

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

PANEL: Ms. Karin Linnebach, Chairperson
Dr. Lorna Turnbull
Mr. Brian Hunt

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation (MPIC) was
represented by Ms. Ashley Korsunsky

HEARING DATE: March 14 and 15, 2018

ISSUE(S): Whether the Appellant's current wrist complaints are related
to an accident which occurred on July 24, 2013

RELEVANT SECTIONS: Subsections 70(1) and 71(1) of The Manitoba Public
Insurance Corporation Act (the 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

Background:

The Appellant, [text deleted], was in a motor vehicle on July 24, 2013 when the driver of the vehicle suddenly applied the brakes. The Appellant opened a claim with MPIC for Personal Injury

Protection Plan (PIPP) benefits on March 3, 2014. She reported to MPIC that she had injured her hands as a result of bracing herself when the brakes were applied.

In a decision letter dated July 9, 2014, an MPIC case manager held that the Appellant was not entitled to PIPP benefits because MPIC was unable to confirm that her injuries were sustained as a result of a motor vehicle accident. The case manager cited MPIC's medical consultant's opinion that the Appellant's current wrist symptoms are not causally related to the motor vehicle incident. The Appellant filed an Application for Review of this decision. In a decision dated October 2, 2014, the Internal Review Officer upheld the case manager's decision, finding there was insufficient evidence to support a causal relationship between the Appellant's current wrist complaints and the accident. The Appellant filed a Notice of Appeal to the Commission on December 1, 2014. The issue on appeal was whether the Appellant's current wrist complaints are related to an accident which occurred on July 24, 2013.

It is MPIC's position that there is insufficient evidence that the Appellant suffered an injury in the incident which took place on July 24, 2013 and therefore no accident under Part 2 of the Act occurred. MPIC also takes the position that, even if the Appellant suffered bodily injury in a motor vehicle accident (MVA) on July 24, 2013, the Appellant's current wrist complaints are not causally related to the MVA. It is the Appellant's position that her wrists complaints are due to injuries sustained in the MVA.

Decision:

For the reasons set out below, the panel finds the Appellant has not met the onus of establishing, on a balance of probabilities, that her current wrist complaints are causally related to the MVA of July 24, 2013.

Preliminary and Procedural Matters:

Five case conferences were scheduled regarding this appeal. The purpose of the case conferences was to discuss pre-hearing matters including documents and reports that can be submitted at the hearing, to review the hearing process, and to schedule a hearing date for the appeal. Letters were sent to the parties confirming what had transpired at the case conferences and the Appellant was provided a copy of the Commission's Guidelines for Hearings. The appeal was set for hearing for March 14 and 15, 2018.

At the commencement of closing argument on March 15, 2018, the Appellant sought to introduce new documents and photographs to support her position. Counsel for MPIC objected to the inclusion of these documents and photographs given the late stage in the proceedings. The panel allowed MPIC's objection. The Appellant participated in all five case conferences by teleconference and the hearing process was explained. In a letter dated February 7, 2017, the Appellant was advised that all documentary evidence was required to be filed with the Commission no later than 30 days prior to the hearing date. The Appellant did not seek to introduce these documents and photographs at the hearing until closing argument after all the witnesses had completed their testimony. Had the Appellant wished to have these documents and photographs included at the hearing, she had the opportunity to address this at the case conferences that were

held. She also failed to mention these documents at the commencement of the hearing or when she was testifying. For those reasons, the documents and photographs were not admitted into evidence.

Evidence for the Appellant

The Commission heard evidence from the Appellant, her employer, [text deleted], her mother, [text deleted], and her surgeon, [text deleted].

