text{FIRB} - \text{NI where:}$$

RIRB is the reduced income replacement benefit;  
FIRB is the former income replacement benefit the victim was receiving at the time the employment was determined pursuant to section 132 or 133; and  
NI is the net income that the victim earns or could earn from the employment determined pursuant to section 132 or 133.”

[10] The income replacement benefit ends completely one year after the date the victim is able to hold a “determined” employment.

**“Termination of Income Replacement Benefit**

129(1) Notwithstanding any other provision of this Division, a victim ceases to be entitled to an income replacement benefit when any of the following occurs:

- ...(d) one year has expired from the day the victim is able to hold an employment determined for the victim pursuant to section 132 or 133.”

[11] What this means is that SGI pays income replacement benefits during the year between “determination” and “termination” on the basis of his employment at the time of the accident, but deducts from that amount what the person “could earn” at the “determined” employment according to Table 1 of Appendix A (“the table”).

[12] In the Appellant’s case, this means that her income replacement benefit (90% of net income) is reduced by the amount set out in the table for a library or file clerk at Level 1 (\$XX,XXX, adjusted for cost of living<sup>6</sup>) even though she can prove:

- (1) there are no job openings for file clerks or library clerks available in her region;<sup>7</sup>
- (2) the pay levels for those jobs are significantly less in her region than the table;<sup>8</sup>
- (3) there are entry barriers to the occupation in the region, e.g. union membership and/or seniority requirements, additional skills requirements;
- (4) there are accommodation issues such as the recovering worker’s need for pacing, breaks, special equipment, etc.

[13] The only ground upon which a person can challenge the “determination” is that the insurer has not appropriately considered the factors set out in section 134 above. It is that ground that we must consider in the Appellant’s case.

## **FACTS**

[14] The facts as set out are taken from the helpful brief filed by Theresa Charpentier, of Voice of the Blue Rose Advocacy, on behalf of the Appellant. The accuracy of the facts has been checked against the documents themselves.

[15] The Appellant sustained neck, shoulder, right arm, lower back and hip injuries as a result of a motor vehicle accident on November 26, 1996. She was the seat-belted driver of a car which was struck on the left front aspect of her car.

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<sup>6</sup> Under sections 187 and 188.

[16] The Appellant initially attended Dr. Short. In his practitioner's report of December 19, 1996 he reports that she is having significant low back pain with right post leg radiculopathy down back right leg to the calf. He identified pain in C6 and T 4-6 spasm right shoulder. He diagnosed Grade III low back pain, and very tender right side of pelvic girdle. In his remarks he stated:

"I feel she needs urgent multidisciplinary assessment as is experiencing very significant left upper leg pelvic girdle pain and her condition is worsening. She is not a complainer. She is trying hard to do her work but cannot manage."

[17] Vera Bater, physiotherapist, reported January 17, 1997 that she was progressing well: at a Grade II level for neck symptoms and Grade II for back symptoms. She had been attending two to three times a week for mobilizations, strengthening and conditioning exercises and had improved significantly.

[18] By March 31, 1997, Mark Shumlich, exercise therapist, advised that she had been attending a fitness program since February 19. There had not been much change since the first report. She had been giving up to 100% effort, which would restore strength to her body. Some exercises made her back sore; in others she was very strong (abs, shoulders); while still others were weak (legs).

[19] Shortly after, on April 8, 1997, her general practitioner, Dr. Short, reported minimal improvement, very limited working and participation in activities of daily living, significant pain in her neck, lower back, shoulders, weakness, insomnia, paresthesia both arms and hands right greater than left, and possible L5/S1 radiculopathy. He had started her on a trial of Elavil for depression. He requested a tertiary assessment in Saskatoon with particular concern as to her depression ("very significant"), radiculopathy R L5/S1 and paresthesia in right (greater than) left in both arms and hands.

[20] She was seen for multidisciplinary assessment at FIT for Active Living in Saskatoon on April 30 – May 1, 1997. The report outlined that she had a non-restorative sleep pattern with

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<sup>7</sup> See section 17 PIBR.

<sup>8</sup> See section 25 PIBR.

frequent awakening due to pain, chronic lassitude and exhaustion, intermittent numbness of the hand, primarily the first, second and third fingers of the right hand, associated with certain activities such as prolonged hair cutting, some of which would appear to have been present prior to the accident, although intensified later.

[21] On physical examination:

“light touch was inconsistently diminished in the right forearm and territory of the median nerve. Median, radial and ulnar fine motor power was normal. Phalen’s sign was negative and Tinels sign was negative on percussion over the carpal tunnel on the left but inconsistently positive on the right. In addition, tapping of the sheath of the ulnar nerve at the elbow recreated some numbness along the lateral aspect of her forearm, more particularly on the right side.”

[22] Her muscular endurance was below average for the upper body, poor for abdomen muscles and limited by pain in the low back. Grip strength was poor. Back extension strength, lateral trunk flexion strength and trunk forward flexion flexibility was poor as was shoulder girdle flexibility.

