

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-222**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Edward Rice;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATES: November 15, 2010 and January 27, 2011

ISSUE(S): Entitlement to Personal Injury Protection Plan Benefits.

RELEVANT SECTIONS: Sections 81(1) and 136(1)(a) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on February 20, 2004. At the time of the accident, his vehicle was stopped at a red light, when it was rear-ended and pushed into the vehicle ahead of him. Due to the bodily injuries which the Appellant sustained in this motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review Decision dated October 13, 2005, with respect to his entitlement to PIPP benefits as a consequence of his patellar tendon rupture suffered in June 2004.

On December 10, 2004, MPIC's case manager issued a decision which advised as follows:

Based on the above, there is no medical evidence supporting you sustained a significant injury to the right knee during the motor vehicle accident that would have contributed to your fall on June 21, 2004 and the subsequent ruptured patella tendon. Therefore, a causal relation to the motor vehicle accident of February 20, 2004 cannot be established. As there is no causal relationship, you are not entitled to benefits under PIPP.

The Appellant sought an Internal Review of that decision. In a decision dated October 13, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical evidence on the file did not support the Appellant's claim. The Internal Review Officer also found that the objective evidence on the file failed to support the Appellant's account of the accident wherein he sustained the ruptured patellar tendon.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to PIPP benefits as a result of his patellar tendon rupture.

Appellant's Argument:

Counsel for the Appellant submits that the Appellant sustained an injury to his knee in the motor vehicle accident of February 20, 2004, when it struck the dashboard. He argues that this knee injury eventually resulted in the patellar tendon rupture on June 21, 2004. As a result, he maintains that there is a causal connection between the motor vehicle accident and the patellar tendon rupture. In support of his position, counsel for the Appellant relies on the following evidence:

1. Testimony of the Appellant –

The Appellant testified at the hearing that his right leg did hit the dashboard during the motor vehicle accident of February 20, 2004. He explained that his right knee injury was not a major consideration immediately following the accident. His most serious complaints following the accident related to headaches, bruises on his shoulders and pain in the upper body, neck and jaw. However, the Appellant testified that when he saw his family doctor ([text deleted]) on February 26, 2004, he did describe his right knee symptoms to [Appellant's Doctor], including:

- swelling over the right knee,
- difficulty standing, walking, and moving around, and
- difficulty getting up from a chair.

The Appellant testified that walking and ascending and descending stairs gave him difficulty. Towards the end of May 2004, his knee was getting more and more sore, so much so, that by the end of May his knee was his main complaint. The Appellant further testified that his condition had considerably improved by June 2004 except for his knee which had continued to deteriorate and worsen.

The Appellant testified that, on June 21, 2004, he was walking down a flight of stairs at home. When he reached the second step from the bottom of the stairs, as he took a step, he felt an explosion of his knee cap and he tumbled, falling on his upper back and shoulders. He advised that he was in excruciating pain, his wife helped him get into the car and they went to the emergency department at the local hospital. He then immediately underwent surgery on his right knee in the emergency department. The Appellant was certain that he

did not hit his knee when he fell down the stairs, but rather his evidence was that his knee “exploded” as he was stepping down the stairs causing him to fall and land on his upper back.

2. [Appellant’s Doctor’s] medical report of September 15, 2004 and clinical notes –

In his medical report of September 15, 2004, [Appellant’s Doctor] advises that:

The diagnosis of the injury sustained in this accident is as follows: Acute strain of the muscles and ligaments involving the neck, upper back, shoulders and left elbow. Multiple areas of soft tissue bruising involving the right knee area and patellar area, and inner ankle right side and across upper abdomen. These bruises were due to probably striking the right knee against the dashboard and the abdomen bruises were caused by the security belt.

The objective findings on examination were tenderness over the left and right side of the neck, mostly posterior area, and range of motion was decreased in all areas. There was tenderness over both shoulders and range of motion was decreased in all areas. There was also tenderness over the left elbow/left epicondyle and range of motion was decreased in all areas. He also had tenderness over the left lower anterior chest area and also over the upper abdominal area. There was bruising in that area. There was tenderness over the right knee area with soft tissue bruising and range of motion was decreased in all movements. There were no x-rays taken.

With regards to [Appellant’s Doctor’s] clinical notes, the entry respecting the office visit of February 26, 2004 notes that the right knee area was sore. On examination [Appellant’s Doctor] found tender right knee area – bruised, decreased range of motion. The next office visit of March 11, 2004 again notes that the Appellant complained of a sore right knee.

3. Testimony and Reports of [Appellant’s Orthopedic Surgeon] –

[Text deleted] is an orthopedic surgeon. He testified at the appeal hearing that a patellar tendon rupture is rare. He advised that it was a very uncommon condition for this Appellant, given the Appellant’s age and the unusual location for the tear in the tendon. The rupture

was in the part of the tendon (distal, lower end) that tears with pre-existing injury, damage and degeneration.

[Appellant's Orthopedic Surgeon] testified that the Appellant's case was completely plausible – that it was an indirect force to his knee and that the rupture happened spontaneously. He further advised that a fall on the knee wouldn't have caused a patellar tendon rupture because different forces are required for that type of injury. Further, there would generally be a pre-existing abnormality of the tendon and other contributing factors such as diabetes and patellofemoral arthritis likely contributed to the abnormality of this Appellant's tendon.

[Appellant's Orthopedic Surgeon] testified that after due consideration it was his opinion that the Appellant's patellar tendon rupture wouldn't have happened without the motor vehicle accident. His opinion was that it was more likely than not that the motor vehicle accident lead to the tendon rupture.