The Appellant

The Appellant had been diagnosed with carpal tunnel syndrome bilaterally and was scheduled to have surgery on both hands. On July 24, 2013, the Appellant attended the [hospital] for carpal tunnel surgery on her right hand. After the surgery, the Appellant's mother drove her to a pharmacy at a large grocery store to get a prescription for painkillers. While her mother was driving slowly in the parking lot of the grocery store, the Appellant was bent over in the passenger seat "digging" in her purse when her mother "slammed on the brakes" to avoid a collision with another vehicle. As a result of the sudden braking, the Appellant stated that she almost smashed her face on the dash but braced herself by catching her fingers on the lip of the dashboard. This caused her fingers to snap back. She stated that she immediately felt pain in her left hand, but not in her right hand because it was bandaged and still frozen from the carpal tunnel surgery.

When she went into the grocery store to fill her prescription for pain medication, the freezing started to go out of her right hand and she began to feel pain there also. She stated that both hands were in excruciating pain. However, she believed that nothing was broken as she could move both wrists. She decided to go home rather than seek medical attention. Because both her hands were

swollen, she decided to call the emergency number she was instructed to contact in case of post-surgery problems. She spoke to an on-call emergency doctor and then later to [text deleted], the surgeon who performed the carpal tunnel surgery. [Appellant's surgeon] advised her to go to the emergency department if she needed to. The Appellant acknowledged on cross examination that she was within minutes of [hospital#2] at the time of the MVA and lives very close to the hospital in [text deleted].

The Appellant stated that she went to see [Appellant's surgeon] a couple of weeks after the surgery and he "examined everything", including her left hand. She had an appointment scheduled for [Appellant's surgeon] to perform carpal tunnel surgery on her left hand in August 2013. When she mentioned the MVA, [Appellant's surgeon] advised her to contact MPIC to report the injury. She stated that she was still unsure about whether her left hand was sore from the MVA or whether it was because of her carpal tunnel problems in her left hand. She stated that her left hand had been swollen since the MVA and that [Appellant's surgeon] almost cancelled the left carpal tunnel surgery because of the swelling. The Appellant wanted to get the surgery over with so had the left hand carpal tunnel surgery in August 2013 as planned.

The Appellant stated that she has had ongoing problems with both her wrists since the MVA and has had to wear braces on both wrists for the last 2 years. She also developed trigger finger in her right hand and in her left thumb. She has had to have hand surgery for that as well. [Appellant's surgeon] has treated her for the trigger fingers.

The Appellant was emphatic that her ongoing wrist pain is due to the MVA and not her carpal tunnel problems and surgeries. She stated that after the MVA she had constant pain in her wrists that wouldn't go away. She described excessive swelling in her left hand that prevented her stitches from being removed. She stated that [Appellant's surgeon] kept telling her to file a claim with MPIC. Because her wrists weren't healing and seemed to be getting worse, she thought she'd better file her claim.

Before the MVA, the Appellant was the head cook at the golf course in [text deleted]. Even though both her hands were bothering her due to her carpal tunnel problems, she was able to work and "could still do everything". She decided to quit working for the golf course to have her first carpal tunnel surgery. She then stated it was her plan to go to [text deleted] and work on the oil sands but she didn't want to go to [text deleted] while having problems with her hands so she decided to get her hands "fixed up". However, after the MVA, her wrists became worse so she never went to work on the oil sands.

A few weeks after her left hand carpal tunnel surgery, she returned to work in a temporary position for a construction company holding a construction sign on the highway. She worked 12-14 hour days holding up a sign that weighed approximately 2 or 3 lbs. She worked for a few months in the summer of 2013 and again a few months later. She acknowledged on cross examination that she did not remember consulting with any physician on when she could return to work. She continued to work "odd jobs" in the summer between 2013 and 2016.

The Appellant stated that she deals with her wrist pain “every day”. She now has a growth underneath her thumb and she cramps up a lot. She has attended for chiropractic treatment and this has helped her with mobility, but not the pain.

