

**Automobile Injury Appeal Commission**

**Province of Saskatchewan**

**Citation:** *I.E. v. Saskatchewan Government Insurance,*  
2006 SKAIA 045  
**Date:** 20060706  
**File:** 044 of 2005

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**BETWEEN**

**I.E., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**I.E. and I.R., for the Applicant**  
**Jane Wootten, for the Respondent**

**Before:** **Ann Phillips, Q.C., Chair**  
**Al Knippel, Commission Member**  
**Jeff Scott, 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  
June 20, 2006

## DECISION

### INTRODUCTION

[1] On July 24, 2003 the Appellant, I.E., was injured when a car struck the bicycle he was riding. Due to a previous appeal that the Appellant brought before this Commission (the “First Hearing”), the insurer, Saskatchewan Government Insurance (“SGI”) was ordered to reconsider whether the Appellant is entitled to Income Replacement Benefits (“IRBs”).

[2] The Commission ordered SGI to reconsider whether the Appellant is entitled to IRBs given a July 29, 2003 Regina General Hospital “Outpatient/Emergency” document that came to light after the close of the previous Hearing. That “Outpatient/Emergency” document states beside the heading “Diagnosis” the following:

“Post Concussion Syndrome”.

[3] As a result of the Decision, SGI considered the “Outpatient/Emergency” document and reviewed whether the Appellant is entitled to IRBs. In a letter dated May 12, 2005 Cory Hameluck, Personal Injury Representative, SGI informed the Appellant that SGI decided to maintain its position that the Appellant did not qualify for IRBs.

[4] By way of an Application Form, the Appellant appeals from SGI’s letter dated May 12, 2005 denying him IRBs.

[5] After the First Hearing, the Appellant provided SGI with a number of photographs showing scarring of his left leg. The Appellant asserts that the photographs depict scarring of his left leg for which he has not received a Permanent Impairment Benefit.

[6] The photographs were reviewed by SGI. As a result of that review, Cory Hameluck informed the Appellant in a letter dated January 28, 2005 that the Appellant was entitled to an additional Permanent Impairment Benefit for the scarring to his left leg. Cory Hameluck went on to state in the letter that:

“There is a maximum of 8% per limb allowable under Table 12.3 of the Regulations to *The Automobile Accident Insurance Act*”.

[7] Given the additional left leg scarring SGI provided the Appellant with an additional 1.9% Permanent Impairment Benefit which maximized the 8% Permanent Impairment Benefit allowable under the Regulations.

[8] By way of an Application Form, the Appellant appeals from the SGI decision letter dated January 28, 2005.

### **PRELIMINARY MATTERS**

[9] At the beginning of the Hearing, the Appellant and his mother sought permission to file two additional documents (the “Two Additional Documents”). Ms. Wootten was not provided, in advance of the Hearing, with a copy of the Two Additional Documents.

[10] Ms. Wootten informed the panel members that she needed to have the Two Additional Documents reviewed by SGI’s medical consultants before she would be in a position to proceed with the Hearing. Consequently, Ms. Wootten asked that the Hearing be adjourned.

[11] Further, during the Hearing the Appellant stated that he was of the belief that he was, also, appealing from a decision dated June 29, 2005 from Charlotte Hendren for Cory Hameluck. In the June 29, 2005 letter SGI informed the Appellant, in part, as follows:

“As discussed, the consultant has reviewed the medical information with respect to the scarring on your chest and advises it was assessed correctly. The maximum available permanent impairment has been paid therefore no further permanent impairment is payable. I am including a copy of the consultants (sic) **decision** (emphasis added) letter for your review”.

[12] Prior to sending the June 29, 2005 letter to the Appellant, Ms. Hendren sent a Memo dated June 14, 2005 to Dr. Endsins (SGI’s medical consultant). In her Memo, Ms. Hendren stated:

“You previously reviewed this file with regards to permanent impairment. There is one area I would like you to **reassess** (emphasis added). You assessed 1% for the trunk scarring, however, it appears to be a larger area that 2 sq. cm. Please review the photos and measurements and **reassess** (emphasis added).

All other areas are complete with the PI assessment. The only area **needing reassessment is the trunk scarring** (emphasis added).

Should you have any questions please call me.”

[13] In response to Ms. Hendren’s Memo, Dr. Endsinn prepared a Memo dated July 24, 2005. In his Memo, Dr. Endsinn provided his reasons for concluding that the Appellant was not entitled to a greater Permanent Impairment Benefit for the trunk/chest scarring.

[14] In response to the Appellant’s assertion that he was appealing from the June 29, 2005 letter, Ms. Wootten argued that no appeal was taken from that letter and that the time to commence an appeal had expired.

#### **DECISIONS CONCERNING THE PRELIMINARY MATTERS**

[15] With respect to the scarring of the Appellant’s left leg, the Appellant and his mother acknowledged during the Hearing that the maximum Permanent Impairment Benefit that is payable under the Regulations for scarring of the left leg is 8%. Further, the Appellant and his mother acknowledged that SGI has provided the Appellant with the maximum 8% Permanent Impairment Benefit for the scarring of the left leg. Consequently, the Appellant abandoned that appeal.

[16] With respect to the Two Additional Documents, we order an adjournment of this Hearing. This will provide Ms. Wootten with an opportunity to have the Two Additional Documents reviewed by SGI’s medical consultants and to do whatever else she believes is necessary in response to those Documents. The Hearing is adjourned *sine die*.

[17] With respect to the June 29, 2005 letter and the scarring of the Appellant’s trunk/chest, we are of the view that the letter does not clearly inform the Appellant that he has the right to appeal from the decision made by SGI to not increase the Permanent Impairment Benefit for the scarring of his trunk/chest. Alternatively, we are of the view that the letter can be reasonably interpreted as suggesting that if the Appellant is not satisfied with SGI’s decision to not pay an

additional Permanent Impairment for the truck scarring that he can roll that appeal into the appeal that he "...presently [has]...regarding the permanent impairment".

[18] Given that the June 29, 2005 letter does not specifically state that the Appellant has the right to appeal from SGI's decision to not pay an additional Permanent Impairment for the trunk/chest scarring we order SGI to provide the Appellant with a decision letter which clearly sets out that the Appellant has the right to appeal from SGI's decision to not pay an additional Permanent Impairment for the trunk/chest scarring. Once the Appellant receives that decision letter and should he not be satisfied with that decision, the Appellant may bring that appeal forward and it will be heard when the IRB appeal is brought again before the Commission.

[19] Finally, and with respect to the scarring of the Appellant's trunk/chest, Mrs. Phillips informed Ms. Wootten that the Commission panel members were having difficulty understanding Dr. Endsins's Memorandum. Mrs. Phillips suggested to Ms. Wootten that in advance of the Hearing she might want to obtain clarification from Dr. Endsins.

#### **SUMMARY OF DECISION:**

- (1) By consent of the parties the appeal from the decision by SGI to not pay a further Permanent Impairment Benefit for scarring of the left leg is abandoned.
- (2) The appeal from the decision by SGI to not pay IRBs is adjourned *sine die*.
- (3) SGI shall provide the Appellant with a letter concerning SGI's decision with respect to whether the Appellant is entitled to an additional Permanent Impairment Benefit for the scarring of his trunk/chest. The letter from SGI will clearly indicate that the Appellant has the right to appeal from that decision. Should the Appellant decide to appeal from that decision the appeal will be heard at the same time as the appeal for the payments of IRBs.

**Dated** at Regina, Saskatchewan, on July 6, 2006.

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Ann Phillips, Q.C., Chair

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Al Knippel, Commission Member

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Jeff Scott, Commission Member