

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-01-41**

**PANEL:** Mr. Mel Myers, Q.C. (Chairperson)  
Ms. Yvonne Tavares  
Ms. Deborah Stewart

**APPEARANCES:** The Appellant, [text deleted], attended the hearing by long-distance telephone;  
Manitoba Public Insurance Corporation ("MPIC") was represented by Mr. Tom Strutt.

**HEARING DATE:** September 26, 2001

**ISSUES:** Whether new evidence indicates causal connection between Appellant's current medical condition and motor vehicle accident.

**RELEVANT SECTIONS:** Sections 136(1), 160, 171(1) and 174 of *The Manitoba Public Insurance Act* (the "MPIC Act")

**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**

The Appellant, [text deleted], is a resident of [text deleted], British Columbia. He was involved in a motor vehicle accident on March 6, 1997, while in Manitoba visiting family. At the time of the accident, the Appellant was the seat-belted driver of a vehicle that came to a stop behind a school bus and was subsequently rear-ended. The Appellant sustained no head injury and no loss of consciousness and there was no damage to the vehicle he was operating.

He consulted [Appellant's doctor #1] in [text deleted], Manitoba the day after the accident. Her

Initial Health Care Report dated March 11, 1997 states that the Appellant had slight tenderness over the left trapezius muscle with normal range of motion and no neurological signs. She diagnosed a muscular pain in the left trapezius with a Whiplash-Associated Disorder ("WAD") I classification and recommended that the Appellant maintain his usual activities. She also noted that the Appellant could work full duties.

The Appellant next sought medical attention on May 6, 1997 by [Appellant's doctor #2] in [text deleted], B.C. complaining of being very stiff and sore. [Appellant's doctor #2's] findings included tenderness over the left trapezius and decreased rotation to the left with pain in the neck. He classified the Appellant's injuries as a WAD II, and recommended modified work duties, as well as Voltaren.

On referral from [Appellant's doctor #2], the Appellant started physiotherapy on May 7, 1997 for a stretching and exercise program. In a Subsequent Physiotherapy Report dated May 29, 1997, there was note of decreased cervical, thoracic, left arm and shoulder pain. He was discharged from physiotherapy on May 29, 1997.

He was seen again on June 27, 1997 by [Appellant's doctor #3] ([Appellant's doctor #2's] partner), who indicated that the Appellant appeared to be in worse shape, suffering with increased stiffness and loss of range of motion in his neck and with pain, radiation and tenderness in his upper back. He had an x-ray of his neck which showed degenerative disc disease from C3 to C7, most severe at C6 and C7, with no evidence of recent injury or fracture. These results indicated no significant changes from x-rays obtained in 1992.

He was seen on July 24, 1997 and July 30, 1997 complaining of neck and back pains and

stiffness. [Appellant's doctor #3's] notes from July 30, 1997, state that: "His back is still sore and stiff, although on exam, he has fairly good range of motion of his back and neck." He was seen again on August 13, 1997 by [Appellant's doctor #3] with back and neck pain. The back pain was radiating down his right leg into his calf. On physical examination, he had 50% loss of range of motion in his neck, with marked reduction of side bending to the right. He also had 30 - 40% of normal range in the back. He was seen one week later on August 19, 1997 with ongoing pain. A repeat x-ray of his lumbar spine showed no evidence of fracture. There was advanced disc degenerative changes at L4-L5 and L5-S1 with progression since x-rays in 1993. There was anterior subluxation of L3 on L4 by 5 mm and osteoarthritic changes in the apophyseal joints. The SI joints, and adjacent spinal levels, were unremarkable.

In the late summer and early fall of 1997, the Appellant was enrolled in a Work Fit program at [text deleted] Physiotherapy upon referral from by [Appellant's doctor #3]. He was discharged as fit to return to his job (driving a pavement roller) as well as light manual labour (no lifting greater than 25 lbs. no repetitive lifting and no overhead work greater than 3 minutes at a time).

He was seen again by [Appellant's doctor #3] on October 28, 1997. [Appellant's doctor #3] indicated that the Appellant had gained strength as a result of the Work Fit program, but that the Appellant indicated that his pain and stiffness were much worse. Range of motion in his neck was, at best, 25 to 30%. All the other ranges of motion in his mid and low-back were also at best, 40% of normal. In his narrative report, [Appellant's doctor #3] also provided details of numerous complaints of arthritis-related pain and discomfort in the Appellant's neck and back which pre-dated the motor vehicle accident by several years.

