

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *R.R. v. Saskatchewan Government Insurance,*
2005 SKAIA 046
Date: 20050920
File: 121 of 2003

BETWEEN

R.R., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Peter V. Abrametz and R.R., for the Applicant
Dale Brown, for the Respondent

Before: **Joy Dobko, Chair**
Peter Bergbusch, Commission Member
Carol Olson, Commission Member

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

Heard at Prince Albert, Saskatchewan
January 20, 2005

DECISION

[1] R.R., the Appellant, appeals a decision of Saskatchewan Government Insurance (“SGI”) dated January 28, 2003. SGI held under section 130 of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35 (the “Act”) that the Appellant is not eligible for an income replacement benefit because he is “regularly incapable of holding employment.” SGI advised the Appellant that he was not eligible to be determined into an employment under section 117 because he had suffered a head injury in 1992 and had a “long history of substance/alcohol abuse, and other health issues that would indicate that [he] would be regularly incapable of holding employment.”

FACTS

[2] While a pedestrian, the Appellant was hit by a vehicle and knocked to the ground on December 4, 2000. He lost consciousness and sustained a Grade III concussion. He remained in hospital for 4 days.

[3] It is necessary to examine in some detail the Appellant’s history before this accident in order to assess the merits of his appeal.

[4] The Appellant completed Grades 1 to 9 at [town]. A Progress Report from the [high school], dated March 14, 1978, shows that the Appellant was a straight-A student, with uniformly positive comments from his teachers. After moving to Saskatoon, he dropped out of school before completing Grade 10. He claims to have knowledge of basic carpentry, wood finishing and cabinet making. curriculum vitae that he filed lists employment held in construction and logging between 1986 and 1988.

[5] In April 1992 the Appellant was riding a bicycle when he was struck by a van, which then fled the scene. He suffered scalp lacerations and chest bruising, and fractured his left clavicle and left scapula. Seven days later he experienced a series of 37 seizures. He underwent a craniotomy to evacuate a subdural haematoma.

[6] In a letter to SGI's personal injury representative dated April 17, 2000, Dr. W. Dust indicates that he saw the Appellant on May 8, 1992, for fractures of the shaft and body of the left clavicle. At the time he had recommended that these be treated non-operatively as they normally heal within 12 weeks, regaining normal or near normal range of motion and strength.

[7] According to an assessment by an educational consultant in June 1992, the Appellant could read and write competently but had difficulty with mathematical computation and had needed more than average time to complete the assessment.

[8] The Appellant was discharged from hospital on June 11, 1992. He continued to experience pain in his left shoulder and was prescribed various pain killers as well as anti-convulsant medications to control his seizures. He was also given exercises to increase the range of motion in his left shoulder. At the time of discharge his responses were slow, although he could learn new information and had satisfactory problem-solving abilities.

[9] The Appellant had a history of alcohol abuse prior to the 1992 motor vehicle accident. His health before this accident was summarized in a medical report authored by his family doctor in September 1999 as follows:

Health Condition Prior to Accident

Prior to the accident, [the Appellant] was drinking alcohol heavily and had cytopenia. He had had a recent chest contusion (December 29, 1991), head injury (January 2nd, 1992) and an acute knee injury from a fall (February 26, 1992). He required palafer (iron supplementation) and thiamine (vitamin B) to reduce nerve injury.

He was also previously suffering with sinusitis. However, he had only recently (January 21, 1992) got in touch with his band and finished a period of detox; he had previously managed periods of two weeks without drinking and the last reference to solvent abuse was the previous year.

[10] Following his discharge from hospital in 1992, the Appellant continued to battle alcohol and substance abuse.¹ On December 3, 1992, the Appellant was again admitted to the hospital in Saskatoon, with obvious signs of alcoholic intoxication. He had struck his head while

¹ notes of his family doctor

falling down some stairs and had lost consciousness. He sustained a significant skull depression which required surgical intervention and was discharged on December 11.

[11] The Appellant attended the Salvation Army rehabilitation program for drug and alcoholism in the spring of 1993, completing the program in May. He subsequently followed through with a recovery plan and a relapse prevention plan.²

[12] The Appellant was readmitted to the Salvation Army program sometime in 1994, possibly in the fall. A discharge summary dated October 18, 1994, indicates, among other things, that he was “going through a lot of withdrawals” and needed a recovery plan and relapse prevention plan “and commitment to them.”

