

Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *E.A. v. Saskatchewan Government
Insurance, 2007 SKAIA 073*

Date: 20060604

File: 101 of 2005

BETWEEN

E.A., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

E.A. for the Applicant

Dale Brown for the Respondent

Before: **Jane Lancaster, Q.C., Chair**
Marjory Gammel, Commission Member
Carolyn Jones, 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 Saskatoon, Saskatchewan on March 14 and May 30, 2007

DECISION

[1] The Appellant, E.A., appeals the decisions of Saskatchewan Government Insurance dated January 11, 2006, May 4, 2006 and June 1, 2006, all dealing with permanent impairment benefits of left and right shoulders including a Step Deformity of her left shoulder.

[2] SGI had provided the Appellant with permanent impairment benefits in the amount of 6% for range of motion for her left shoulder on January 11, 2006 and 10.5% for range of motion of her right shoulder on May 4, 2006 based on assessments performed on both of her shoulders by physiotherapists.

[3] The Appellant's family doctor, Dr. Karpinski, had advised SGI on March 14, 2005 that the Appellant had reached maximum medical improvement.

[4] SGI did not assess permanent impairment benefits for the step deformity indicating in their January 11, 2006 letter to the Appellant that they required current x-rays which could be compared to x-rays prior to the injury the Appellant claimed resulted from her assessment. SGI indicated that upon receipt of the current x-rays, their consultant would review if permanent impairment benefits were payable.

[5] The Appellant's doctor provided copies of a left shoulder ultrasound report dated October 9, 2001, a diagnostic imaging report dated June 6, 1996 (which indicated a minor degenerative change in the acromioclavicular joint and an upward migration of the humeral head with evidence of thinning of the rotator cuff consistent with longstanding rotator cuff degeneration, and a January 18, 2006 radiologist report indicating "The humeral head is elevated in the glenoid fossa. It appears to have an impact on the acromion. There is a narrowing of the AC joint and gleno-humeral joint space with marginal osteophyte formation. Sclerosis and irregularity noted in the super-lateral aspect of the humeral head.

No other abnormality. Conclusion: Degenerative arthritis. Degenerative changes in the rotator cuff.”¹

[6] These documents were referred to Dr. Matthews and on June 1, 2006, SGI declined to provide permanent impairment regarding the step deformity. The reason was the January 18, 2006 x ray report which showed there were marked degenerative changes in the AC joint and glenohumeral joint. In addition, there was no evidence of an AC joint separation. As such, SGI was of the view that there was no entitlement for Permanent Impairment rating under Appendix B, Part 1, Division 1, Subdivision 1, 2(s) of the regulations in effect at the time of the motor vehicle accident. (Note the June 1, 2006 letter was clarified on November 14, 2006² regarding the fact that there were degenerative changes in the AC joint.)

POSITION OF THE PARTIES:

[7] The Appellant’s position is the ranges of motion calculations of her left shoulder were not appropriately done and she is entitled to additional permanent impairment benefits as a result. She feels that her range of motion has deteriorated since the assessment and she should be compensated for that deterioration.

[8] The Appellant has always asserted that her shoulder was dislocated by SGI during an assessment and she now has a bump on her shoulder which she feels she should be compensated by way of additional permanent impairment benefits.

[9] Counsel for SGI states that SGI takes full responsibility for any permanent impairment of the Appellant’s shoulders but requires evidence of a step deformity or dislocation before permanent impairment can be assessed. SGI’s position is that all of the evidence provided by the Appellant and her medical doctor does not show a dislocated shoulder or step deformity such as can be compensated in the regulations.

¹ In addition, the Appellant filed a further x-ray report dated February 28, 2006 which confirmed the January x ray and confirming moderate degenerative change in the left AC joint.

² The June 1, 2006 letter had erroneously indicated that there were **no** degenerative changes in the AC joint.

ANALYSIS:

[10] There is ample medical evidence that the Appellant had suffered severe medical issues relating to both of her shoulders prior to the motor vehicle accident, including multiple surgeries and degeneration. In spite of that, SGI chose to accept full responsibility for any permanent impairment of her shoulders and not to apportion benefits to take into consideration her non motor vehicle condition.

[11] As a result, we will only review whether SGI has correctly assessed permanent impairment for the Appellant's left shoulder, including her assertion that she should be compensated for a step deformity or dislocation.

PERMANENT IMPAIRMENT BENEFITS (PIB)

[12] As an understanding of PIB and its purposes is necessary to understanding this decision, we will provide a brief explanation.

[13] Fundamentally, the *Act* and its *regulations* provide that a person who is injured in a motor vehicle accident may be entitled to certain benefits, depending on the nature, duration and impact of their injuries. There are many kinds of benefits appropriate for various circumstances but the most common are benefits for lost income, medical and rehabilitative services, medications, expenses and permanent impairment.