[Independent doctor] performed an independent medical examination of the Appellant on March

18, 1998. [Independent doctor's] report indicates that the Appellant's presenting complaints were neck pain, upper back pain as well as low back pain and left lateral loin pain. The Appellant claimed his sleep was disturbed and he was using extra-strength Tylenol on an as-needed basis. Aggravating factors included working around the yard, including digging in the garden and relieving factors included medication. His physical examination findings documented decreased active range of motion of the cervical and lumbar spine with symptoms of pain at the extremes of forward flexion and extension. Tenderness to palpation was noted at the left upper trapezius muscle and lumbar spinous processes. There was pain with straight leg testing of both lower limbs at 70 degrees with no decrease of pain with hip and knee flexion.

A physical capacity evaluation was also carried out concurrently with [independent doctor's] assessment and revealed that the Appellant was not working at his perceived maximum. The results of the pain profile questionnaire indicated that the Appellant was depressed. [Independent doctor] concluded that the Appellant's "perceived restrictions and limitations were not consistent with what I found on my assessment." He also stated, "Based on my understanding of his job activity and based on my assessment, [the Appellant] can return to his job activity starting part-time and gradually working to his previous level of work."

In his report dated June 16, 1998, [Appellant's doctor #3] maintained that in his opinion, the Appellant could not return to his pre-accident employment, that he needed treatment for the depression which had developed, but that he needs to "get on with life" as there was nothing left to offer him in terms of treatment (except for possibly, one more course of physiotherapy where there would be a strong education component connected to the exercises and strengthening segment if a capable service provider were found).

Based upon a review of the file on June 26, 1998, the Appellant's Case Manager determined that with the Appellant's significant medical history, Income Replacement Indemnity should not have been considered. Based on this fact, and the Appellant's misrepresentations, including voluntary limitations on testing, the Case Manager determined that the Appellant's benefits from MPIC should be terminated. He wrote to the Appellant on June 29, 1998, advising him that his benefits would be terminated in accordance with Section 160 of the MPIC Act.

Section 160 provides that:

**Corporation may refuse or terminate compensation**

**160** The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

- (a) knowingly provides false or inaccurate information to the corporation;
- (b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;
- (c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;
- (d) without valid reason, neglects or refuses to undergo a medical examination, requested by the corporation;
- (e) without valid reason, refuses, does not follow, or is not available for, medical treatment recommended by a medical practitioner and the corporation;
- (f) without valid reason, prevents or delays recovery by his or her activities;
- (g) without valid reason, does not follow or participate in a rehabilitation program made available by the corporation; or
- (h) prevents or obstructs the corporation from exercising its right of subrogation under this Act.

[The Appellant] sought an internal review from that decision. In his decision dated November 5, 1998, the Internal Review Officer determined that the Appellant's conduct during the course of the examination and evaluation by [independent doctor] was insufficient to disentitle him to benefits on the basis of Section 160 of the MPIC Act. However, the Internal Review Officer found that there was ample evidence of long-standing complaints of pain - particularly pain which was arthritic in origin - long before the motor vehicle accident. In addition, he found that there was a lengthy, largely unexplained, delay in seeking further medical attention after the initial examination the day after the accident. The Internal Review Officer concluded that there was not a causal connection between the motor vehicle accident on March 6, 1997 and the Appellant's subsequent complaint of disabling back pain. He therefore confirmed the decision of the Adjuster to terminate the Appellant's benefits effective June 29, 1998, albeit for slightly different reasons.

On September 20, 1999, the Appellant wrote to this Commission in order to appeal the decision of the Internal Review Officer dated November 5, 1998. After an exchange of correspondence, the former Chief Commissioner of this Commission wrote to the Appellant on February 15, 2000 to advise him that he would not consider extending the time within which to file a Notice of Appeal from the Internal Review Officer's decision of November 5, 1998, as the Appellant had not provided a sufficient reason for his delay. However, the Appellant's letter of September 20, 1999 had enclosed an additional medical report from [Appellant's doctor #4] of [text deleted], dated August 6, 1999. This new medical evidence was forwarded to MPIC, with the suggestion that they refer the matter back to the Appellant's Case Manager for a review of this additional evidence from [Appellant's doctor #4] for reconsideration.

Pursuant to Section 171 of the MPIC Act, the Corporation may reconsider new information.

