

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *N.R. v. Saskatchewan Government Insurance,*  
2005 SKAIA 047  
**Date:** 20050926  
**File:** 083 of 2004

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**BETWEEN**

**N.R., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**N.R., Applicant**  
**Jane Wootten, for the Respondent**

**Before:** **Jeffrey Scott, Chair**  
**Ann Phillips, Q.C., Commission Member**  
**Darleen Topp, 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 Regina, Saskatchewan  
September 13, 2005

## DECISION

[1] The Appellant, N.R., was injured in a motor vehicle accident in the State of California, United States of America, on March 17, 2001. By a letter dated March 1, 2004 (the “Decision Letter”) the insurer, Saskatchewan Government Insurance (“SGI”) determined that the Appellant was entitled to a 1% whole body permanent impairment. The Appellant appeals from the Decision Letter and the 1% permanent impairment.

## FACTS

[2] On March 17, 2001, the Appellant was the operator of a motor vehicle in the State of California when his vehicle was rear-ended. The Appellant was not wearing a seat belt. Due to the accident, the Appellant believes that he might have been unconscious for a short period. He immediately experienced pain in and around the area of his neck, shoulders, and lower back. He also experienced some numbness of his head.

[3] Since the Appellant was on his way back to Canada when the accident occurred, he did not seek medical attention in the United States for his injuries. Two days after the accident, the Appellant returned to Canada. By then the Appellant was experiencing severe headaches, increased neck pain, and increased lower back pain. He attended upon the office of his family physician, Dr. McNeal. Dr. McNeal prescribed painkillers, muscle relaxants, requisitioned x-rays, and recommended massage therapy treatments.

[4] On June 8, 2001 in Minot, North Dakota, the Appellant underwent a MRI of the Cervical Spine. The MRI report under the heading “Conclusion” states “Normal MRI scan cervical spine”.

[5] On August 20, 2001 in Minot, the Appellant underwent a MRI of the Lumbar Spine Canal. The MRI report under the heading “Conclusion” states:

“1. Early degenerative disc disease at multiple lower lumbar levels; 2. Mild spinal stenosis at the 4-5 level...; 3. Minor 4-5 and to lesser extent 3-4 facet joint arthropathy; 4. No acute lumbar finding”.

[6] Due to the injuries that he suffered in the accident, the Appellant is receiving chiropractic treatments from Dr. G.H. Armstrong, Estevan, Saskatchewan. Dr. Armstrong, also, has referred the Appellant to Dr. K. Kumar, neurosurgeon, Regina, Saskatchewan.

[7] In a letter dated September 11, 2001, Dr. Kumar wrote to Dr. Armstrong and stated the MRI performed in Minot showed "... early degenerative changes at multiple levels but there is no true disc protrusion or spinal stenosis". Further, Dr. Kumar stated in his letter that "X-ray of the lumbar spine also shows mild disc degeneration". Dr. Kumar concluded in his letter that the Appellant "... presents with acute lumbar strain. He is still quite bent over. However, there are no nerve root signs to indicate nerve root impingement". Given the back pain that the Appellant was experiencing, Dr. Kumar was of the opinion that the Appellant would benefit from an epidural steroid block.

[8] The Appellant did indeed undergo a couple of steroid blocks. The Appellant testified that the steroid blocks did provide him with some temporary relief from, for example, headache pain.

[9] SGI arranged for the Appellant to undergo a Functional Rehabilitation Program at the Wascana Rehabilitation Centre, Regina. The Appellant was assessed on June 11 and 12, 2002 by an interdisciplinary team of health professionals. Arising out of that assessment a report was prepared. Included in the report is the finding that the Appellant presented with, for example, "moderately decreased on extension" cervical range of movement, "moderately" decreased lumbar extension, and "mildly" decreased thoracolumbar rotation.

[10] Given the only temporary headache relief that he experienced from the steroid blocks, the Appellant attended upon Dr. H.M. Sommer, Physical Medicine and Rehabilitation, Winnipeg, Manitoba. Dr. Sommer recommended to the Appellant that he undergo a right medial branch neurotomy. On two separate dates in April, 2003 and under the care of Dr. Sommer, the Appellant did indeed undergo right C2-C3 medial branch neurotomies. After those two procedures, the Appellant underwent a right C2-C3 (Third Occipital) Neurotomy under the care of Dr. Sommer.

[11] Dr. Arnold Endsins, Medical Consultant, SGI reviewed the SGI file and determined that the Appellant was entitled to a 1% Permanent Impairment due to the injuries that he suffered in the accident. In a Memo dated February 19, 2004 addressed to Laura Wood, Personal Injury Representative II, SGI, Dr. Endsins set out his rationale for arriving at a 1% PI. Given that the Appellant “underwent surgical intervention in the form of a percutaneous radio-frequency neurotomy of the third occipital nerve median branch, causing sensory impairment rated as Grade 3, to include loss of pain” Dr. Endsins determined that the Appellant was entitled to a 1% impairment rating pursuant to Part 4, Subdivision 4, Division 2 of the *The Personal Injury Benefits Regulations* (“the “*Regulations*”) in effect in 2001.<sup>1</sup> With respect to the reduced range of motion of the back that the Appellant was experiencing Dr. Endsins stated in his Memo: “No PI is assignable for loss of range of motion of the cervical spine. PI is only assignable where there is increased motion as a result of instability or for alteration of bony structure. This does not appear to have been the case, as noted in MRI scans done following the motor vehicle accident. Therefore no additional PI has been assigned”. Ms. Wood then used Dr. Endsins’s analysis to form the basis for the Decision Letter from which the Appellant is appealing.

