



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-76

PANEL: Ms. Laura Diamond, Chairperson
Ms. Mary Lynn Brooks
Ms. Deborah Stewart

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Tom Strutt.

HEARING DATE: February 10, 2005

ISSUE(S): Entitlement to Permanent Impairment Benefits

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation
Act ('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], was injured in a motor vehicle accident on December 5, 1997. He was a pedestrian struck by a motor vehicle.

Following the accident, the Appellant was taken to the Emergency Room at [hospital], where he was examined, x-rayed and diagnosed with a fractured left tibia.

His treatment was followed by his family physician, [text deleted].

Quite some time later, the Appellant was treated for hand symptoms involving ulnar nerve neuropathy. He underwent surgery, by [Appellant's surgeon #1], for this condition in August of 2002. The difficulties with his hand and elbow persisted, and he underwent surgery again, by [Appellant's surgeon #2], on March 29, 2004 and November 5, 2004. A great deal of difficulties and complications followed. Both [Appellant's surgeon #2] and [Appellant's doctor] provided their opinion that the Appellant had a permanent disability from these ulnar nerve injuries.

Internal Review Decision

The Appellant's case manager decided, on March 19, 2003, that there was insufficient evidence to support a causal relationship between the Appellant's signs and symptoms in his elbows and hands and his motor vehicle accident.

On May 6, 2003, the decision of the case manager was confirmed by an Internal Review Officer. The Internal Review Officer reviewed the medical reports of the Appellant's caregivers, and of [text deleted], Medical Consultant to the MPIC Health Care Services Team, and concluded that the medical information on the file indicated that a causal relationship could not be established between the ulnar neuropathy and the motor vehicle accident of December 5, 1997. As such, no permanent impairment benefit arose in that regard.

It is from this Internal Review decision that the Appellant now appeals.

Submissions

The Appellant submits that he was hit on his left side during the motor vehicle accident and broke his left tibia. This was treated at [hospital].

After the motor vehicle accident, he began to feel a tingling feeling in the index finger on his left hand. He testified that he did not pay too much attention to it at the time, as he thought it would probably go away. He testified that he finally consulted with [Appellant's doctor], which ultimately led him to be referred to [Appellant's surgeon #1].

The Appellant could not clearly recall when he began feeling symptoms in his hands or elbows, but estimated that it perhaps arose in the summer of 1998. He submitted that he mentioned it to [Appellant's doctor] (who initially did not make a note of it) but could not recall when.

He submitted that he had sustained no other injury which could account for the ulnar neuropathy and that it must be due to the motor vehicle accident.

Counsel for MPIC submitted that the Appellant's ulnar neuropathy was not causally related to the motor vehicle accident. Counsel submitted that the Emergency Room Report, dated December 5, 1997, indicates that the Appellant was not thrown in the collision, but rather that he was hit on his left side and fell down. The impact to his left side resulted in multiple injuries to the left leg and it can be inferred that he fell on his right knee, then onto his right side. This is supported by a reference to right knee pain in the Emergency Room Report.

There is no reference in any of the Emergency Room Reports reviewed to any left arm problems. In fact, counsel for MPIC submitted that there is no reference in any of the materials to a left arm problem until May 7, 2002, some four and one-half (4 ½) years after the accident.

Counsel for MPIC also submitted that the documentary evidence shows that the only records of the Appellant's arm or elbow pain arose in approximately 2002, and that these reports (to [Appellant's surgeon #1] and the case manager) indicated that the problem first presented in mid-2000 at the earliest.

Counsel for MPIC pointed to the reports of [Appellant's doctor], dated October 24, 2002 and August 31, 2004, as failing to indicate the date on which the Appellant first complained of elbow problems. Reports from [Appellant's surgeon #1] and [Appellant's surgeon #2] do not temporally relate the elbow problems to the car accident.

As well, [Appellant's surgeon #1's] report of July 31, 2002 makes it clear that the Appellant's arm problems were not traumatic in origin. Counsel for MPIC pointed to [Appellant's surgeon #1's] description of a well advanced bilateral problem, with osteoarthritis in both elbows.

Counsel for MPIC also relied upon an opinion provided by [text deleted], Medical Consultant to MPIC's Health Care Services Team, dated March 5, 2003. [MPIC's doctor] reviewed all of the medical reports on file and noted that there was no documentation of the elbow being traumatized, and that the ulnar neuropathy was not identified until 2002 (with the Appellant not reporting symptoms involving his left elbow until sometime in 2000). He concluded that it was possible that the ulnar neuropathy was a byproduct of the Appellant's condition requiring anticoagulation medication, or his osteoarthritis involving both elbows. He stated:

Based on the above-noted medical information, it is my opinion that a cause/effect relationship cannot be established between [the Appellant's] severe left focal ulnar neuropathy and the December 5, 1997 pedestrian/motor vehicle incident.

Discussion

Section 127 of the MPIC Act provides that a victim of a motor vehicle accident is entitled to a lump sum indemnity if he or she suffers a permanent physical or mental impairment as a result of the accident:

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

The onus is on the Appellant to prove, on the balance of probabilities, that the impairment is a result of the accident.

The Commission has reviewed the submissions of the parties, as well as the Appellant's testimony and the medical and other documentation on the file.

Having regard to the reports of the medical practitioners (including from the Emergency Room, [Appellant's doctor], [Appellant's surgeon #1], and [Appellant's surgeon #2]) as well as the reports which the Appellant made to his case managers on June 24, 2002 and March 21, 2003, it is the finding of the Commission that the Appellant's elbow and arm symptoms were not recorded as being reported by him until over two years after the motor vehicle accident. In the absence of any specific medical documentation of complaints of arm problems closer in time to the accident, it is difficult to establish a causal connection between the Appellant's condition and the motor vehicle accident.

[Appellant's surgeon #1]'s report of July 31, 2002 makes no connection between the Appellant's condition and a traumatic injury to the left hand. Rather, he describes the patient's

. . . ongoing left hand symptoms involving the ulnar nerve distribution for at least 2 years. Has minor symptoms on the right side as well.

He notes that “. . . both ulnar nerves were hypermobile and sensitive . . . Both elbows revealed some audible crunch indicating osteoarthritic change . . . “ and concludes:

No doubt, the patient is suffering from bilateral osteoarthritis of the elbow along with ulnar nerve neuropathy which has been diagnosed by EMG. . . .

[Appellant's doctor's] report of October 24, 2002 does not support a causal connection between the Appellant's condition and the accident:

I am not aware that he had a significant elbow injury during the motor vehicle accident. I did not see him immediately at emergency at that time. I am aware he did have a fractured left tibia and still has trouble walking, and needing a cane due to this. Perhaps initial hospital records can indicate if there was an elbow injury, this is on the same side as his tibia fracture. Reviewing my notes back to late 1997 and 1998, there were no complaints of elbow pain. However, I cannot with certainty relate his current problem to his motor vehicle accident.

As noted above, the hospital records referred to by [Appellant's doctor] do not make any mention of an injury to the elbow.

Decision

The Commission therefore determines, on the basis of the Appellant's evidence and the medical and other reports on file, that, on the balance of probabilities, the Appellant has not met the onus of showing that his ulnar neuropathy was caused by injuries sustained in the motor vehicle accident of December 5, 1997.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date May 6, 2003.

Dated at Winnipeg this 23rd day of February, 2005.

LAURA DIAMOND

MARY LYNN BROOKS

DEBORAH STEWART