[23] She was admitted to the tertiary program and discharged on August 21, 1997, after improvements in all areas. She worked hard and maintained a healthy balance of pushing herself through pain while knowing when to limit herself. A Work Capacity Evaluation (WCE) done at the end of the program determined that she could perform her work tasks for a two hour period, with a break of about 30 minutes after the first hour. She did not match physical job requirements for floor to waist lifting, bilateral carry, unilateral carry, and standing. It was contemplated that she would increase from the two hours per day to full time over a period of a year. If she was not successful, a plan to pursue another vocation should be carried out.

[24] She did begin a graduated return to work program in late September, and took the initiative to increase her hours at work. The occupational therapist reported in June, 1998 that she was maintaining a four hour work level, but doubted that she would be able to complete an eight hour shift by September, 1998.

[25] In March, 1998, she had a CT scan that identified a possible posterolateral disc herniation at C6-7. She continued to have pain in the cervical area with headaches, right arm numbness and poor sleeping due to pain.

[26] As the graduated return to work program was considered to have failed, various options were considered. SGI's medical consultant thought that confirmation should be sought as to whether or not she had a disc herniation and whether surgery was an option. If not, then he recommended a Residual Capacity Evaluation (RCE) to see if there were other jobs that would be more suitable for her to do. She underwent vocational testing, but plans were put on hold due to her pregnancy, the child being born in April, 1999. She returned to work in 2000 on a half time basis, but continued to have back pain, poor sleep, with poor short-term memory and concentration level due to pain.

[27] An RCE was done at FIT in Saskatoon on June 3-4, 2001. Her physical complaints were unchanged, with mild depressive symptomatology. An occupational therapist assessed her capabilities in the home. While she was assessed as having the ability to safely complete home management tasks independently, it was noted that there were many household tasks similar to work activities (similar postural tolerances) that would mean she would struggle with household tasks if she continued as a hairdresser. She was working four to five hours per day, three days per week, and it was thought unlikely that she would be able to return to an eight hour work day. She was exhibiting tolerances generally at a light level for an eight hour day.

[28] In March, 2001, she was referred to a rheumatologist who considered possible inflammatory myopathy. She was sent for a muscle biopsy to rule out polymyositis. The muscle biopsy was negative, but she experienced a painful recovery from the biopsy. Nerve conduction studies and EMG were normal. She was diagnosed with myofascial pain syndrome, a variant of fibromyalgia (chronic and non-specific myalgia and arthralgia).

[29] On October 29, 2001, SGI "determined" her into the employment of "file clerk", with a determined gross yearly employment income of \$XX,XXX. She had one year before this amount would be deducted from her current income replacement benefit. In the year, "only 75% of any income you earn will be deducted from your income replacement benefit."

[30] She was to be tapered off home assistance, with three hours assistance per week to be provided in March, two hours per week in April and one hour per week in May, with a one time thorough cleaning.

[31] She appealed the determination of the employment as a file clerk/library clerk, and a hearing in April, 2002 raised the following points:

- (1) The job tasks of a file clerk and library clerk involved much of the day standing or walking, with a fair amount of bending, stretching and reaching.
- (2) Job requirements included good memory, reading skills, computer keyboarding, office practices and skills in business.
- (3) The library clerk positions in [area] paid minimum wage, with specialized libraries perhaps paying higher wages.
- (4) The vocational testing report showed strengths in entrepreneurship, social skills, and artistic endeavours, but lacking in clerical skills.
- (5) The hairdressing work she was unable to do is classed as “sedentary to light”, and this she could not carry out on a full time basis.

[32] The internal review concluded:

“The consultant researched only those occupational classifications, which are within the limited and light strength standards. Occupations are identified through the National Occupational Classification (NOC). This resource material is produced and supplied by Human Resources Development Canada and is based on the Canadian work force and its occupation.

The list of occupations that [the Appellant] would be capable of doing are based on a transferable skills analysis which relate to her work history and then filtered to account for any impact (sic) her injuries or disability may have, as stated on the functional capacity evaluation completed at Kinetik in Saskatoon.”

[33] The report from Arthur Grey Rehabilitation Consultants upon which the determination and the decision were based is five pages long. Its preparer, Wendy Grey, manager of Arthur Grey, testified, and described the sources she referred to in preparing the report, which states as

its goal: “To research appropriate occupations for which the client may be qualified.” The following are the criteria that she researched:

- (1) vocational aptitudes as determined on a General Aptitude Test Battery;<sup>9</sup>
- (2) her present level of education (grade 12);
- (3) her income replacement benefit (\$XX,XXX);
- (4) the location (within 100 kms. of [her hometown]);
- (5) client’s physical capacities as established by Kinetik in their Residual Capacities Evaluation report, which states the client possesses the capability to work in an occupation up to the light level;
- (6) income levels as established by the Appendix A, Classes of Employment, Employment Income by Occupation, as established by the PIBR of *The Automobile Accident Insurance Act*.<sup>10</sup>

[34] The following are criteria that were not referred to in the report: the physical abilities of the Appellant in areas other than strength, and particularly, her positional tolerance. Ms. Grey did say she considered body positions (sitting, standing, walking), limb coordination (e.g. some employment – keyboarding, oil changing – requires upper limb coordination; others – ditch digging – requires multiple limb coordination).

