

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *U.E. v. Saskatchewan Government Insurance,*  
2007 SKAIA 093  
**Date:** 20070918  
**File:** 099 of 2006

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**BETWEEN**

**U.E., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**U.E., Applicant**  
**Jane Watson, for the Respondent**

**Before:** **Beverly Cleveland, Chair**  
**Al Knippel, Commission Member**  
**Jane Lancaster, Q.C., 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  
August 28, 2007

## DECISION

[1] The Appellant was injured in a motor vehicle accident which occurred on August 20, 2005. As a result of this accident, he fractured his neck at C6/7 in addition to injuries to his left leg and buttock, scarring to his face and concussion.

[2] The Appellant has appealed a June 26, 2006 decision by Saskatchewan Government Insurance (SGI) denying his claim for cognitive impairment and setting out his entitlement for permanent impairment for his neck fracture, concussion and scarring.

### ISSUES:

[3] At the hearing, the Appellant confirmed the following:

- As he is currently employed at a salary equivalent to that which he received prior to the motor vehicle accident, he is not pursuing any claim for income replacement benefits nor salary top up.
- He is not appealing the decision of SGI regarding permanent impairment calculations for his scarring and accepts the decision of SGI regarding determination of permanent impairment for scarring on his face at 0.3%, left buttock at 3.5%, and left leg at 0.25%.

[4] The Appellant is appealing the determination of the permanent impairment benefits of his neck fracture and the calculation of permanent impairment of his concussion. In his appeal, he also noted that he had experienced cognitive problems which he contends are related to his concussion and loss of consciousness and which he felt have not been adequately compensated in his permanent impairment.

### FACTS AND FINDINGS

[5] The Appellant was involved in a single vehicle accident on April 20, 2005 approximately 2 miles from his home. He remembers very little about the accident, but does remember knocking on a neighbour's door after the accident.

[6] His mother attended at the neighbour's and transported him to hospital in [town] where he was admitted April 21, 2005 at 03:26.

[7] At that time, the Appellant advised the hospital that he had fallen. There was evidence of alcohol consumption. He later advised hospital staff at the Royal University Hospital (RUH) in Saskatoon that he had in fact been injured in a motor vehicle accident.

[8] Hospital notes from the [town] Hospital noted that upon admission he was assessed 15/15 on the Glasgow Coma Scale (normal) and a notation of alert and active.<sup>1</sup>

[9] The Appellant advised staff at Royal University Hospital (RUH) that the accident had occurred around 23:30 on April 20, 2005 and that he estimated he had been unconscious for approximately 2 hours before he walked to the neighbor's for help. There is no independent evidence of the time of accident, when the Appellant attended at the neighbor's residence, how long the Appellant was at the neighbor's before his mother arrived, and the circumstances or time which elapsed before he arrived at the hospital at 03:26 on April 21, 2005.

[10] Medical examination at RUH confirmed that the Appellant had fractured the facet in his neck located at C6/7.

[11] Medical reports from his orthopedic surgeon, Dr. Griebel, indicate that his neck fracture healed well and there is no indication of nerve damage<sup>2</sup> with a mild 1-2 mm subluxation at the C6/7 level.

[12] The Appellant also obtained a MRI dated December 2, 2005 which outlined the condition of his neck indicating moderate foraminal narrowing in the C5/6 and minimal foraminal narrowing at C6/7.

## **LAW AND ANALYSIS**

### **Standard of Review and Onus of Proof:**

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<sup>1</sup> The Appellant was also assessed regarding his cognitive status upon admission to RUH

<sup>2</sup> May 19, 2005 and July 5, 2005

[13] In reviewing a decision of SGI, the Commission has jurisdiction under section 193(7) of the *Act*<sup>3</sup> to:

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

[14] Where, as in this case, the claimant places the facts in issue and challenges SGI’s decision in respect of a benefit that SGI is obligated to pay, the standard for our review will be correctness. That is, after considering the record and any new evidence, the Commission will decide the matter on the basis of what it thinks is the correct decision in the circumstances.

**Permanent Impairment Benefits (PIB):**

[15] Dr. Alport, a medical consultant with SGI, testified at the hearing concerning the calculation of permanent impairment benefits. He had not been the medical consultant who had calculated the Appellant’s permanent impairment but was proffered by SGI as a resource to assist the Appellant in understanding the legislative scheme as set out in the *Personal Injury Benefits Regulations* pursuant to Part VIII benefits of the *Automobile Accident Insurance Act*.