[13] Helen Sinclair, the director of the Salvation Army’s addiction program in Saskatoon in the 1980s and 1990s, counseled the Appellant for alcohol addiction for three months in 1990 while he was an in-patient and again in 1993 and 1994. Part of his treatment included working half days in the Salvation Army’s warehouse and thrift shop. Ms. Sinclair testified that, in her opinion, the Appellant’s alcoholism did not make him incapable of holding employment. His biggest problem was that the people he socialized with also drank heavily.

[14] On August 23, 1995 the Appellant was treated by Dr. Palmer after he had ingested hairspray. He was treated again on October 9, 1995 after falling down the stairs while he was having a seizure. In December 1995 the Appellant successfully completed a 28-day program on alcohol and drug abuse offered by the Métis Addictions Council Corporation of Saskatchewan.

[15] The Appellant advised his family doctor on May 13, 1996 that his last bout of drinking had been in October 1995, after his sister’s death. The Appellant continued to report to his physician that he was sober.³

² Letter dated November 30, 1993.

³ E.g., November 14, 1996.

[16] Dr. Rye became the Appellant's family practitioner in January 1997. In September 1997 he complained of chronic pain in his knees and ankles. By October his walking had improved, although he had some bruising to his left ankle and had been wearing a tensor bandage. In early January 1998 he saw Dr. Shirali, who concluded that the Appellant suffers from chronic left rotator cuff tendonitis and a mild degree of impingement of the left cuff.⁴

[17] During the spring of 1998 the Appellant continued to complain of pain in his left knee and ankle, as well as headaches and back pain. Dr. Rye's notes for June 26, 1998, indicate that the Appellant was "doing well – has been doing some manual work." On his next attendance on July 30, 1998, Dr. Rye records that the Appellant "was working but back was sore on lifting." In September he reported to Dr. Rye that he was feeling about 75% and "had stress." The next month Dr. Rye's notes record that the Appellant had had some family tension one month earlier and had been voluntarily admitted to hospital. Through November and December the Appellant told Dr. Rye that he was not feeling so well and had persistent headaches. He complained of a lack of rest and inability to sleep.

[18] During 1999 the Appellant continued to see Dr. Rye about once a month. Dr. Rye would issue prescriptions usually of one month's duration for numerous medications, including becloforte, Tylenol 3 and Diazepam. From time to time the Appellant complained of back and left shoulder stiffness and of difficulty sleeping. Dr. Rye referred the Appellant to a rheumatologist to determine whether the Appellant's immobility after his 1992 accident had resulted in bone loss. Dr. Olszynski confirmed that he was at greater risk, but said that proper rehabilitation and exercise and adequate calcium intake were the only measures to improve his condition.

[19] In a medical report dated September 2, 1999, Dr. Rye outlined his objective findings concerning the Appellant:

Upper limb joints pains and aches which have required Tylenol one.
There is some swelling of finger.
Chest congestion, wheezy to auscultation.

⁴ also Dr. Rye's notes

Kidney failure which does not interfere with life style, manifest by persistent raised uric acid and high chloride.

Raised liver function tests.

Allergic symptoms from pollen, dust and smoke which have required floanase and decongestants.

First degree heart block, with premature functional beats.

The report also refers to the 1992 motor vehicle accident and sets out a diagnosis of post traumatic brain injury. The Appellant complained of intermittent headaches and finding it hard to think and focus when talking. Despite these problems, the report states that the Appellant stood for band elections almost successfully and that he represented his brother in court successfully. The report also states that the Appellant had limited range of motion of his left shoulder, which he could not move above 120 degrees due to stiffness, and mentions aches and joint degeneration in his hands. These problems were being investigated before the Appellant's 1992 motor vehicle accident but, according to the report, they were exacerbated by his prolonged immobility after the 1992 accident.

[20] On September 14, 1999, the Appellant told Dr. Rye that he had had a lot of swelling in his knees while working. He had been doing flooring and carpentry work for three weeks. By September 29, 1999, the Appellant was experiencing stiffness and pain in his left side, ankle and knee, and Dr. Rye referred him to an orthopaedic specialist. The Appellant saw Dr. Rye five more times during 1999, frequently complaining of tiredness and lack of rest.