## LAW AND ANALYSIS

[12] The Commission can review the legal correctness of SGI’s decision. In reviewing a decision of SGI, the Commission has the same jurisdiction under section 193(7) of *The Automobile Insurance Act* (the “Act”) that the Court of Queen’s Bench previously had under section 198(3) of the Act then in force to:

“set aside or vary the insurer’s decision; or make any decision that the insurer is authorized to make pursuant to this Part”.

[13] The discretion to make decisions must be exercised in a judicial manner. The discretion can only be exercised in favour of the claimant if it is demonstrated that the decision of SGI (i.e.

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<sup>1</sup> Chapter A-35 Reg. 3.

the determination of PI) was erroneous or based on erroneous assumptions, or at the very least, the decision was unreasonable.<sup>2</sup> The Commission will exercise its discretion in the same way.<sup>3</sup>

[14] Section 153 of the Act then in force sets out the definition of “permanent impairment”. The section states:

“In this Division, ‘permanent impairment’ includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other permanent impairment prescribed in the regulations”.

[15] During the Hearing the Appellant testified that due to the neurotomy he experiences numbness behind his right ear. He went on to state that it is numb to touch.

[16] Given Mr. Ryan’s testimony with respect to the numbness behind his right ear, Ms. Wootten acknowledged that according to the *Regulations*<sup>4</sup> the Appellant is entitled to a 2% PI (as compared to a 1% PI). Ms. Wootten stated that SGI will immediately increase the PI from 1% to 2% and pay to the Appellant the 2% Permanent Impairment.

[17] With respect to the decision by SGI to not offer to the Appellant a Permanent Impairment for his reduced range of back motion, we are all of the view that the decision is correct. As noted in section 153 of the Act, SGI is obligated to determine and provide the Permanent Impairments that are set out in the *Regulations*. SGI does not have the authority to provide to a claimant a sum of money for a Permanent Impairment that does not conform with the *Regulations*.

[18] The *Regulations* do not provide for a Permanent Impairment where there is simply a clinically observed reduced range of back movement. In order to qualify for a Permanent Impairment where there is, for example, a reduced range of movement of the Cervical spine resulting in functional limitation there must be radiological evidence of “chronic instability”. Without the radiological evidence of “chronic instability”, there is no entitlement to a Permanent

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<sup>2</sup> *Belchamber v. Saskatchewan Government Insurance* [1997] TWL QB7557; *Donan v. Saskatchewan Government Insurance* [1998] TWL QB98224; *Collis v. Saskatchewan Government Insurance* [1998] TWL QB98113.

<sup>3</sup> *R.C. v. Saskatchewan Government Insurance* 2003 SKAIA 001.

<sup>4</sup> Part 4-Division 2 Central and Peripheral Nervous System-Subdivision 4 Peripheral Nervous System-Table 4 Item C. Peripheral nerves Sub-item 1. Auricular ramus C2,C3 at Class 3.

Impairment. The Appellant has not tendered any radiological evidence to support a Permanent Impairment for his reduced range of back movement.

[19] During the Hearing, the Appellant testified that following the neurotomy he is experiencing a change in his vision. He described it as like looking through a “cloud”. The Appellant’s visual difficulty is not the subject of a decision letter by SGI. Consequently, we do not have jurisdiction to hear the Appellant’s claim for a Permanent Impairment arising from any change in his vision.

## **CONCLUSION**

[20] SGI will immediately increase and pay to the Appellant a Permanent Impairment of 2%. The decision by SGI to not offer to the Appellant any Permanent Impairment due to his reduced range of back motion is upheld. We understand that the Appellant might seek radiological evidence to support a claim for a Permanent Impairment due to his reduced range of back motion and that if he does receive such proof he will provide it to Ms. Wood. We do not have jurisdiction to hear the Appellant’s claim for a Permanent Impairment arising out of an alleged visual impairment. We understand that the Appellant intends to obtain medical information to support such a claim and that he will, in turn, provide the information to Ms. Wood.

[21] Given the Appellant’s success in having the Permanent Impairment increased from 1% to 2% he is entitled to reimbursement from SGI for the \$75.00 application fee and any other costs that he may have as prescribed by the Act.

**Dated** at Regina, Saskatchewan, on September 26, 2005.

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Jeffrey Scott, Chair

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Ann Phillips Q.C., Commission Member

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Darleen Topp, Commission Member