[35] She said that a file clerk’s job and a library clerk’s job required: sit/stand/walk, upper limb coordination, and light strength. Hairdressing required stand/walk, upper limb coordination and limited strength, plus additional secondary or apprenticeship training, and certification. She had concluded from the Kinetik report that because the Appellant was assessed as capable of lifting 25 lbs. safely and could sit or stand on a “frequent” basis, i.e. between 1/3 and 2/3 of the working day, that she could probably handle a sit/stand/walk job, and there was nothing in the Kinetik report to indicate that she could not. She had located available jobs in the area in the file

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<sup>9</sup> The Appellant was given an aptitude test in August, 1998.

<sup>10</sup> PIBR then effect, A-35, Reg. 3, sections 24(2) and 25 and Appendix A.

clerk and library clerk classifications on the Internet. In response to Ms. Charpentier's questioning on the lack of posting of file clerk's positions, she observed that 85% of job vacancies are filled by direct application. She questioned the census/statistical basis for the information in Ms. Charpentier's book. She acknowledge that in some cases she will look at the occupational therapist's requirements for physical tolerances, especially where there is a "constant" or "frequent" requirement. She pointed out that Kinetik had *not* said that the best the Appellant could do was four hours a day sedentary; it had said eight hours a day light.

[36] She did not comment on the Appellant's aptitudes as tested in August, 1998 in the Occupational Research Report or their relevance to the jobs selected. No attempt was made to correlate these aptitudes with the jobs proposed, although she was rated in the upper third of the working population (exclusive of the highest 10%) for form perception and clerical perception.<sup>11</sup>

[37] Ms. Grey researched occupational classifications within the limited (handling loads up to 5 kgs.) and light (handling loads up to 5 kgs. but less than 10 kgs.)

[38] She considered the Appellant's grade 12 education, her income replacement benefit of \$XX,XXX and "client's physical capacities as established by in the residual capacities evaluation report, which states the client possesses the capability to work in an occupation up to the light level."

[39] The Kinetik report reported on dynamic strength, position tolerance and mobility. It did indeed state:

"Based on the information summarized in the Dynamic Strength, Position Tolerance, and Mobility sections of the evaluation, the client is capable of performing physical work at the light level, as defined by Employment and Immigration Canada, in the National Occupational Classification. Based on this evaluation we feel that the client can sustain the light level of work for an 8-hour day."

[40] These measurements were matched with her job description as a hairdresser, and there were mismatches in the following activities: floor to waist lift, waist to eye level lift, two-handed carrying, standing, work arms over head standing.

[41] No attempt was made by the researcher to match the physical capacity of the Appellant to the requirements of the occupation she selected. Apparently it is sufficient to recite that the classifications are within the limited and light strength standards.

[42] Because the result arrived at in the Physical Work Performance Evaluation Summary was that the Appellant was incapable of doing her own job as a hairdresser, at a “limited” strength level, but was apparently fit to sustain a “light” level of work for an eight hour day, we investigated this anomaly further. In so doing, we obtained material from the NOC Career Handbook, Second Edition, from the Human Resources Development Canada website.<sup>12</sup> For our purposes, the synopsis of descriptors and labels and the explanation of the physical activities are set out in the glossary. These are set out as Appendices A and B to this decision. In the discussion of physical activities, it can be seen from Appendix A that there are six factors involved, of which two (body position and strength) are particularly relevant in the Appellant’s case. Only strength appears to have been expressly considered, although Ms. Grey’s testimony was that she had thought of body position as well. The glossary refers to body position as the “primary type of posture or body movement involved in performing the work. These postures or body movements range from simple to complex and from sedentary to mobile.” The activity of cutting and styling hair is given as an example of body position 2 – standing and/or walking.<sup>13</sup> The Appellant did not meet the “standing” requirement for her job as a hairdresser.

[43] The Commission obtained the Career Handbook Guide for hairstylists and for file clerks. These are attached as Appendices C and D. As discussed, while the hairstylist body position is “standing and/or walking” and strength requirements are “limited”, a file clerk body position requirement is “3 \*Sitting, standing, walking” or, for some occupations in this group, body position 4 “other body positions such as bending, stooping, kneeling and crouching” may be required, and the strength requirements are “2 – light”.

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<sup>11</sup> It also seems odd that a hairdresser would have such low level skills in motor coordination, finger and manual dexterity.

<sup>12</sup> [http://www23.hrdc-rhc.gc.ca/ch/e/docs/intro\\_synopsis.asp?referer=group\\_6271\\_1.asp&anchor=profile\\_summary](http://www23.hrdc-rhc.gc.ca/ch/e/docs/intro_synopsis.asp?referer=group_6271_1.asp&anchor=profile_summary) and [http://www23.hrdc-drhc.gc.ca/ch/e/docs/glossary\\_physical\\_activities.asp](http://www23.hrdc-drhc.gc.ca/ch/e/docs/glossary_physical_activities.asp)

<sup>13</sup> Page 3 of 6 of Appendix B.

