

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-13-098 and AC-14-001**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Ms Pat Heuchert

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

HEARING DATE: October 6, 2014

ISSUE(S): Entitlement to permanent impairment benefits.

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and Schedule A of Manitoba Regulation
41/94.

**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 January 8, 2011. His vehicle was hit when a vehicle travelling from the opposite direction lost control, and crossed over into his lane resulting in a head-on collision. Following the accident, the Appellant was taken to the emergency department at [text deleted] hospital. His main complaints involved pain of the left shoulder and right foot. As a result of the injuries which he sustained in that accident,

the Appellant sustained permanent impairments which, pursuant to Section 127 of the MPIC Act entitle to him to a lump sum indemnity in accordance with the Regulations to the MPIC Act. The Appellant is appealing the Internal Review decisions dated May 31, 2013 and October 18, 2013 with respect to the permanent impairment benefits determined by MPIC.

On December 14, 2012, MPIC's case manager issued a decision advising that the injuries which the Appellant sustained in the motor vehicle accident of January 8, 2011 did not result in a rateable permanent impairment benefit.

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 May 31, 2013, varied the case manager's decision. The Internal Review Officer found that the Appellant was entitled to a 1% award for sensory impairment affecting the right foot. However, the Internal Review Officer found that the Appellant's left shoulder dislocation was not causally related to the accident. The Internal Review Officer issued a subsequent decision on October 18, 2013 respecting the Appellant's entitlement to a permanent impairment award for his lower back pain. The Internal Review Officer found that there was no rateable impairment for the Appellant's back pain and that he did not have an objective back injury that would entitle him to a permanent impairment benefit.

The Appellant has now appealed those Internal Review decisions to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to additional permanent impairment benefits for his left shoulder and lower back pain.

Appellant's Submission:

At the appeal hearing, the Appellant submitted that he has ongoing injuries to his left shoulder and lower back which resulted from the motor vehicle accident of January 8, 2011 and should therefore be compensated by a permanent impairment benefit. The Appellant advised that due to his ongoing injuries, he continues to work on restricted duties with the [text deleted]. He notes that he continues to suffer pain with respect to his ongoing injuries. This ongoing pain has greatly impacted his life.

With respect to the left shoulder dislocation, the Appellant submits that the left shoulder deformity took place during the motor vehicle accident. He submits that he has never dislocated his left shoulder at any other time. In support of his position, the Appellant submitted a letter from his family physician confirming that he has never been treated for any left shoulder injuries. The Appellant maintains that his left shoulder dislocation is as a result of the motor vehicle accident and therefore he should be entitled to a permanent impairment award for same.

With respect to his low back pain, the Appellant states that he has a disc protrusion which results in his significant low back pain. The Appellant submits that he should be entitled to a permanent impairment benefit as he is not at his pre-accident status and he sustained this injury in the motor vehicle accident.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established an entitlement to further permanent impairment awards, specifically regarding his left shoulder and low back. Counsel for MPIC submits that the Appellant's left shoulder dislocation was not as a result of the motor vehicle accident of January 8, 2011. In support of her position, counsel for MPIC relies upon the opinion of the Health Care Services consultant set out in the Health Care services review of May 29, 2013. The Health Care Services medical consultant's opinion states that:

Information obtained from Winnipeg Fire Paramedic Services and the [text deleted] Hospital effectively rules out left shoulder dislocation as being a medically probable outcome of the incident in question, if consideration is given to the clinical and radiological findings noted.

The reports indicate [the Appellant] reported left shoulder pain following the incident in question, which could have been the result of the seat belt. The presence of the shoulder strap over the left shoulder at the time of the collision would prevent the left humerus from dislocating anteriorly in relationship to the glenoid (portion of shoulder blade the humerus rests on). The left shoulder would have been held back by the shoulder strap as [the Appellant] was propelled forward into the air bag at the time of impact. It should be noted that Hill-Sachs deformity can develop as a result of anterior dislocation of the glenohumeral joint.

Based on the results of this review, it is my opinion [the Appellant] did not dislocate the left shoulder as a result of the incident in question, based on the balance of medical probabilities.

Relying upon that opinion, counsel for MPIC submits that there is no entitlement to a permanent impairment benefit for the Appellant for a left shoulder dislocation.

Counsel for MPIC submits that the Appellant does not qualify for a permanent impairment benefit for his low back pain. She submits that the medical evidence on the file does not establish that the Appellant sustained a rateable impairment pursuant to the Schedule of

Permanent Impairments. Although the medical information supports that the Appellant has sustained a soft tissue back injury, a diagnosis of a L5/S1 disc protrusion with radiculopathy was not confirmed following an MRI scan and electro-diagnostic testing. As a result, counsel for MPIC submits that the Appellant does not have a rateable impairment and there is no entitlement to a permanent impairment award.

As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decisions dated May 31, 2013 and October 18, 2013 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 Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to any additional permanent impairment benefits at this time.

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 he is entitled to further permanent impairment benefits relating to his low back or left shoulder. Specifically, with respect to the left shoulder, having reviewed all of the medical information on the Appellant's file, the Commission finds that the identified left shoulder dislocation is not causally related to the motor vehicle accident of January 8, 2011 based on the balance of probabilities. The Commission accepts the opinion of MPIC's Health Care Services consultant that the documented

evidence from the Winnipeg Fire Paramedic Services and [text deleted] Hospital rules out a left shoulder dislocation as being a medically probable outcome when considering the clinical and radiological findings.

With respect to the Appellant's low back injury, the Commission finds that the Appellant's low back soft tissue injury is not a rateable impairment and there is no entitlement to a permanent impairment benefit for the Appellant's soft tissue low back injury. As a result, the Commission finds that permanent impairment benefits set out in the Internal Review decisions dated May 31, 2013 and October 18, 2013 are confirmed. Accordingly, the Appellant's appeal is dismissed and the Internal Review decisions dated May 31, 2013 and October 18, 2013 are confirmed.

Dated at Winnipeg this 13th day of November, 2014.

YVONNE TAVARES

NEIL COHEN

PAT HEUCHERT