On cross examination, the Appellant acknowledged that she has had carpal tunnel syndrome bilaterally for more than 15 years. In response to whether she has experienced pain in her hands and wrists as a result of the carpal tunnel syndrome, she indicated that mostly her fingers have been swollen and numb. She then acknowledged that she had experienced some pain in her hands as a result of her carpal tunnel syndrome if she “does anything excessive”. She described an incident six months before the motor vehicle incident when her hands “blew up” after shovelling her mother’s driveway and using a pick. She stated this caused her hands to be sore for 2 or 3 weeks, but that this pain went away leaving her with the carpal tunnel syndrome pain. She asserted that the pain in her hands from the carpal tunnel syndrome is a different kind of pain and described the pain from shovelling simply due to overworking her hands.

The Appellant was questioned about medical reports before the MVA that documented sensory changes in her wrists bilaterally, weakness in her grip strength and weakness in her wrists. The Appellant acknowledged that she had weakness in her wrists and that her hands were getting progressively weaker, but again asserted that her condition did not stop her from doing anything and that she was able to keep working and perform all her duties as a head cook.

The Appellant acknowledged that her numbness, pain and weakness in her hands worsened in the year before her carpal tunnel surgeries and that she was prescribed medication for her condition, including Tylenol 3s, Naproxen and Tramacet. She acknowledged that her symptoms would often wake her at night and that she was prescribed medication to help her sleep. She acknowledged that her condition was such that [Appellant's surgeon] decided to perform the right carpal tunnel release surgery on a "relatively urgent" basis.

[Text Deleted]

[Appellant's surgeon] was qualified as a physician with specialty in plastic and reconstructive surgery. He stated that 95% of hand surgeries, including carpal tunnel release surgeries are performed by plastic surgeons such as himself. He has performed over 6000 carpal tunnel surgeries since 2013. In 2013, he performed mostly hand surgeries approximately 4 days per week. The number of surgeries per day varied from 1 to 20. He saw patients 1 to 3 times per week at the [hospital #3] as well as in his office across from the hospital. When he has a clinic day, he will see between 60 to 90 patients in a day. In addition to performing surgeries and seeing patients in clinic, he was also teaching at the [university] and was overseeing students. He did this approximately 1 to 2 days per week.

[Appellant's surgeon] explained that carpal tunnel syndrome is caused by a compressed nerve in the carpal tunnel that results in numbness, tingling and burning pain in hands as well as numbing or tingling in fingers. He agreed that sensations due to carpal tunnel syndrome can travel from a patient's hand through the wrist and up into a forearm although he indicated that none of his

patients have ever reported numbness beyond the hand and very few patients have reported burning pain in the forearm.

[Appellant's surgeon] described the carpal tunnel release surgery and indicated that anesthetic goes into the wrist and a little into the hand for post-operative pain. He acknowledged that once the anesthetic wears off it is normal to experience pain in the wrist and hand. [Appellant's surgeon] asserted that, while one cannot guarantee success with any surgery, 99% of carpal tunnel surgeries he performs are successful. He acknowledged that this statistic is based on his experience and not on the medical literature. He has only had to re-operate on one patient in the last 10 years. He was unprepared to say that generally carpal tunnel surgeries are 99% successful because many general practitioners also perform this surgery and they don't perform it the same as he does. He acknowledged that complications can arise post surgery and agreed that it is normal to experience swelling and pain in the wrist and hand after the surgery.

[Appellant's surgeon] stated that he remembered the phone call he had with the Appellant on the day of her right carpal tunnel surgery when she advised him of what had happened in the vehicle after the surgery. His recollection was that the driver of the vehicle had to brake hard to avoid a car accident and that the Appellant "jammed her hand against the dash board". On cross examination, he stated that the Appellant jammed both hands against the dashboard and that the Appellant's palms and wrists made contact with the dashboard.

