Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-077

PANEL:	**Ms Yvonne Tavares, Chairperson** **Mr. Guy Joubert** **Dr. Sharon Macdonald**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.**
HEARING DATE:	**January 16, 2014**
ISSUE(S):	**Whether the Appellant's right shoulder complaints are connected to the motor vehicle accident of June 23, 2009.**
RELEVANT SECTIONS:	**Sections 70(1), 127(1), 136(1) of The Manitoba Public Insurance Corporation Act ('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 June 23, 2009, when another vehicle failed to stop at a red light and hit the passenger side of her vehicle. As a result of the accident, the Appellant complained of neck, upper back and hip pain and suffered from headaches, dizziness and nausea. At the time of the accident, the Appellant was employed full-time by [text deleted] as the store manager. Due to the injuries which the Appellant sustained in the accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing the Internal Review decision dated April 27, 2012 with respect to whether a cause and effect relationship exists between her right shoulder complaints/symptoms and the motor vehicle accident of June 23, 2009. The Internal Review decision found that there was no causal relationship between the Appellant's current right shoulder complaints/symptoms and the motor vehicle accident. As a result the Appellant was not entitled to a permanent impairment award or funding for physiotherapy treatment in relation to her current right shoulder symptoms.

Facts and Background:

1. As noted above, the Appellant was involved in a motor vehicle accident on June 23, 2009, when another vehicle failed to stop at a red light and hit the passenger side of her vehicle.
2. Following the accident, the Appellant was transported by ambulance to the [hospital]. The June 23, 2009 ambulance report notes complaints of neck pain with no other injuries stated by the Appellant or noted during the assessment. The June 23, 2009 Emergency Room report indicates that the Appellant's symptoms were with respect to neck pain. X-rays were taken of the chest, the thoracic spine and cervical spine.
3. The Appellant attended upon her family physician on June 26, 2009. In a Primary Health Care Report dated July 3, 2009, the Appellant's family physician, [text deleted], noted that the Appellant complained of left and right neck pain, left and right headache, left and right shoulder/arm pain, left hip/thigh pain and dizziness as a result of the collision. Physical signs that were documented included left and right neck tenderness, left shoulder/arm tenderness. The clinical diagnosis was cervical spine and left shoulder injury.
4. The Appellant was referred to physiotherapy by her family physician. An initial therapy report dated June 30, 2009 of [Appellant's Physiotherapist], diagnosed the Appellant with a WAD II cervical strain and facet joint irritation, with a strain/contusion of the left shoulder

and contusion of the left hip. In a follow-up narrative report to [Appellant's Doctor], the physiotherapist noted that the Appellant reported pain in the neck/upper back and left shoulder and hip. The diagnosis noted in that report was also WAD II cervical strain and facet joint irritation, strain/contusion left shoulder, contusion left hip. The physiotherapist's treatment plan was: heat and respond, posture education, education on proper movement and stretches/ROM for C-spine/shoulder/hip. Will progress to hip and shoulder strengthening.

5. The Appellant was assessed by [Appellant's Neurologist], on August 19, 2009. In a report of the same date, [Appellant's Neurologist] found the following with respect to the Appellant's condition:

   i) There was no historical or clinical evidence to suggest that she had a cerebral concussion from the accident.

   ii) Her non-radicular neck pain and pain at the back of her head was due to a soft tissue injury, without any neurological involvement.

   iii) She developed a post-traumatic vertigo.

   iv) The Appellant says she has nocturnal parasthesia in both hands. This is highly suggestive of a carpal tunnel syndrome. However, he could not confirm the diagnosis because there were neither any objective clinical signs in her median nerve distribution nor were there any electro-physiological deficits. It was [Appellant's Neurologist's] opinion that her accident had nothing to do with her hand parasthesia.

6. In a narrative report dated September 25, 2009, [Appellant's Doctor] indicated the following:

   - Diagnosis is cervical strain with post-traumatic vertigo and headache.
   - In June, immediately after her injury, she was provided with Flexeril at HS and Naprosyn 250 mg TID. On July 3rd she had left shoulder pain and was complaining of some dizzy spells, some neck pain and a little bit of hip pain. Medications were not changed. She

then developed vertigo by the 15th and was put on Serc 16 mg TID. On the 30th of July she still had dizzy spells and was unable to work, but her exam was virtually normal other than a tender neck. A CT of her head was performed and a referral to [Appellant's Neurologist] which is enclosed. Since that time, as far as I know, she has gone on to recover.