Additionally, in his report dated October 15, 2010 [Appellant's Orthopedic Surgeon] noted that:

...Damage to the patellofemoral joint at the time of the motor vehicle accident, and confirmed on the subsequent MRI showing the patellofemoral arthritis, may have further compromised smooth motion of the extensor mechanism in descending stairs setting the stage for ratcheting-type of patellofemoral motion, compensatory quadriceps over-tightening and a disruption through a previous abnormal tendon, made vulnerable at the time of initial car accident and direct blow to the front of the knee.

4. Emergency Room Treatment Record

The Emergency Room Treatment Report notes the Appellant's history as "fell forward on planted right foot". Counsel for the Appellant argues that this verifies the Appellant's history that he was walking down the stairs when his knee gave out and he did not fall down the stairs and strike his knee causing the injury.

Counsel for the Appellant submits that, on the balance of probabilities, based upon the evidence of the Appellant, [Appellant's Orthopedic Surgeon] and [Appellant's Doctor], the patellar tendon rupture most likely resulted from the motor vehicle accident of February 20, 2004. Therefore, counsel for the Appellant submits that the Appellant is entitled to PIPP benefits in accordance with the MPIC Act.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's patellar tendon rupture was not connected to the motor vehicle accident of February 20, 2004. She maintains that the patellar tendon rupture was most likely caused by the Appellant striking his knee on the stairs when he fell down a flight of stairs in his home and not the motor vehicle accident. Further, she argues that the patellar tendon rupture on June 21, 2004 was not temporally connected with the motor vehicle accident of February 20, 2004. Counsel for MPIC submits that the Appellant's patellar tendon rupture occurred independent of the motor vehicle accident.

Counsel for MPIC contends that prior to the fall, the Appellant had no measurable right knee problems. Counsel for MPIC argues that the Appellant sustained mild to moderate injuries, sprains and strains as a result of the car accident. She submits that the Appellant's injuries from the motor vehicle accident were not sufficiently serious to distract from his knee problems. He was a sophisticated individual and he would have mentioned all of his injuries at the outset of his

claim. However, there was no mention of a right knee injury, either directly to the case manager or when the Appellant completed his Application for Compensation.

Counsel for MPIC also contends that the Appellant's report of how the fall down the stairs occurred has changed throughout the course of the file. She argues that there are at least three other versions of the event described in the file, which vary from the Appellant's testimony at the appeal hearing. She maintains that the Appellant's testimony is not credible, given the variations on his story.

Further, counsel for MPIC submits that the opinion of [MPIC's Doctor] should be preferred to that of [Appellant's Orthopedic Surgeon]. She submits that [MPIC's Doctor] is an expert in the assessment and treatment of tendon injuries. Further she maintains that [Appellant's Orthopedic Surgeon] does not have the level of experience that [MPIC's Doctor] has in reviewing these types of files. [MPIC's Doctor] has had the opportunity to review all of the relevant medical information on the Appellant's file and is in the best position to opine as to the cause of patellar tendon rupture on June 21, 2004.

Lastly, counsel for MPIC submits that the fall down the stairs and the direct impact of the knee hitting the stairs was the most likely cause of the Appellant's patellar tendon rupture. She submits that on a balance of probabilities, the right knee injury is not related to the motor vehicle accident of February 20, 2004.

Decision:

Upon hearing the testimony of the Appellant, of [Appellant's Orthopedic Surgeon] and of [MPIC's Doctor], and after careful review of all of the medical, paramedical and other reports

and documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant's patellar tendon rupture on June 21, 2004 was, on the balance of probabilities, caused by the motor vehicle accident of February 20, 2004.

Reasons for Decision:

Upon a review of all of the evidence before it, the Commission finds that on the balance of probabilities, the Appellant's ruptured patellar tendon is related to the motor vehicle accident of February 20, 2004. Although the evidence was very close, we find that it is more likely than not that the Appellant's knee was injured in the motor vehicle accident of February 20, 2004, which ultimately led to the rupture of the patellar tendon on June 21, 2004. In making that finding, the Commission relies upon the clinical chart notes and the medical reports of [Appellant's Doctor], the medical reports and testimony of [Appellant's Orthopedic Surgeon] and the testimony of the Appellant.

[Appellant's Doctor's] clinical notes indicate that the Appellant was seen in his office six days following the February 20, 2004 accident. There is reference in [Appellant's Doctor's] notes of that visit to right knee pain, right knee tenderness, bruising and decreased range of motion (of the right knee). Pain in the right knee was again noted in the March 11, 2004 visit. Based upon those notes and the Appellant's testimony, the Commission finds that the Appellant did injure his knee in the motor vehicle accident of February 20, 2004.

Additionally, the Commission accepts the expert opinion of [Appellant's Orthopedic Surgeon] that the most probable cause of the patellar tendon rupture was the earlier motor vehicle accident. We found [Appellant's Orthopedic Surgeon's] evidence to be convincing and credible. We

accept his opinion that based upon the combination of documented bruising, the mechanism of injury of the motor vehicle accident and the subsequent minimal provocation when the Appellant descended the staircase, the motor vehicle accident most likely resulted in the patellar tendon rupture. Based upon [Appellant's Orthopedic Surgeon's] testimony, the Commission finds, on a balance of probabilities, that damage to the patellofemoral joint at the time of the motor vehicle accident most likely lead to the patellar tendon rupture on June 21, 2004.

Accordingly, the Commission finds that the Appellant's is entitled to PIPP benefits as a result of his patellar tendon rupture. As a result, the Appellant's appeal is allowed and the Internal Review Decision dated October 13, 2005 is therefore rescinded.

Dated at Winnipeg this 17th day of March, 2011.

YVONNE TAVARES

DR. PATRICK DOYLE

MR. PAUL JOHNSTON