

Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *G.N. v. Saskatchewan Government Insurance*
2008 SKAIA 043

Date: 20080829

File: 109 of 2007

BETWEEN

G.N., Appellant

and

Saskatchewan Government Insurance, Respondent

Appearances:

G.N., Appellant

Michael Tomka, for the Respondent

Before: **Ann Phillips, Q.C., Chair**
Beverly Cleveland, Commission Member
Conrad Hnatiuk, 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 Regina, Saskatchewan
August 15, 2008

DECISION

[1] The Appellant, G.N., appeals a decision by Saskatchewan Government Insurance (SGI) dated July 25, 2007 that “concluded” her (remaining) benefits for refusing to attend a tertiary assessment scheduled for August 7 and 8, 2007. In her application for appeal, the Appellant writes (in part) “I need my loss of income since my second rear ender May 15, 2007.”

[2] SGI preliminarily raised the question whether the Commission had jurisdiction to decide the Appellant’s entitlement to income benefits. The Commission concluded it did not have jurisdiction and advised the parties orally with written reasons to follow. These are those reasons.

JURISDICTION

[3] This Commission derives its jurisdiction to hear and consider appeals from section 191 of the *Automobile Accident Insurance Act*. The section reads:

191(1) A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of Queen’s Bench or the appeal commission within the later of:

(a) 90 days after the date of the insurer’s written decision; and

(b) if a claimant has requested mediation pursuant to section 190, 60 days after the date the mediator’s written statement pursuant to subsection 190(8) declaring that the mediation is completed.

[4] The above section sets out the time frames within which appeals may be brought before this Commission. In this case, the Appellant’s appeal of SGI’s July 25, 2007 decision (the refusal decision) was received by the Commission office on October 17, 2007 and is within the 90 day time frame and that appeal is properly before us.

[5] SGI also sent the Appellant an earlier decision letter dated June 26, 2007 denying her an income replacement benefit respecting a second accident (the IRB decision). No application for appeal of that decision was received by the Commission office. As a result, SGI takes the position the Appellant is now out of time to appeal the IRB decision and thus the Commission is unable to decide if she is entitled to an income benefit.

PRELIMINARY MATTERS

[6] The Appellant subsequently agreed to attend the tertiary assessment and SGI reinstated her benefits effectively withdrawing its refusal decision. Consequently the only matter remaining for us to consider is: Did the Appellant appeal the IRB decision within the appropriate time period?

FACTS AND FINDINGS

[7] The Appellant was involved in motor vehicle accidents on February 26, 2007 and May 15, 2007. She applied for and received benefits. SGI advised the Appellant on June 26, 2007 that she was not entitled to an income benefit resulting from the second accident. The Appellant received the IRB decision the next day.

[8] The Appellant disagreed with the decision and knew there was a time limitation respecting an appeal. She discussed the IRB decision letter with her daughter who also knew there was a time limitation respecting an appeal.

[9] On June 26, 2007, SGI also sent the Appellant a letter advising that she was being booked for a tertiary assessment. On July 22, the Appellant refused to attend the assessment scheduled for August 7 and 8, 2007 because, as she says it - "I am always sick", which precipitated the refusal decision.

[10] Sometime after receiving the refusal decision, the Appellant and her daughter attended on a lawyer who advised the deadline for filing an appeal was October 25, 2007. Both testified the Appellant showed the lawyer the June 26 IRB decision and the July 25 refusal decision.

LAW AND ANALYSIS

[11] The Appellant's appeal of the refusal decision was effectively withdrawn by SGI and her benefits reinstated. That appeal, which was properly before us, is therefore no longer relevant.

[12] It is clear the Appellant wanted to appeal the IRB decision but unfortunately did not do so within the 90 days required by subsection 191(1)(a) of the *Act*. SGI did not expressly waive the limitation period and we do not have the power to extend the statutory time limits. Prior decisions of this Commission as well as decisions of the Saskatchewan Court of Appeal have determined that failure to appeal within the legislated time frame is fatal to an appeal.¹ We observe that the Appellant had a reasonable excuse for failure to appeal, and that her failure to do so in time did not prejudice SGI in any way.

CONCLUSION

[13] The Commission does not have jurisdiction to hear the appeal of the IRB decision.²

Dated at Regina, Saskatchewan, on August 29, 2008.

Ann Phillips, Q.C., Chair

Conrad Hnatiuk, Commission Member

Beverly Cleveland, Commission Member

¹ *Mintzler v SGI*, 2000 SKQB104, 2001 SKCA54; *K.F. v SGI*, 2004 SKAIA06, *D.N. v SGI*, 2006 SKAIA 095

² For purposes of deciding the preliminary question about our jurisdiction, we accept the Appellant relied on the advice of a lawyer which ultimately was incorrect. We cannot, of course, and do not make any factual findings respecting that advice and specifically whether it was negligently given.