[44] We appreciate that the occupational therapist who prepared the Kinetik report summarized the results of the Appellant's tests in various areas as follows:

“Based on the information summarized in the Dynamic Strength, Position Tolerance, and Mobility sections of the evaluation, the client is capable of performing physical work at the **light level**, as defined by Employment and Immigration Canada, in the National Occupational Classification. Based on this evaluation we feel that **the client can sustain the light level of work for an 8-hour day.**”

[45] However, the occupational therapist referred to the individual abilities in each of the areas of Dynamic Strength, Position Tolerance and Mobility in determining that the Appellant could not match the job requirements of her job as a hairdresser.

[46] It is not apparent to the Commission why these factors cannot be matched against a real job in an occupation identified by the occupational research report. In fact, since under section 134 of the old *Act* the insurer must consider, among other things, the physical abilities of the victim at the time of the determination of an employment, to omit an evaluation of her positional tolerance, especially when there are clearly problems in this area, is contrary to the requirements of the *Act*.

[47] It does not seem sensible to determine an employment for a person based solely on their strengths in handling of loads.

[48] The situation is quite different from that in the *Job* case.<sup>14</sup> In that case, an evaluator had identified three occupations – gas field production operator, security alarm installer and repairer of small appliances. SGI “determined” Job into employment as a gas field production operator, and he appealed from that decision. A transferrable skills analysis and labour market survey were conducted, and an interview with an employer in the area was carried out. Moreover, at the trial, three employers testified with respect to the job requirements, including concerns expressed by Job over walking on uneven or muddy or icy terrain, prolonged standing, accommodation for lifting heavy objects.

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<sup>14</sup> *Job v. SGI*, 2002 SKQB 479.

[49] This is a different situation. There has been no attempt to ascertain whether there is a job as a file clerk for which the Appellant meets the body position requirements. Does she have to reach, bend, climb stairs, and what weight is she actually required to lift? In *Job*, the activities of concern to Job within the position of gas field production operator were in fact analyzed. That has not occurred in the Appellant's case.

[50] We note in particular the occupational therapist's frequent references to the close approximation of the positional tolerances required of the Appellant at work and in home activities:

“Therapist Observation – The tolerances seen on the Functional Capacity Evaluation [for cleaning walls and windows] for areas such as working with arms overhead, working bent over in a standing position, and work bent over in squatting were observed at levels which would likely be sufficient for independence in tasks such as washing walls, windows and cupboards, with use of pacing strategies. It is, however, important to note that the positions required for these types of household tasks are very similar to those required on an ongoing basis in [the Appellant's] employment. Thus it is likely that with these combinations of activities that [the Appellant] is likely to struggle with these types of household tasks.”

[51] Similar observations were made with respect to positional tolerances in cleaning bathrooms, floors, cooking.

[52] If these are relevant in assessing her own job, there is every reason to think that they are relevant in assessing a job which is new to her. We have been referred to descriptions of the work carried in the occupations of file clerk and library assistant.<sup>15</sup> We observe the following comments in connection with working conditions:

“File clerks spend most of their day standing or walking. There is a fair amount of bending, stretching and reaching involved.”

“...Libraries are almost always busy and this often results in the staff standing and walking for most of the day. It may be necessary for the library assistant to bend, stretch, reach and lift equipment.”

[53] This description is in accordance with observations made by members of the Commission of people in these jobs carrying out their regular activities.

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<sup>15</sup> Published in 1996 by the Guidance Centre, University of Toronto.

[54] SGI's medical consultant, M. Jutras, M.D., expressed comparable concerns. While he accepted the Functional Capacity Evaluation as "a valid and accepted scientific tool", and said:

"I am not sure practitioners without the appropriate credentials (specific training in the performance and interpretation of these tests) can readily dispute the results. Thus I am of the opinion that if the FCE indicates she is capable of tolerating an 8 hour day at a light level with certain restrictions, then this is the best evidence we have that she should be capable.

The real concern in my mind is the application of the FCE results with the stated restrictions. Specifically, what are the restrictions of this customer and what job classifications are consistent with these restrictions. In other words, have these restrictions been properly applied in her attempts to return to the work force, or have they not been respected?...

We need to know whether the jobs chosen by the vocational consultant do or do not follow the stated functional limitations with respect to extended standing, reaching or bending.

I am not sure how to resolve this. My thought is perhaps we need an opinion from a practitioner who is expert in the evaluation of the workplace, and determine whether or not the restrictions given through the FCE process are clear enough, and whether the jobs given do in fact respect these restrictions. Is there an independent opinion (an OT consultant perhaps – one that has established credentials in the interpretation of an FCE and the application to the workplace), that can be provided concerning this customer that would be acceptable to all involved?

