

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-118**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Mr. Charles T. Birt, Q.C.
Mr. Colon Settle, Q.C.

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey; the Appellant, [text deleted], appeared on her own behalf

HEARING DATE: March 14, 2000

ISSUE: Restricted ROM of wrist—basis of determining

RELEVANT SECTIONS: Sections 126 to 130 of the MPIC Act ('the Act') and Section 8(b) of Schedule A to Manitoba Regulation 41/94

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

There is but one issue before us in this case, namely: the basis upon which the restriction of the range of motion in the Appellant's left wrist should be determined.

THE FACTS:

- [The Appellant's] [text deleted] truck was in collision with a [text deleted] passenger vehicle in [text deleted] on June 5th, 1996. The front of her truck hit the passenger's side of the [text deleted];

- Her left wrist, hyperextended in the course of that accident, sustained a partial scapholunate ligament tear and a tear of the triangular fibrocartilage. She underwent debridement of both those tears but is left with residual pain and a limitation in the range of motion ('ROM') of her left wrist;
- Her ROM of the left wrist was assessed, initially, on March 25th, 1998, by [Appellant's physiotherapist #1], [text deleted]. A reassessment was performed on December 7th, 1999, by [Appellant's physiotherapist #2], [text deleted];
- Section 8(b) of the Schedule A to Manitoba Regulation 41/94 makes the following provisions for permanent impairments in the form of restriction of movement to a wrist (the percentages being applied to a statutory maximum which, at the date of [the Appellant's] accident, was \$104,138.00):

(b) Restriction of Movement:

- (i) in flexion 0.5 to 2%
- (ii) in extension 0.5 to 2%
- (iii) in ulnar angulation 0.5%
- (iv) in radial angulation 0.5%

- MPIC, in determining the extent to which the range of motion of [the Appellant's] wrist had become restricted, used as its norm the figures contained in the Guidelines of the American Medical Association;
- [the Appellant's] evidence is that, before her accident, the range of her motion of her left wrist was equal to that of her right one, although she is right hand dominant; the ROM of her right wrist was measured by [Appellant's physiotherapist #2] on December 7th, 1999, at the time he measured the ROM of her left one;
- The degrees of ROM that are, therefore, relevant to this appeal, are these:

Restriction	March '98 report	December '99 report	A.M.A. Guidelines	Right wrist, December 1999
In flexion	55°	50°	60°	75°

In extension	65°	49°	60°	77°
In ulnar angulation	30°	32°	30°	47°
In radial angulation	10°	15°	20°	21°

DISCUSSION:

The Appellant argues that it is her norms, rather than those of the A.M.A., that should be adopted in determining the extent to which her range of motion has been diminished by her accident. She points out that, prior to that accident, she was very active physically, played golf, was a gymnast and enjoyed an all-round flexibility markedly greater than that of the average woman. She points to the measured range of motion of her right wrist, and to the fact that it substantially exceeds the A.M.A. Guidelines, save only in the context of radial deviation.

Counsel for MPIC submits that it would be altogether too dangerous to adopt such a subjective set of norms as is proposed by the Appellant, and that the A.M.A. Guidelines give consistency and certainty in every case, regardless of the prior condition of the claimant.

With deference, we accept the position of the Appellant in this case. The position advanced on behalf of MPIC would be the proper one, were there no reliable evidence of a claimant's prior condition. In [the Appellant's] case, however, we have her own, credible evidence of her prior condition, supported by the measurements of her right wrist range of motion taken by an independent physiotherapist. We also accept [the Appellant's] evidence that, although the dexterity and grip strength of her right hand were almost undoubtedly greater than those of her left, the difference in ranges of motion between her two wrists was negligible prior to her accident.

In his decision letter of September 29th, 1998, MPIC's Internal Review Officer was obliged to rely upon the measurements taken in March of that year. In consequence, he found that the ulnar angulation of [the Appellant's] left wrist was within normal limits, and he made no award in that regard. By December, 1999, it had become apparent that there was a measurable ulnar deviation, that her flexion and extension were reduced by about one-third, and that a more appropriate award, calculated by using the Appellant's right wrist ROM as the norm, would be as follows:

flexion	0.67%	
extension	0.64%	
ulnar angulation	0.5%	
radial angulation	0.5%	
Total	2.31% x \$104,138.00 =	\$2,405.59

Since [the Appellant] has already received: \$1,562.07

for her wrist injury (i.e., 1.5%), she is entitled to a further: \$843.52

plus interest at the statutory rate on that sum, calculated from the 5th day of June 1996 to the date of actual payment.

The foregoing presumes that [the Appellant] has, in fact, received the additional \$520.69 to which she became entitled as a result of a letter from Ms. Joan McKelvey, counsel for MPIC, addressed to the Appellant on March 8th, 2000. If those funds have not already been sent to the Appellant, then they must be added to the amount referred to above.

Dated at Winnipeg this 21st day of March, 2000.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

COLON SETTLE, Q.C.