[14] A person who is injured in a vehicle accident may, depending on the nature and impact of the injuries and depending on the person's circumstances, be eligible for a number of different kinds of benefits.

[15] Some of these benefits are based on actual expenses. When an injured person incurs expenses traveling to a medical examination, the actual cost of his taxi fare, for example, will be reimbursed.

[16] Other benefits are based on the claimant's specific circumstances. The most obvious of these is the Income Replacement Benefit which is generally an amount calculated by reference to the injured person's actual earnings and the impact that the injuries have had on

his or her ability to earn those monies. Thus, a person who earned \$50,000 per year and who is unable to work will receive a higher weekly sum for income replacement than will a person whose annual income was \$25,000.

[17] These benefits are essentially intended to reimburse actual expenses or losses, such as the loss of income that may occur after a person is injured in an accident. PIB are a third kind of benefits; for these, individual circumstances or expenditures are not relevant.

[18] The Permanent Impairment Benefit is an attempt – admittedly and necessarily imperfect – to quantify a person’s permanent loss of function, impairment or deformity resulting from a motor vehicle accident. It does not take into account the nature of the person’s work or his or her salary. It does not take into account the person’s interests or lifestyle. Instead, the PIB is an objective measure of the percentage of the body that is effectively no longer usable, has lost function or is permanently damaged in other ways.

[19] Let’s consider, for example, a person whose leg was broken in a vehicle accident. However horrid the break, if it is set and heals normally, there is no PIB available because the person is, in fact, not permanently impaired. The person was impaired throughout his recovery. The injury may have caused the person to miss months of work and may have prevented him from participating in numerous activities at home. But the impairment was not permanent; he eventually became, one might say “as good as new”. There may have been other benefits paid throughout his recovery period but there will not be compensation by way of a payment for permanent impairment.

[20] On the other hand, if the broken leg does not heal properly and the person is permanently unable to fully bend or extend his leg and if he walks with a limp, he will receive a PIB for that permanent consequence. The amount of the benefit is determined by reference to a schedule in *The Personal Injury Benefit Regulations*.

[21] The amount our hypothetical person will receive is the same as what any other person with the same permanent damage to his leg will receive. It doesn’t matter that one was a mail delivery person who can no longer walk his route, while another worked a desk

job. It does not matter that one was a marathon runner, while the other was a spectator. For the same permanent impairment, they will receive the same amount of PIB.

[22] The reason for this is that the PIB is an attempt to assess the person's loss in relation to whole body function. The premise of the legislation is that lost income and increased expenses are compensated through other benefits. The PIB offers a lump sum *in addition* to those benefits. It is a measure of the loss of the body's capacity to do all things or, in effect, to function as a human body was intended to function. In appropriate cases, it also compensates an insured for the disfigurement of his or her body. As such, the schedules deem that certain permanent impairments or deformities result in a specified percentage of lost whole body capacity. The loss of that capacity for two people who suffer an identical injury is the same for each of them, regardless of their hobbies, occupations or earnings, if any.

[23] Permanent impairment is not the same as a disability. Disability is how the reduction or loss affects the person's ability to work and to live. Permanent impairment is for a permanent, measurable reduction or loss of physical function.

[24] The Appellant's permanent impairment on her shoulders was measured calculating her loss of range of motion pursuant to the regulations. At the hearing, the Appellant indicated that she takes no issue with the calculations and assessment of her right shoulder, but indicates that she felt that the calculations for her left shoulder were not done appropriately and should be redone. She provided no explanation for why she felt this difference, especially in light of the fact that the assessment was completed on both shoulders at the same time by the same physiotherapist chosen by the Appellant from a list provided by SGI.

[25] The Appellant also expressed strongly that in her view, the bone which she indicates is protruding on her shoulder is not the result of degenerative changes in her AC joint and glenohumeral joint but evidence of an AC joint separation. Her view is contradicted in the medical reports she has obtained through her family doctor including x-rays and ultra sound. She can provide us no evidence of her claim except for stating that when she saw the x-ray it

was evident to her there was a joint separation and she has a bony obstruction on her shoulder, and so therefore, she should be entitled to permanent impairment for the same.

[26] We disagree. There is no evidence that the calculations and assessment regarding the Appellant's permanent impairment of her left shoulder has been improperly completed. In addition, we agree with SGI's decision that there is no permanent impairment benefit payable for what the Appellant characterizes as a deformity on her left shoulder.

COSTS

[27] As the Appellant has been unsuccessful with her appeal, there is no order as to costs.

CONCLUSION

[28] The decisions of SGI dated January 11, 2006, May 4, 2006, and June 1, 2006 with regard to the permanent impairment of the Appellant are upheld.

Dated at Regina, Saskatchewan, on June 4, 2007.

Jane Lancaster, Q.C., Chair

Marjory Gammel, Commission Member

Carolyn Jones, Commission Member