[Appellant's surgeon] initially stated he saw the Appellant a week after the right carpal tunnel surgery, but acknowledged that he was uncertain when he saw the Appellant after the surgery. He

had no chart notes of a visit with the Appellant before he performed the left hand carpal tunnel surgery. It was suggested to [Appellant's surgeon] that he didn't see the Appellant again until the day of the left carpal tunnel surgery, but he believed that he saw her between surgeries. He agreed with counsel for MPIC that had he met with her between the surgeries, he likely would have noted if there were any abnormal findings. He also acknowledged that given the high volume of patients that he sees and that there is no documentation from the visit, he can't be certain that he observed any swelling. He agreed there was no documentation of any objective findings.

[Appellant's surgeon] was questioned about whether he remembered discussing postponing the left hand carpal tunnel surgery with the Appellant. His response was that the Appellant had so much pain in her right hand that he was concerned about operating on her left hand which he described as her "good hand". [Appellant's surgeon] testified that he wouldn't have operated on her left hand if it was injured.

[Appellant's surgeon] diagnosed the Appellant with chronic regional pain syndrome which is also known as reflex sympathetic dystrophy and is of the view that this was caused by the MVA and not the carpal tunnel surgeries. His diagnosis of chronic regional pain syndrome is based on decreased range of motion and swelling and the condition, in his view, is caused by the trauma from the MVA. When questioned about what trauma he was referring to, he stated the trauma was when the Appellant had to jam her hands up on the dashboard to prevent herself from hitting the dashboard. When asked whether his opinion would change if he learned that the Appellant's wrists didn't actually hit the dashboard at all, his response was that it was then unlikely that she developed complex regional pain syndrome from the MVA. He agreed with counsel for MPIC that he

wouldn't expect injuries to the Appellant's wrists and pain in her hands and wrists from the MVA if only the Appellant's fingers hit the dashboard. He agreed with counsel for MPIC that it is possible the cause of the Appellant's condition is unknown and acknowledged that wrist pain can result from surgery. He acknowledged that a subsequent MRI showed that the Appellant has no damage to her tendons or ligaments.

[Appellant's surgeon] was asked to describe symptoms typically associated with osteoarthritis in wrists. He indicated that pain and decreased range of motion are common symptoms. He was unaware that imaging of the Appellant's wrists shows that she has osteoarthritis. He acknowledged that osteoarthritis can cause wrist pain.

[Appellant's surgeon] acknowledged that the Appellant was referred to another plastic surgeon who specializes in hand wrist surgery for a second opinion. He acknowledged that this physician concluded there was no objective evidence of the cause of the Appellant's pain. [Appellant's surgeon] confirmed that the Appellant's trigger fingers that developed after the Appellant's surgeries are unrelated to the MVA.

[Text Deleted]

[Appellant's employer] testified that he has known the Appellant for 20 years and that she has worked for him on and off for the last 10 years. He buys and sells houses and the Appellant has assisted him with drywalling, painting and flooring as well as helping out on a farm by driving a tractor in the fields. He stated that before the Appellant's MVA, she could work for 10 hours a day and now she can only work for approximately 2 hours at a time. She can now no longer do

drywalling and sanding so just does the painting. She also isn't able to do detail work when painting and is mostly just rolling. This started a couple of months after the MVA in approximately August 2013. He believes the Appellant was working for him towards the end of August 2013 doing painting. In 2013 and 2014 she worked 3 evenings a week for a few hours at a time.

[Text Deleted]

[Appellant's mother] stated that on the day of the MVA she was driving down [street] to go to the store so the Appellant, her daughter, could fill her prescription. She was driving 10-15 kilometers per hour looking for a parking spot in the lot when all of a sudden a car came out of nowhere at an angle so she stopped her car. After braking, her daughter was screaming that her hands hit the dashboard. [Appellant's mother] did not see her daughter's hands touch the dashboard.

[Appellant's mother] wanted to take her daughter back to the hospital and offered twice but her daughter didn't want to go so she didn't argue with her. Her daughter wanted to get her prescription and go home. She drove to the perimeter where her daughter met up with her friend who was going to drive her home to [text deleted].