[21] From comments the Appellant made to Dr. Rye it seems that the Appellant often spent his time looking after family members. Through 2000, the Appellant continued to see Dr. Rye monthly. On July 31, 2000, he told Dr. Rye that he had had a single episode of drinking in Saskatoon. He regularly complained of pain, especially in his left shoulder, and of tiredness.

[22] In a short report dated April 11, 2000, Dr. J. G. Rye indicated that the Appellant was able to fully lift his left arm above his head, but with pain in the left shoulder and an audible click on rotation. Dr. Rye described his understanding of the Appellant's current activities as follows:

He is doing light outdoor work and starting school in late summer. His primary occupation seems to be helping other members of his large family cope with their horrendous problems—in the past month, he has picked up one from a drug house and brought back to the reserve for the methadone programme, taken responsibility for another from the court as an Indian elder and been supervising two nephews with school difficulties. I don't think secondary assessment would be necessary as he is being followed by the Acquired Brain Injury team.

[23] Dr. Mario Taillon, an orthopaedic surgeon, saw the Appellant on or about May 9, 2000, to evaluate both of the Appellant's shoulders. Apparently the Appellant had had increasing pain in his left shoulder for three months prior to the examination. Dr. Taillon recommended a CT scan of the Appellant's shoulder.

[24] Dr. Rye referred the Appellant for assessment by a psychiatrist in late September 2000. Dr. Rye explained that the Appellant felt "run ragged" and was on Tylenol 3, Sudafed, chlorohydrate and Zoloft, but that he had refused the Appellant's requests for diazepam until he had seen a specialist. Dr. Rye commented that he thought the Appellant's lifestyle was unsustainable and that he was at risk for "another overdose."

[25] On November 4, 2000, the Appellant was admitted to the Victoria Hospital in Prince Albert for a drug overdose. He had ingested Tylenol 3, Ativan and hairspray.

[26] On November 29, 2000, the Appellant was taken by stretcher to Victoria Hospital. He had fallen down the stairs after drinking hair spray and may have had another seizure. He was also suffering from severe gastritis and had had a sore throat and bronchitis for 4 days.

[27] The Appellant was crossing [avenue] in Prince Albert on foot on December 4, 2000 at night when he was struck by a vehicle. Following the accident he was taken by ambulance to Victoria Hospital. Before the accident, he had been drinking and was carrying two bottles of hairspray in his jacket. He lost consciousness for some length of time.⁵

⁵ Dr. Rye's letter dated December 13, 2000 states that the Appellant was unconscious for 18 hours, but it appears that he was conscious when he arrived at the hospital.

[28] The Appellant filed an Application for Benefits on about March 5, 2001. He reported experiencing pain on his left side, in the head, shoulder, hand, hip, knee and ankle. He also indicated a partial loss of vision in his left eye and an inability to obtain rest without medication. Surprisingly, when describing his prior medical conditions, he wrote as follows:

- Subdural hematoma.
- Good health otherwise.

The Appellant's statement regarding his health is impossible to reconcile with the many ailments for which he sought treatment and the hundreds of times he was attended upon by physicians.

[29] For the purposes of this appeal, it is not necessary to describe in detail the injuries the Appellant sustained in the December 2000 accident and the subsequent course of treatment and rehabilitation he underwent. Briefly, as a result of the accident, the Appellant's left cornea was detached; his left knee cap was fractured and his altered gait also caused him hip pain; and he had a pronounced nervous tick on the right side of his face. He also complains of moderate to mild headaches throughout the day.

[30] On income tax returns the Appellant reported income from social assistance payments, and no other sources, as follows:

| Year | Total Income |
|-------------|---------------------|
| 1995 | 2,957.00 |
| 1996 | 6,961.00 |
| 1997 | 6,146.00 |
| 1998 | 6,634.00 |
| 1999 | 5,831.00 |
| 2000 | 6,170.00 |

[31] The Appellant filed a medical report dated January 28, 2002, by Dr. Robert Griebel, a neurologist. Dr. Griebel was asked for his opinion regarding "the extent of [the Appellant's] brain injury subsequent to a motor vehicle accident in April, 1992 and whether that injury was of such significance as to render this individual incapable or managing his own affairs."⁶ Dr.