This is a suggestion only but upon reflection this seems to be the only way I can see to objectively resolve this matter."

[55] We agree.

## CONCLUSION

[56] SGI's decision of June 11, 2002 determining the Appellant into the occupations of file clerk or library clerk under section 132 of the old *Act* is set aside. SGI is to make such a determination in accordance with section 134(a), and particularly, the physical abilities of the Appellant at the time of the determination, and in particular, whether the jobs do or do not follow her personal limitations with respect to extended standing, reaching, bending, etc.

[57] A second issue was raised in the June 11, 2002 decisions, but was not pressed before us, in connection with the homemaker's benefit. It referred to the earlier decision dated May 22, 2001, which stated:

“The report from Kinetik’s states that a reduction of hours of assistance by one hour per month would be recommended for home assistance as follows:

June (month #1) – 3 hours assistance per week

July (month #2) – 2 hours assistance per work prioritized to bathroom cleaning, vacuuming.

August (month #3) – 1 hour assistance per week prioritized to vacuuming.

To ease this transition period, Kinetik’s is recommending a one time thorough cleaning of your house.”

[58] The June 11, 2002 decision states:

“You mentioned at the hearing that this (the one time thorough cleaning assistance) had not been done, please contact your Personal Injury Representative and discuss this with her.”

[59] While the appeal brief refers to a request to allow a *periodic* housecleaning several times a year, the Commission is of the opinion that the occupational therapist’s recommendation was entirely reasonable, and we do not set aside this aspect of the June 11, 2002 decision.

[60] That letter also states:

“In conducting our review of your file we find that your Personal Injury Representative paid We Care Home Health Services weekly up to and including the week of August 21, 2001.”

[61] It therefore appears that SGI complied with the occupational therapist’s recommendation, which we further find to be reasonable. In so doing, we have considered the additional medical information filed by the Appellant, including her psychiatric assessment and Dr. Markland’s report of November 25, 2002. In our opinion, the remarks concerning depression and chronic pain does not affect the validity of the conclusions of the occupational therapist with respect to her functional abilities.

**Costs**

[62] The Appellant is entitled to her costs of the application pursuant to section 193(11) of the new *Act*, as follows:

Filing fee (if applicable)	\$75
Preparation of trial brief	\$500*

Meals, lodging and travel expenses from her hometown to Saskatoon, according to section 96(2) of the *PIBR*

The expenses of obtaining Dr. Markland's report, in accordance with section 169 of the new *Act* and section 76 of the new *PIBR*, not to exceed \$286

\*The brief filed by the Voice of the Blue Rose Advocacy was extremely helpful. While it may be that section 193(11) of the new *Act* and section 96(1) of the *Regulations* permit compensation for persons other than legal counsel representing a claimant, we do not decide this issue on this application. If the Appellant had been represented by counsel, the allowable counsel fees would have been \$400 on a Column 2 basis and \$700 on a Column 3 basis.

**Dated** at Regina, Saskatchewan, on February 20, 2004.

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Ann Phillips, Q.C., Chair

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Beverley Cleveland, Commission Member

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Al Knippel, Commission Member