7. A Physiotherapy Discharge Report dated November 3, 2009 noted that the only ongoing concern is dizzy spells which patient continues to deal with her doctor. The physiotherapist noted the Appellant's ongoing symptoms as patient reports she continues to have some pain and stiffness at base of neck at times. Neck muscles get tired at times.
8. The Appellant was subsequently referred to an athletic therapist. In an Initial Therapy Report dated November 25, 2009, the Appellant's symptoms are listed as dizzy spells, pain in the neck and upper back, and trouble sleeping; has not returned to work since accident. In a Therapy Discharge Report dated February 23, 2010, the athletic therapist noted that symptoms remained pain in neck and shoulders persist and right shoulder feels weak. She also noted that the Appellant's right shoulder range limited in flexion and abduction.
9. In a medical report dated April 1, 2010 [Appellant's Doctor] noted that the Appellant's most recent appointment was March 16. At that time the Appellant was complaining of being unable to sleep at night for pain in her shoulder. Examination showed restricted range of motion due to pain. [Appellant's Doctor] referred her to [Appellant's Orthopedic Surgeon] on March 16, 2010 for further assessment of the right shoulder.
10. In a medical report dated July 14, 2010, [Appellant's Doctor] noted the following:

> ...On her first visit of June 26, 2009, shortly after her MVA, she was sore to palpation over both left and right trapezius muscles. On July 3, she localized to left shoulder only. Subsequent visits on July 15 and 30th were mostly to do with vertigo and neck pain and headache. On August 24, she presented with a sore right shoulder but I diagnosed shingles (a herpes zoster infection). A month later, On September 29 she remained sore where the shingles had been on the right shoulder but I reported that her range of motion of her shoulder was normal. Subsequent visits October 6, 21,

> December 4th were all about neck pain and vertigo. On February 19, 2010 she came in for a physical and mentioned her vertigo and it was on March 9, 2010 that she complained of right shoulder pain that she believed was there since the MVA. Interestingly, the xray has shown a possible calcific tendonitis and examination showed decreased range of motion with painful arc. You wanted explanation on the delayed onset of symptoms and I'm not sure whether or not these symptoms are related to the accident. She is scheduled to see [Appellant's Orthopedic Surgeon] who might further be able to advise us as to whether or not this current finding could be related to the accident. I haven't examined the patients (sic) shoulder since March 16, at which time I found her range of motion restricted due to pain and it seemed to involve all movement of the shoulder.

11. The file was subsequently referred to MPIC's Health Care Services department in order to determine whether the Appellant's right shoulder condition was related to the motor vehicle accident of June 23, 2009. [MPIC's Doctor], medical consultant for MPIC's Health Care Services team opined in an interdepartmental memorandum dated February 24, 2011 that the medical information on file did not substantiate a probable causal relationship between a symptomatic tendinopathy of the right supraspinatus, for which an arthroscopic sub-acromial decompression was proposed in the fall of 2010 and the June 23, 2009 motor vehicle accident.

12. A medical report dated September 20, 2011 was received from [Appellant's Orthopedic Surgeon]. In that report, [Appellant's Orthopedic Surgeon] notes that

> One must assume that given the ongoing discomfort that she was experiencing and the trauma noted at the time of arthroscopy, that this was related to the motor vehicle accident as there has been no additional trauma that she reports.

13. The file was again reviewed by MPIC's Health Care Services. In an interdepartmental memorandum dated December 22, 2011, MPIC's Health Care Services consultant agreed with the previous review reported in the memorandum dated February 24, 2011. The reviewer found that it could not be determined that the right shoulder condition bore a relationship to the motor vehicle accident in question.

On January 19, 2012, MPIC's case manager issued a decision letter which determined that there was insufficient evidence to support a causal relationship between the Appellant's current right shoulder complaints/symptoms and the motor vehicle accident of June 23, 2009. Therefore, the Appellant was not entitled to a permanent impairment award or funding for treatment for her right shoulder pursuant to PIPP.

The Appellant disagreed with the case manager's decision and sought an Internal Review of that decision. The Internal Review Officer, in a decision dated April 27, 2012, dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical information on the Appellant's file did not support a causal relationship between her current right shoulder complaints and the injuries sustained in the motor vehicle accident of June 23, 2009.

The Appellant has appealed the Internal Review decision of April 27, 2012 to this Commission. The issue which requires determination on this appeal is whether the Appellant's right shoulder complaints/symptoms were caused by the motor vehicle accident of June 23, 2009.

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant's right shoulder complaints were caused as a result of the June 23, 2009 motor vehicle accident. The Claimant Adviser argues that taking into account all of the medical evidence on the Appellant's file, there is evidence that the Appellant's right shoulder was injured in the motor vehicle accident and that it slowly became worse as time passed. Ultimately, the Appellant required surgery to her right shoulder, which unfortunately has not been successful in decreasing her symptoms of pain. In support of her position, the Claimant Adviser relies on the Appellant's testimony that she was

receiving physiotherapy and athletic therapy to her shoulders since the motor vehicle accident. She also notes that the Appellant has had ongoing documented neck and shoulder complaints since the motor vehicle accident. The Claimant Adviser also relies upon [Appellant's Orthopedic Surgeon's] medical report of January 23, 2013, wherein [Appellant's Orthopedic Surgeon] opines that:

> It is quite possible that this patient's shoulder symptoms and condition are related to the motor vehicle accident of June 23, 2009. According to the patient's history given to me, she had no prior symptoms in the shoulder before the accident. The MRI of October 19, 2010 did show evidence of supraspinatus, infraspinatus and subscapularis tendinopathy. As this MRI was performed 16 months after the accident it is very hard to identify acute verses chronic changes. Although it is possible that the MVA exacerbated a previous underlying degenerative condition there is no way of proving this without prior history or imaging. The only information I have to go on for this is the patient's history. Therefore I think it is reasonable to accept the relationship between the MVA and the shoulder problem.