⁶ [Emphasis added].

Griebel saw the Appellant on April 30, 1992, after he was admitted to the Royal University Hospital in Saskatoon following a series of seizures. The Appellant underwent a craniotomy for evacuation of a subdural clot. Three days later further intervention was required to drain a re-accumulation of the clot. The Appellant was assessed by a rehabilitation specialist because of difficulty with speech and some mild cognitive impairment. A follow-up neurological examination by Dr. Griebel on August 11, 1992, was unremarkable and the Appellant generally appeared well. Dr. Griebel's opinion on the questions posed was as follows:

It is apparent that this gentleman did suffer a significant head injury in April, 1992. The head injury was not of sufficient magnitude however, to warrant further investigation when he had his scalp lacerations sutured at St. Paul's Hospital. The subdural blood, in conjunction with alcohol, appears to have eventually caused the seizures which precipitated his further admission to hospital. The cognitive sequelae of this event were obviously enough to warrant a brief period of rehabilitation but various tests did not demonstrate marked deviations from the normal range. On balance, I do not believe the injury suffered was sufficiently severe to render the patient incapable of managing his own affairs. The issue is somewhat clouded as well by a longstanding history of chronic alcohol abuse and other head injuries.⁷

[32] Several persons were called to give evidence regarding the Appellant's employment history and ability to work. Audrey Daniels, a [First Nation member], was employed by the Band as the administration bookkeeper from 1981 until February 2004. She said that the Band had a separate bookkeeper responsible for its housing projects. She spoke generally about the Band's budget, indicating that each band department had a separate budget for projects on the reserve, include housing. At any time, the number of Band members employed to renovate Band housing is approximately 20. Once the Band's budgeted amount for housing construction has been exhausted, employees are laid off.

[33] She testified that she has known the Appellant for at least 25 years and did not know any reason why he could not work in construction. As a bookkeeper, Ms. Daniels would deal with Band employees when they brought their time sheets into the office. She had no occasion to interact with the Appellant during the years that she was the Band bookkeeper. She had not

⁷ [Emphasis added]. The issue in this case is whether SGI erred in concluding that the Appellant was regularly incapable of holding employment at the time of the motor vehicle accident, not whether he was "incapable of managing his own affairs."

actually seen the Appellant performing any work. She did not know whether he was regularly working, because she did not deal directly with Band housing. She knew that the Appellant had worked with her husband to lay flooring. She did not know whether he had worked at any other type of employment.

[34] Malcolm Daniels has been a member of the First Nation for 25 years and works as a construction foreman. He works from spring to December in each year. He hires Band members to work for him, for as long as projects take to be completed or the Band's funds permit. At least five contractors do work on the reserve, with 3 or 4 busy at any time. The Appellant worked for Mr. Daniels for two weeks on a flooring job in 1999, removing old flooring, laying new plywood underlay, and installing flooring tiles. The Appellant showed up for work on time and performed his duties. Mr. Daniels told the Appellant that if he had more work for him he would call him. However, they have not worked together since, although Mr. Daniels has had other jobs that the Appellant could have done. Because unemployment is high, there is no shortage of Band members available for work.

[35] Eric Bird, a retired contractor for the First Nation, testified about another occasion when the Appellant was hired to install new flooring in Band housing. He said that the Appellant was capable of doing this work and had done a pretty good job for him. Although he could not recall specific dates, Mr. Bird believed that the Appellant had worked for him for about 2 months and was laid off because the Band had been short of funds.

[36] The Appellant's mother testified that Terry is one of seven children, four of whom are now deceased. Many of his siblings have had health problems, and he has been a support to them. The Appellant's mother recalled hearing her son make telephone calls seeking work prior to December 2000. She was vague about the Appellant health problems prior to his accident in December 2000.

[37] The Appellant testified about his health problems after his first accident in 1992. After 1992, he had been unable to obtain work for some time, which he attributed to his multiple injuries and depression. In 1997 he set up industrial shelving at the [Bargain Centre] during a 3-

4 day period. The Appellant testified that he worked for as much as three months in 1998. He worked on housing projects for the First Nation, under Eric Bird's supervision, for approximately 2 ½ weeks. He said that he also planted trees for 2 ½ weeks at \$11 per hour. He also performed wood chopping and general household duties for his uncle, who paid the Appellant by letting him live with him. That same year the Appellant ran for his Band Council. In 1999, the Appellant worked on Band housing with Malcolm Daniels for 2 ½ - 3 weeks and for a private corporation for a further 2 weeks cutting brush.