## APPENDIX “A”

## A Synopsis of Descriptors and Labels

<p><b>APTITUDES</b></p> <p>One of five levels assigned for each factor, with levels representing normal curve distribution of the labour force:</p> <p><b>G</b> General Learning Ability      <b>Q</b> Clerical Perception  <b>V</b> Verbal Ability                      <b>K</b> Motor Co-ordination  <b>N</b> Numerical Ability                  <b>F</b> Finger Dexterity  <b>S</b> Spatial Perception                  <b>M</b> Manual Dexterity  <b>P</b> Form Perception</p>		<p><b>INTERESTS</b></p> <p>Three of five descriptive factors, assigned in order of predominance and lower case rating indicating weaker representation:</p> <p><b>D</b> Directive  <b>I</b> Innovative  <b>M</b> Methodical  <b>O</b> Objective  <b>S</b> Social</p>	
<p><b>DATA/INFORMATION, PEOPLE, THINGS</b></p>			
<p><b>D – Data/Information</b></p> <p>0 Synthesizing  1 Co-ordinating  2 Analyzing  3 Compiling  4 Computing  5 Copying  6 Comparing  7 —  8 Not significant</p>		<p><b>P – People</b></p> <p>0 Mentoring  1 Negotiating  2 Instructing – Consulting  3 Supervising  4 Diverting  5 Persuading  6 Speaking – Signalling  7 Serving – Assisting  8 Not significant</p>	
		<p><b>T – Things</b></p> <p>0 Setting up  1 Precision working  2 Controlling  3 Driving – Operating  4 Operating – Manipulating  5 Tending  6 Feeding – Offbearing  7 Handling  8 Not significant</p>	
<p><b>PHYSICAL ACTIVITIES</b></p> <p>One of several levels assigned for each factor:</p>			
<p><b>Vision</b></p> <p>1 Close visual acuity  2 Near vision  3 Near and far vision  4 Total visual field</p>		<p><b>Hearing</b></p> <p>1 Limited  2 Verbal interaction  3 Other sound discrimination</p>	
<p><b>Colour Discrimination</b></p> <p>0 Not relevant  1 Relevant</p>		<p><b>Body Position</b></p> <p>1 Sitting  2 Standing and/or walking  3 Sitting, standing, walking  4 Other body positions</p>	
		<p><b>Limb Co-ordination</b></p> <p>0 Not relevant  1 Upper limb co-ordination  2 Multiple limb co-ordination</p>	
		<p><b>Strength</b></p> <p>1 Limited  2 Light  3 Medium  4 Heavy</p>	
<p><b>ENVIRONMENTAL CONDITIONS</b></p>			
<p><b>Location</b></p> <p>L1 Regulated inside climate  L2 Unregulated inside climate  L3 Outside  L4 In a vehicle or cab</p>		<p><b>Hazards</b></p> <p>H1 Dangerous chemical substances  H2 Biological agents  H3 Equipment, machinery, tools  H4 Electricity  H5 Radiation  H6 Flying particles, falling objects  H7 Fire, steam, hot surfaces  H8 Dangerous locations</p>	
		<p><b>Discomforts</b></p> <p>D1 Noise  D2 Vibration  D3 Odours  D4 Non-toxic dusts  D5 Wetness</p>	
<p><b>EMPLOYMENT REQUIREMENTS</b></p>			
<p><b>Education/Training Indicators</b></p>			
<p>1 No formal education or training requirements</p> <p>2 Some high school education and/or on-the-job training or experience</p> <p>3 Completion of high school</p> <p>4 Completion of course work, training, workshops and/or experience related to the occupation</p>		<p>5 Apprenticeship, specialized training, vocational school training</p> <p>6 College, technical school (certificate, diploma)</p> <p>7 Undergraduate degree</p> <p>8 Post-graduate or professional degree</p>	
		<p>+ Indicating an additional requirement beyond education/training (e.g., extensive experience, demonstrated or creative ability, appointments, etc.)</p> <p>R Regulated requirements exist for this group</p>	

## APPENDIX "B"



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Second Edition

Classification Structure

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## PHYSICAL ACTIVITIES

For an occupational group that has an asterisk (\*) in the Physical Activities ratings, refer to the Remarks section of that group for an explanation.

## VISION

The use of sight in the work performed. The levels are organized in terms of the visual field involved in the performance of the work.

### 1 Close visual acuity

Some or all work activities are performed close to the worker. The scope of the visual field is confined and requires close attention to detail.

Occupations where one or more of the Main Duties require close visual acuity are coded at this level. Other Main Duties in the unit group may involve other types of vision – for example, **Near and far vision (3)** or **Total visual field (4)**.

Examples:

- assembling micro-circuit boards
- machining to close tolerances
- cutting gems
- performing surgical procedures

### 2 Near vision

Work activities are performed near the worker. The scope of the visual field is broader than in **Close visual acuity (1)**.

Examples:

- reading and interpreting drawings and specifications
- using computer keyboards and reading computer monitors
- repairing automobile engines
- setting up and operating machine tools

### 3 Near and far vision

Some work activities involve the monitoring of processes, objects or situations in the work environment that are far from the worker. Other work activities involve **Near vision (2)**.

Examples:

- loading/unloading materials by hand or equipment
- installing shingles/tiles on roofs
- conducting surveys to establish legal property boundaries

- developing trading strategies by monitoring market conditions from the exchange floor

#### **4 Total visual field**

Work activities involve the entire field of vision – **Near and far vision (3)** – as well as depth perception and peripheral vision.

Examples:

- driving vehicles
- refereeing sports events
- fighting fires
- dancing onstage in ballet performances

### **COLOUR DISCRIMINATION**

The use of colour discrimination to identify, distinguish and match colours and different shades of the same colours.

#### **0 Not relevant**

Colour discrimination is not relevant in the performance of the work.

Examples:

- cleaning windows
- providing information over the telephone
- interviewing, hiring and overseeing staff training
- translating documents

#### **1 Relevant**

Colour discrimination is relevant in the performance of the work.

Examples:

- observing signals while operating vehicles
- installing, testing and repairing electrical wiring
- restoring and conserving museum and art gallery artifacts
- designing, constructing and repairing dentures

### **HEARING**

The use of hearing in the work performed. The levels are organized in terms of the type of auditory discrimination involved in the performance of the work.

#### **1 Limited**

Hearing is limited to short and/or infrequent verbal interactions in order to perform the work.

Examples:

- typing and proofreading correspondence
- cutting and trimming meat, poultry and fish according to customers' orders
- carrying linen to and from laundry areas and running errands

- assisting mine workers in constructing underground installations

## **2 Verbal interaction**

Work activities involve communication with colleagues, clients and/or the public on a regular basis.