[16] 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.

[17] 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.

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<sup>3</sup> *Automobile Accident Insurance Act* c.A-35

[18] 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.

[19] 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.

[20] 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.

[21] 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.

[22] 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 to normal, 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.

[23] 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*.

[24] 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.

[25] 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.

[26] In the Appellant's case, the MRI and the reports of Dr. Griebel show some listhesis where his neck was fractured, but Dr. Griebel's report dated July 5, 2005 indicates no neck pain, weakness or numbness of his extremities.<sup>4</sup> Any weakness or numbness could have been indicative of nerve damage according to Dr. Alport's testimony. Dr. Alport also indicated that an MRI cannot identify nerve damage as narrowing or compression does not necessarily result in nerve damage.

[27] The regulations which govern a C6/7 facet joint fracture are located in the *Personal Injury Benefits Regulations* at:

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<sup>4</sup> "From a cervical point of view, [the Appellant] is doing well and denies any neck pain, weakness or numbness in his extremities."

**DIVISION 1**

**Musculoskeletal System**

**Subdivision 3: Spine**

**Part 4: Other Spinal Impairments**

- (d) Post-traumatic alteration of a spinous process, transverse process, lamina or **zygapophyseal joint following a fracture**, spondylolysis or pseudarthrosis, including any radiographically documented range of motion restriction or instability (per Table 3.1), per spinal segment ..... 0.5% (emphasis added)

[28] The permanent impairment under this section is set at 0.5% which was what the Appellant was provided.

[29] The Appellant also indicated that he had not been compensated for his sublexations. Table 3.1 under Part 4: Other Spinal impairments indicates that the sublexation for C3-7 must be in excess of 3.5 mm. The Appellant’s medical information indicated a slippage of 1-2mm. Dr. Alport testified that there is a normal flexibility in the spine system and it is only when it gets to the levels as set out in Table 3.1 that compensation is indicated.

[30] The Appellant was of the view that he had been unconscious for over 2 hours and so therefore, pursuant to

**DIVISION 2**

**Central and Peripheral Nervous System**

**Subdivision 1: Skull, Brain and Carotid Vessels**

**Part 1: Alteration of Brain Tissue or Function**

**1.1 Cerebral concussion or contusion as documented by health-care practitioner in first 48 hours:** ( emphasis added)

- (a) Minor (post-traumatic amnesia (PTA) <30 min or loss of consciousness (LOC) <5 min) ..... 0.5%
- (b) Moderate (PTA >30 min <24 hrs or LOC >5 min <1 hr.) ..... 2%

[31] There is no documentation by a health-care practitioner of any amnesia suffered by the Appellant, however, the Appellant was awarded 0.5% permanent impairment to recognize there may have been some brief loss of consciousness.

[32] The Appellant also indicates that he suffers from some cognitive difficulty as a result of the accident. At the hearing, he indicated that he has learned to cope with this difficulty and he testified that he works as a safety supervisor for a oil field company, training other employees and is capable of performing all aspects of his employment including rescue. He has upgraded his qualifications by taking and passing numerous courses and indicates that his employer has indicated no concerns about his job performance and is satisfied with his work.

[33] The Appellant's position is that although he accepted that SGI had no option but to follow the regulations regarding permanent impairment calculations, he felt strongly that regulations did not adequately compensate for an injury which affected his life profoundly and has the potential in the future to cause medical limitations.

[34] Counsel for SGI advised the Appellant that his file remains open and if he relapses or develops further medical documented conditions caused by his motor vehicle accident in the future, he can reapply for benefits

## **CONCLUSION**

[35] We accept that SGI properly calculated the Appellant's permanent impairment for his neck fracture and his loss of consciousness. We have heard his concerns that in particular, compensation for a neck fracture seems very low, but SGI is required to follow the legislation as set out in the regulations and we find they have done so.

[35] As a result, the Appellant's appeal is denied. There is no order as to costs.

**Dated** at Saskatoon, Saskatchewan, on September 18, 2007.

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Beverly Cleveland, Chair

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Al Knippel, Commission Member

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Jane Lancaster, Q.C., Commission Member