

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of February 1 – February 5, 2010

Qualifying for an NEB – what activities are being considered at FSCO?

Mangallon and TTC Insurance Company Limited, File No. A07-001813, December 18, 2009, per Arbitrator Sapin.

Injured October 27, 2005 when bus doors suddenly closed on insured. Insured not entitled to a non-earner benefit (“NEB”).¹ Arbitrator found what insured perceived about impairments and actual reality differed; and factors other than incident more likely account for symptoms.

Implications:

The Arbitrator applied *Heath v. Economical Mutual Life Insurance Company*,² which requires a comparison of all of an insured’s pre- and post-accident activities and life circumstances. The Arbitrator compared several factors over one year pre- and two years post-accident to determine if the incident was a significant contributing factor to insured’s impairments.

Some of these factors included: health history, including conditions, medications, surgeries and procedures; current symptoms; degree of dependency, including in housework and self-care needs; day-to-day activities; social activities; and other life circumstances (the death of a spouse). In this case, the insured identified her role as grandmother as a key cultural role within the family. As matriarch, she regularly gathered the family together for social outings and family celebrations, and cared for and babysat grandchildren.

This decision is helpful in demonstrating the kinds of activities that will be important in determining an insured’s entitlement to an NEB.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>. Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site. If you have questions or comments about this edition of the newsletter, contact Carrie Lynn Simmons at Legate & Associates: csimmons@legate.ca.

¹ Insured must suffer an impairment that renders him or her completely unable to carry on a normal life within 104 weeks of the incident as a result of an accident. Insured must be continuously prevented from engaging in substantially all of the activities he or she ordinarily engaged in before the accident.

² For a summary, see our newsletter for the week of September 7 to September 11, 2009.