Examples:

- operating directory listing systems to provide directory assistance to customers
- resolving work problems and recommending measures to improve productivity
- consulting with families of the deceased regarding funeral services
- analyzing and providing advice on managerial methods and organization of establishments

## **3 Other sound discrimination**

Work activities involve the identification, assessment and/or production of sound. **Verbal interaction (2)** is included in this level.

Examples:

- leading bands, orchestras and choirs during musical rehearsals and performances
- administering audiometric tests to diagnose the degree of hearing impairment
- testing automotive systems and components using testing devices to isolate faults
- commanding fishing vessels by operating navigational instruments

## **BODY POSITION**

Primary type of posture or body movement involved in performing the work. These postures or body movements range from simple to complex and from sedentary to mobile.

### **1 Sitting**

Work activities primarily involve sitting. **Standing and/or walking (2)** may occur but is incidental to the work being performed.

Examples:

- reading and editing copy to be published or broadcast
- preparing financial statements
- issuing aircraft take-off and landing instructions to pilot
- interviewing clients

### **2 Standing and/or walking**

Work activities primarily involve standing or walking.

Examples:

- cutting and styling hair
- dispensing prescribed medications to customers
- preparing and cooking meals
- delivering mail

**3 Sitting, standing, walking**

This level involves work activities in combinations and varying degrees of **Sitting (1)** and **Standing and/or walking (2)**.

Examples:

- teaching students through lectures, discussions, audio-visual presentations and field studies
- assessing land values for taxation purposes
- ensuring that systems and equipment are operating efficiently on job sites
- supervising and co-ordinating the activities of workers who cut or stitch fabric, fur or leather garments

**4 Other body positions**

Work activities involve body postures other than, or in addition to, **Sitting (1)** and **Standing and/or walking (2)** such as bending, stooping, kneeling and crouching.

Examples:

- performing labouring duties in warehouses
- measuring, cutting and installing carpeting
- adjusting, repairing or replacing parts and components of automotive systems
- treating patients' disorders of the spine and body through corrective manipulation

**LIMB CO-ORDINATION**

The use of limbs in performing work.

**0 Not relevant**

Work activities do not involve co-ordination of limbs.

Examples:

- counselling clients and providing therapy
- proofreading materials before publication
- greeting patrons at entrances to restaurant dining rooms
- responding to enquiries at an information desk

**1 Upper limb co-ordination**

Work activities involve co-ordination of upper limbs.

Examples:

- keyboarding
- performing maintenance services such as oil changes, lubrications and tune-ups
- operating video cameras
- instructing students in sign language

**2 Multiple limb co-ordination**

Work activities are carried out by co-ordinating the movements of upper limb(s) simultaneously with lower limb(s).

Examples:

- digging ditches using shovels
- operating and driving automobiles, vans and trucks
- climbing and working aloft on poles, ladders or other support structures
- performing in figure skating competitions

## **STRENGTH**

The use of strength in the handling of loads such as pulling, pushing, lifting and/or moving objects during the work performed.

### **1 Limited**

Work activities involve handling loads up to 5 kg.

Examples:

- examining and analyzing financial information
- selling insurance to clients
- conducting economic and technical feasibility studies
- administering and marking written tests

### **2 Light**

Work activities involve handling loads of 5 kg but less than 10 kg.

Examples:

- repairing soles, heels and other parts of footwear
- filing materials in drawers, cabinets and storage boxes
- preparing and cooking meals
- repairing paintings and artifacts

### **3 Medium**

Work activities involve handling loads between 10 kg and 20 kg.

Examples:

- setting up and operating finishing machines or finishing furniture by hand
- measuring, cutting and applying wallpaper to walls
- adjusting, replacing or repairing mechanical or electrical components using hand tools and equipment
- operating film cameras to record live events

### **4 Heavy**

Work activities involve handling loads more than 20 kg.

Examples:

- operating and maintaining deck equipment and performing other deck duties aboard ships
- shovelling cement into cement mixers and assisting in the maintenance and repair of roads
- measuring, cutting and fitting drywall sheets for installation on walls and ceilings
- operating power saws to thin and space trees in reforestation areas

## APPENDIX “C”

**6271.1 Hairstylists**

Hairstylists cut and style hair and perform related services.

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**Examples of Job Titles**

hair colour technician  
 hairdresser  
 hairdresser apprentice  
 hairstylist  
 hairstylist apprentice  
 wig stylist

[>>View all titles](#)

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**Profile Summary****APTITUDES**

G	V	N	S	P	Q	K	F	M
3	3	4	4	3	4	3	2	3

---

**INTERESTS**

IOS

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**DATA PEOPLE THINGS (DPT)**

374

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**PHYSICAL ACTIVITIES (PA)**

V	C	H	B	L	S
2	1	2	2	1	1

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**ENVIRONMENTAL CONDITIONS (EC)**

L1, H3, D3, D5

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**EDUCATION/TRAINING**

2+, 5, 6, R

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**Descriptor Profile**

## Main Characteristics

Occupations in this group are characterized by the following aptitudes, interests and worker functions as they relate to main duties:

- **General learning** and **verbal ability** to suggest hair styles compatible with clients' physical features and to determine styles from clients' instructions and preferences
- **Form perception** to observe detail in facial features and analyze hair and scalp conditions
- **Motor co-ordination** and **finger dexterity** to cut, trim, taper, curl, wave, perm and style hair
- **Manual dexterity** to apply bleach, tint, dye and rinses to colour, frost and streak hair; may shampoo and rinse hair
- **Innovative interest** in **compiling** information to provide basic treatment and advice on beauty care treatments for scalp and hair
- **Objective interest** in **manipulating** combs, scissors, clippers, brushes and other devices to cut and style hair
- **Social interest** in **servicing** clients by cutting and styling hair and performing related services; may train and supervise other hairstylists, hairstylist apprentices and helpers



## Physical Activities

### Vision

2 Near vision

### Colour Discrimination

1 Relevant

### Hearing

2 Verbal interaction

### Body Position

2 Standing and/or walking

### Limb Co-ordination

1 Upper limb co-ordination

### Strength

1 Limited



## Environmental Conditions

### Location

L1 Regulated inside climate

### Hazards

H3 Equipment, machinery, tools

### Discomforts

D3 Odours

D5 Wetness

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## **Employment Requirements**

Education/Training

2+, 5, 6, R

- Some secondary school education is required.
  - Completion of a two- or three-year hairstyling apprenticeship program or completion of a college or other program in hairstyling combined with on-the-job training is usually required.
  - Several years of experience may substitute for formal education or training.
  - Employers may require applicants to provide a hairstyling demonstration before being hired.
  - There are various provincial/territorial certification and licensing requirements for hairstylists, ranging from trade certification to licensing by a provincial/territorial association. Interprovincial trade certification (Red Seal) is also available for qualified hairstylists.
- 



## **Workplaces/Employers**

Barber shops

Hairstyling or hairdressing salons

Health care establishments

Self-employment

Theatre, film and television establishments

Vocational schools

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## **Occupational Options**

Red Seal trade certification allows for interprovincial mobility.

---

## **Similar Occupations Classified Elsewhere**

*Estheticians, Electrologists and Related Occupations (6482)*

[>>View this Group](#)

*Hairdressing teachers (in 4131 College and Other Vocational Instructions)*

[>>View this Group](#)

## APPENDIX "D"

**1413.2 File Clerks**

File clerks organize papers, records, documents and other material according to subject matter or other filing system.

**Examples of Job Titles**

file and classification clerk

file clerk

[>>View all titles](#)

**Profile Summary****APTITUDES**

G	V	N	S	P	Q	K	F	M
3	3	3	4	4	3	4	4	4

**INTERESTS**

Mid

**DATA PEOPLE THINGS (DPT)**

687

**PHYSICAL ACTIVITIES (PA)**

V	C	H	B	L	S
2	0	1	3*	1	2

**ENVIRONMENTAL CONDITIONS (EC)**

L1

**EDUCATION/TRAINING**

3

**Descriptor Profile**

## Main Characteristics

Occupations in this group are characterized by the following aptitudes, interests and worker functions as they relate to main duties:

- **General learning** and **verbal ability** to review files in order to identify subject matter and other criteria by which to file them
- **Numerical ability** to keep records of materials filed and removed
- **Clerical perception** to perceive detail when filing and retrieving files
- **Methodical interest** in **comparing** information to sort material according to particular filing systems
- **Innovative interest** in **handling** files to remove materials when requested and to store materials according to filing systems in drawers, cabinets and storage boxes
- **Directive interest** in locating files when requested and in maintaining records of materials filed and removed



## Physical Activities

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### Vision

2 Near vision

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### Colour Discrimination

0 Not relevant

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### Hearing

1 Limited

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### Body Position

3\* Sitting, standing, walking

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### Limb Co-ordination

1 Upper limb co-ordination

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### Strength

2 Light



## Environmental Conditions

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### Location

L1 Regulated inside climate



## Employment Requirements

### Education/Training

3

- Completion of secondary school is usually required.



## Workplaces/Employers

Establishments throughout the private and public sectors

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### **Occupational Options**

Progression to supervisory positions is possible with experience.

---

### **Similar Occupations Classified Elsewhere**

*General Office Clerks*

(1411)

[>>View this Group](#)

Health record unit supervisors (in 1211 *Supervisors, General Office and Administrative Support Clerks*)

[>>View this Group](#)

Health records administrators (in 0114 *Other Administrative Services Managers*)

[>>View this Group](#)

*Library Clerks* (1451)

[>>View this Group](#)

Library technicians (in 5211 *Library and Archive Technicians and Assistants*)

[>>View this Group](#)

Records management supervisors (in 1211 *Supervisors, General Office and Administrative Support Clerks*)

[>>View this Group](#)

Records systems analysts (in 1122 *Professional Occupations in Business Services to Management*)

[>>View this Group](#)

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### **Remarks**

\*Physical Activities

- For some occupations in this group, **Body Position 4** (Other body positions) may also apply.