Section 171 provides that:

**Corporation may reconsider new information**

171(1) The Corporation may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim.

It was in this context that MPIC was to consider the additional medical report and on this basis that [the Appellant's] claim would be reconsidered.

On May 18, 2000, the Appellant's Case Manager at MPIC referred the new medical evidence from [Appellant's doctor #4] to MPIC's Medical Services Team for a review to determine whether or not there was any basis for reinstatement of benefits.

[The Appellant's] file was reviewed by [MPIC's doctor #1] and [MPIC's doctor #2] of MPIC's Medical Services Team. Their Inter-Departmental Memorandum, bearing date August 15, 2000, carefully reviewed his entire history and concludes:

The claimant has well documented complaints of both neck and back pain that predate the motor vehicle collision. These complaints were felt to be of sufficient severity that imaging studies were performed on more than one occasion. These studies documented evidence of degenerative changes in both the cervical and lumbar spine prior to the motor vehicle collision. Such degenerative changes develop over time. Even so, the studies taken following the motor vehicle collision have not noted any significant from prior studies. The x-ray report on June 27, 1997, 2 1/2 months after the accident, indicates no significant change from films in 1992, predating the accident.

In summary, there is an improbable mechanism of injury, and improbable effect of motor vehicle collision-related trauma, an improbable temporal relationship and improbable magnitude of an effect. Therefore, in consideration of the medical evidence currently available on file, and with a reasonable degree of medical certainty, it is improbable that the motor vehicle collision of March 6, 1997 is causally related to the claimant's current medical condition.

Based on [MPIC's doctor #1's] report, the Case Manager wrote to the Appellant on September

19, 2000, to inform him that, "the additional medical evidence of [Appellant's doctor #4], based on his examination some two years and five months after the accident does not confirm there is a causal relationship between your present complaints and the motor vehicle accident. Therefore there is no indication for treatment of a motor vehicle collision related condition."

[The Appellant] appealed from that decision to MPIC's Internal Review Officer. The Internal Review Officer dealt with the sole issue on his review of whether MPIC was obligated to fund the treatment program recommended by [Appellant's doctor #4] in his report dated August 6, 1999, or any other forms of treatment being recommended by the Appellant's various British Columbia caregivers. The Internal Review Officer agreed with the conclusion reached by the Health Care Services Team, that the symptoms and complaints for which the Appellant had begun seeking treatment in August, 1999 were unlikely to have resulted from the extremely minor motor vehicle accident of March 6, 1997. He therefore confirmed the decision of the Case Manager dated September 20, 2000, refusing any additional benefits.

[The Appellant] appealed to this Commission from the Internal Review Decision by way of a notice bearing date March 21, 2001.

At the outset of the hearing, the parties determined that the hearing should focus on whether or not there was an ongoing causal connection between [the Appellant's] current symptoms and complaints and the motor vehicle accident of March 6, 1997. If the Commission were to determine that issue in the affirmative, then the matter of which benefits should be reinstated (i.e. income replacement indemnity and/or treatment benefits) would be addressed.

Upon consideration of the totality of medical evidence before us, and the Appellant's own



testimony, the Commission finds that on the balance of probabilities, the chain of causation does not lead us to the conclusion that the motor vehicle accident is the cause of the Appellant's ongoing complaints of neck and back pain. As documented by his caregivers, the Appellant has very significant osteoarthritis and degenerative disc disease. These pre-existing conditions had lead to long-standing complaints of pain prior to the motor vehicle accident. The new evidence provided by [the Appellant] does not substantiate a need for treatment of injuries sustained in the motor vehicle accident of March 6, 1997. Rather, we concur with the comments of MPIC's Medical Services Team in their Inter-Departmental Memorandum, bearing date August 15, 2000, that:

In summary, there is an improbable mechanism of injury, and improbable effect of motor vehicle collision-related trauma, an improbable temporal relationship and improbable magnitude of an effect. Therefore, in consideration of the medical evidence currently available on file, and with a reasonable degree of medical certainty, it is improbable that the motor vehicle collision of March 6, 1997 is causally related to the claimant's current medical condition.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date December 20, 2000.

Dated at Winnipeg this 12<sup>th</sup> day of October, 2001.

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**MEL MYERS, Q.C., CHAIRPERSON**

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**YVONNE TAVARES**

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**DEBORAH STEWART**