

## WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of March 31 to April 4, 2008

### Psychological make-up and Pre-MVC Career Goals are Relevant factors in determining reasonable necessity of vocational rehabilitation expenses

#### ***April Piche and Allstate Insurance Company of Canada FSCO A05-002263, March 6, 2008, Arbitrator David Leitch***

MVC November 14, 2003. Insured claimed rehabilitation benefits for university tuition fees and related expenses to enable her to engage in employment that is as similar as possible to employment goals before the MVC. Insured says she always intended to become a “police officer or corrections officer” and applied with a police force several years before the collision but failed one of the entrance tests. No further attempt to obtain police or corrections employment was made until sometime shortly before the MVC according to the insured. However, insured had held two private security jobs and worked part-time as a mail carrier in the year before the MVC.

Insured claimed that the injuries from the MVC prevented her from pursuing her career goals in policing or corrections so she decided to pursue a career as a probation and parole officer and started university schooling to this end and she claimed the expenses from her insurer. Insurer claimed that there was no evidence to suggest that insured needed a B.A. degree to obtain employment similar to that of her pre-MVC work as a “security officer”.

Arbitrator noted, however, that the SABS provides that the insured’s “personal and vocational characteristics” must be considered and, after reviewing the Court of Appeal decision in *Attavar v. Allstate* (2003) 63 O.R. (3d) 199 regarding the scope of these characteristics, found that the “psychological make-up” as shaped by pre-mvc career aspirations, can be a relevant personal characteristic. Arbitrator also found that the psychological make-up included considerations of adverse psychological consequences associated with engaging in a particular employment after the MVC.

In this case, Arbitrator first found that she did have a career goal to become either a police officer or corrections officer but did very little to pursue that goal following her first unsuccessful attempt several years before the MVC. Second, there was no evidence to establish that she would suffer any adverse psychological consequences by continuing to engage in employment similar to her pre-accident work. Third, Arbitrator was not able to find that insured was required to have a B.A. to pursue a career as a probation and parole officer. Finally, there was evidence that suggested it was doubtful that insured was going to be unable to complete her B.A and her rehabilitation had to be realistic in order to be reasonable.

## **Implications:**

Where an insured was working before the MVC but had career goals beyond that particular work, those career goals must also be considered in determining, for the purposes of rehabilitation benefits under the SABS, whether measures are reasonable and necessary to enable the insured to engage in employment that is as similar as possible to employment he or she engaged before the MVC. Further, consideration will also be given to whether the psychological status of an insured may be adversely impacted by working in a particular type of employment after the MVC.

Since it may not be sufficient to simply consider whether the insured could return to employment similar to the particular pre-MVC work, it is important to determine whether an insured also had a serious career goal before the MVC.

## **Accessing Arbitration Decisions**

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Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.