The Claimant Adviser maintains that [Appellant's Orthopedic Surgeon] was the specialist that treated the Appellant and performed the arthroscopic surgery on her shoulder. She submits [Appellant's Orthopedic Surgeon's] opinion should be given greater weight than that of MPIC's Health Care consultant since he is a specialist and he treated the Appellant directly.

Additionally, the Claimant Adviser notes that the [Appellant's Doctor] did note at her first examination of the Appellant on June 26, 2009, that the Appellant had shoulder complaints to both right and left shoulders. Taking into account all of the medical information, the Claimant Adviser argues that the Appellant did complain of right shoulder complaints from the outset immediately after her motor vehicle accident. She submits that these right shoulder complaints became worse with time and eventually led to the Appellant's arthroscopic surgery. She submits that the Appellant was a credible witness and her testimony should be relied upon to establish that her right shoulder symptoms are connected to the motor vehicle accident of June 23, 2009.

As a result, the Claimant Adviser submits that the Appellant's appeal should be allowed and that she should be entitled to PIPP benefits for her right shoulder pursuant to Part 2 of the MPIC Act.

MPIC'S Submission:

Counsel for MPIC submits that the Appellant has not established a causal relationship between her ongoing right shoulder complaints and the motor vehicle accident of June 23, 2009. Counsel for MPIC submits that there is no causal relationship because:

1. A temporal link has not been established based on the fact that although the Appellant was being seen by numerous caregivers, there is no mention of right shoulder complaints reported to or by the various caregivers until February 2010, when significant symptoms began to be reported. Specifically, counsel for MPIC submits that there was no reporting of right shoulder symptoms in the acute period of the Appellant's injury phase immediately following the motor vehicle accident when those symptoms would have been expected.
2. The Appellant's right shoulder condition could be attributable to trauma or from the degenerative process. Counsel for MPIC maintains that even the asymptomatic population has tears in the rotator cuff.

Counsel for MPIC submits that the Appellant has not established that her right shoulder condition was caused by the motor vehicle accident on the balance of probabilities. As a result he submits that the Appellant's appeal should be dismissed and the Internal Review decision of April 27, 2012 should be confirmed.

Decision:

Upon a 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 the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities that her right shoulder complaints are related to the motor vehicle accident of June 23, 2009.

Reasons for Decision:

Upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that the current and ongoing right shoulder condition is related to the motor vehicle accident of June 23, 2009. The Commission accepts the opinion of MPIC's Health Care consultant, [MPIC's Doctor], set out in his interdepartmental memorandum dated February 24, 2011. [MPIC's Doctor], noted that:

> For it to be determined that a symptomatic tendinopathy of the right supraspinatus in fall 2010 was caused by the June 23, 2009 motor vehicle accident, the following criteria would need to be met:
>
> 1. Medical evidence on file substantiating the presence of acute right shoulder symptoms and impairment of function concordant with an acute rotator cuff lesion; and
>
> 2. A history of ongoing symptoms and physical findings consistent with a supraspinatus tendinopathy up to the fall 2010 orthopedic assessment.

The Commission, having reviewed the Appellant's file, finds that the criteria mentioned by [MPIC's Doctor #1], has not been met. The Commission agrees with [MPIC's Doctor], that based on the totality of the medical information on file, the reported right shoulder pain on June 26, 2009 was likely a symptomatic manifestation of an accident related cervical spine strain, rather than indicative of a symptomatic rotator cuff tendinopathy, in so far as the subsequent medical information on file, up to the October 27, 2010 orthopedic report did not indicate clinical features substantiating a symptomatic rotator cuff tendinopathy. The Commission

further agrees that the presence of a symptomatic right supraspinatus tendinopathy developing several months after the June 23, 2009 motor vehicle accident is more likely consistent with the natural history of the probable pre-existing tendinopathy involving the right supraspinatus tendon.

It is evident that after the February 19, 2010 visit to the family physician, the Appellant experienced right shoulder symptoms which were later diagnosed by the orthopedic surgeon on October 27, 2010 as being a fairly advanced tendinopathy of the right supraspinatus, for which arthroscopic subacromial decompression was recommended. The Appellant's complaints related to her right shoulder in and around January and February 2010 suddenly became much more pronounced, which led to further investigations of the right shoulder. The Commission finds that prior to that time, the Appellant's right shoulder complaints simply are more consistent with a cervical spine strain related to the trapezius muscles rather than a rotator cuff tear. The Commission accepts the opinions of MPIC's Health Care Services consultant, that such signs and symptoms would have been expected during the acute injury phase in much closer proximity to the time of the motor vehicle accident for it to have been caused by the motor vehicle accident.

As a result, the Commission finds that the Appellant has not established that her right shoulder condition is related to the motor vehicle accident of June 23, 2009. Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated April 27, 2012 is confirmed.

Dated at Winnipeg this 5th day of February, 2014.

YVONNE TAVARES

GUY JOUBERT

DR. SHARON MACDONALD