[38] The Appellant filed a letter dated June 10, 2002, from Henry Daniels, a member of the First Nation who has known the Appellant all his life. Among other things, Mr. Daniels states, "[The Appellant] has always been employable and willing to work." Mr. Daniels explained that the Appellant had narrowly lost election to the Band Council in 1998 and had campaigned for him to be elected as chief in 2001.

LAW AND ARGUMENT

[39] The Commission's power on appeal is provided in Subsection 193(7) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35. The Commission may:

- (a) set aside, confirm or vary the insurer's decision; or
- (b) make any decision that the insurer is authorized to make pursuant to Part VIII of the Act.

The Commission must exercise its discretion judicially, and will overturn a decision of SGI only if an applicant establishes that SGI's decision was erroneous, or based on erroneous assumptions, or was unreasonable.⁸

[40] SGI relied upon section 130 of the Act in denying the Appellant's claim for income replacement benefits. Section 130 provides:

130 Notwithstanding any other provision of this Division, a victim who, before an accident is regularly incapable of holding employment for any reason except age is not entitled to an income replacement benefit.

⁸ *R.C. v. Saskatchewan Government Insurance*, 2003 SKAIA 1.

[41] Two decisions of the Saskatchewan Court of Queen's Bench have addressed this provision. In *Bogdanoff v. Saskatchewan Government Insurance* (1999), 181 Sask. R. 220 (Q.B.), reversed on other grounds but affirmed on this point (2001), 203 Sask. R. 161 (C.A.), leave to appeal refused (2001) 219 Sask. R. 160 (note), the applicant had been unemployed from January 1988 to the date of the accident, June 6, 1995, with the exception of two to three weeks of work in 1993. At paragraph 44, Mr. Justice Laing set out his reasons for holding that the applicant was regularly incapable of holding employment at the time of the accident:

[44] Employment is defined in s. 100(1)(f) as meaning any remunerative occupation. The sporadic work performed on automobiles by the applicant including two of which he owned in the period of time between 1992 and 1994 did not amount to his occupation during that period of time. *Black's Law Dictionary*, 5th ed. (St. Paul, Minn.: West Publishing Co., 1979), defines "occupation" as follows:

That which principally takes up one's time, thought, and energies, especially, one's regular business or employment; also, whatever one follows as the means of making a livelihood. Particular business, profession, trade, or calling which engages individual's time and efforts; employment in which one regularly engages or vocation of his life.

The evidence the applicant gave with respect to his efforts in repairing or restoring automobiles is more consistent with the same being his hobby, and not his occupation. Certainly he was not able to point to any remuneration of any significance that he earned during the period of time. The fact is he did not hold employment as the term is defined, and he was regularly incapable of doing so for whatever reason (mental or physical) for a period of six and one-half years prior to the accident. On the basis of s. 130 of the Act the applicant has failed to prove on the balance of probabilities he is entitled to an income replacement benefit.

[42] In *Erskine v. Saskatchewan Government Insurance* (2001), 214 Sask. R. 198 (Q.B.), the applicant had a fairly lengthy employment history, but during the year prior to her motor vehicle accident had been off work for several months due to several medical conditions, including diabetes. However, she had planned to return to work on January 15, 1999, but did not do so after she was injured in a motor vehicle accident on January 7, 1999. Mr. Justice Allbright considered the section 130 issue as follows:

[85] On a balance of probabilities I am satisfied that the applicant was capable of holding employment within the contextual meaning of the provisions of *The Automobile Accident Insurance Act, supra*. I accept the evidence of Ms. Erskine, Dr. Oleksinski and Dr. Marcoux. Based upon their collective evidence, I have concluded that it is probable that Ms. Erskine would have been able to return to work in the health care field, a vocation which she

had pursued prior to the accident. While there is the possibility that the targeted date of return to work may not have seen her in fact do so, the best evidence indicates that mentally and physically by that date, while she would undoubtedly have continued to have experienced some difficulties, she would have been capable of working at a health care facility in Prince Albert. In my view, this removes the applicant from the disorienting rationale contained in s. 130 of *The Automobile Accident Insurance Act, supra*.

[43] The Appellant's counsel argued that SGI asked the wrong question when it applied section 130 in this case. In essence, he argued that, if the Appellant could show that he was capable of holding employment before the accident, SGI could not conclude that he was regularly incapable of holding employment. Mr. Abrametz argued that, to satisfy this test, it was not necessary for the Appellant to show that he had actually held employment prior to the accident. He could have been unemployed and yet capable of holding employment. However, he argued, the Appellant had established that he had occasionally worked prior to the accident. In addition, the Appellant's alcoholism should not be a factor since he had been sober for at least three years before the accident.

[44] For SGI, Mr. Brown argued that the Appellant had held jobs for only short periods, and the transient nature of this employment showed that he was regularly incapable of holding employment. SGI also relied upon the Appellant's history of substance and alcohol abuse and the many ailments from which the Appellant suffered in support of the conclusion that the Appellant could not consistently maintain employment.

[45] We do not accept the interpretation of section 130 advanced on the Appellant's behalf. It is not sufficient, in our view, for an applicant to show that he or she was capable of holding employment prior to the accident. An applicant who was able to work sporadically before the accident might nevertheless be "regularly incapable of holding employment." Although Mr. Justice Allbright wrote in *Erskine v. SGI, supra*, that the applicant had been "capable of holding employment" prior to her accident, we do not think that he intended to adopt a different test. In *Bogdanoff v. SGI, supra*, Mr. Justice Laing adopted a definition of employment that describes activity "in which one regularly engages." The word "regularly" in section 130 must refer to an applicant's ability to be consistently or habitually employed (although not necessarily for a single employer or in one type of occupation).

[46] In the Appellant's case, the evidence showed that he was seldom employed prior to the date of the accident, December 4, 2000. From 1992 to 1996 he did not hold employment. In 1997 his uncle paid him to assist with trapping, but the Appellant did not explain how much he earned or how long this activity lasted. That same year the Appellant worked for 3 or 4 days in the Bargain Centre. During the following years, according to the Appellant, he worked a maximum of 3 months in 1998 and 4-5 weeks in 1999. He did not work at all in 2000 before his accident in December.

[47] In our view, the present case bears some similarity to the circumstances in *Bogdanoff, supra*. The Appellant performed work only sporadically prior to the December 2000 accident. If we consider only the period following December 1995 (after the Appellant completed a 28-day program on alcohol and drug abuse offered by the Métis Addictions Council Corporation of Saskatchewan) as his counsel urged us to do, the Appellant worked at most a total of perhaps 5 months from January 1996 to December 2000 inclusive. The Appellant did not produce documentation to substantiate much of this employment. However, even if he had, the conclusion that he was not regularly capable of holding employment would still have been inescapable.

[48] An additional factor that SGI considered is the Appellant's history of alcohol and substance abuse. The Appellant underwent counselling for addictions on numerous occasions until the end of 1995, and it appears as though these efforts were somewhat successful. The Appellant acknowledged having relapsed on a few occasions. Before his accident in December 2000, the Appellant also had a number of recurring ailments, including upper limb joint pain, knee pain and allergies. The Appellant's lifestyle was a frequent topic of his health care providers. Much of his time seems to have been taken up with helping other members of his family. In September 2000, his physician noted that the Appellant felt "run ragged" and was "officially off work with a shoulder injury." Dr. Rye's letter concludes with the observation that the Appellant's "present lifestyle is unsustainable and he is at considerable risk for another overdose in the months ahead." In November 2000 he was admitted twice to hospital after ingesting hairspray, among other things. Although there could be many instances where an individual's addiction to drugs or alcohol does not make him or her regularly incapable of

holding employment, the Appellant's circumstances do cast further doubt on his ability to regularly hold employment.

CONCLUSION

[49] The decision of January 28, 2003, denying the Appellant income replacement benefits is upheld.

Dated at Regina, Saskatchewan, on September 20, 2005.

Joy Dobko, Chair

Peter Bergbusch, Commission Member

Carol Olson, Commission Member