[Appellant's mother] believed her daughter was in a lot of pain because she was crying and screaming. After that day, her daughter told her she continued to have a lot of pain and had phoned [Appellant's surgeon].

Submission for the Appellant

The Appellant submitted that it was her left hand that felt the most pain in the MVA because her right hand was frozen. It was only when the freezing in her right hand wore off that she experienced pain in her right hand. She has been diagnosed with chronic pain syndrome in her hands and she cannot use her hands the way she used to without painkillers. Now she cannot work anymore. She believes the MVA caused this condition.

Submission for MPIC

Counsel for MPIC submitted that the only issue under appeal is whether the Appellant's wrist complaints are causally related to an MVA. However, there was no MVA as defined in the Act as there is insufficient evidence that any bodily injury occurred. Part 2 of the Act defines "accident" as "any event in which bodily injury is caused by an automobile". Counsel submitted that, even if an accident occurred as defined in the Act, the Appellant's wrist complaints are not causally related to the MVA.

The Appellant bears the onus to prove, on a balance of probabilities, that the Internal Review Officer erred when finding the case manager's decision correct that causation could not be established. The totality of the evidence shows that the Appellant has failed to meet her onus.

There are lots of inconsistencies about what actually happened in the incident and therefore the mechanism of injury is unclear. The first written account of what occurred in the vehicle is the application for compensation completed by the Appellant on March 19, 2014, 8 months after the incident. In her application for compensation, the Appellant stated that her mother slammed on the

brakes and she slammed her hands on the glovebox. The Appellant's mother initially stated that her daughter hit her hand on the dash, but later on cross examination stated it was possible both hands were hit.

The first documented examination of the Appellant following the MVA occurred 6 weeks after the MVA on September 5, 2013. Her family physician wrote that the Appellant had continuing pain in her right wrist for 5 days when she banged her hand on the dashboard of the car while sudden braking. During the Appellant's testimony, she stated that her fingers caught on the lip of the dash and there was a snap back. She testified that her hands and wrists did not make direct contact with the dashboard.

When [Appellant's surgeon] was asked about the mechanism of injury on cross examination, he testified that he was under the impression that the Appellant's palms and wrists made contact with the dash. His diagnosis of hyperextension and inflammation was based on this understanding of the mechanism of injury. When asked whether his opinion would change if he knew there was no contact between the Appellant's wrists and the dashboard, he stated that it was unlikely the Appellant had developed complex regional pain syndrome from the MVA if there was no contact. It is clear that [Appellant's surgeon] gave an opinion on causation on an incorrect understanding of the mechanism of injury.

When reviewing the medical reports, it is evident that [Appellant's surgeon] was the only health care provider who provided an opinion stating that the Appellant's wrist problems are causally related to the MVA. MPIC's Health Care Services (HCS) consultant did not feel there was

sufficient casual relationship between the incident and her symptoms. The specialist to whom the Appellant attended for a second opinion was of the opinion that there was no objective evidence of a cause of the Appellant's symptoms.

[Appellant's surgeon]'s first report addressing the Appellant's wrist problems and the MVA is dated April 3, 2014. At that time, [Appellant's surgeon]'s diagnosis of the Appellant was "postinflammatory pain secondary to a severe motor vehicle accident". However, this diagnosis was not made on basis of any examination. [Appellant's surgeon] testified that he had a telephone conversation with the Appellant on the day of the MVA, but there is no documentation of what was discussed. There is also no documentation when the Appellant had her follow-up appointment and what was discussed at this appointment. At the time of the MVA, [Appellant's surgeon] was seeing 60-90 patients in his clinic practice, performing several surgeries per week and working at the hospital overseeing students. [Appellant's surgeon] was mostly performing carpal tunnel surgeries at that time and therefore was hearing reports of a lot of similar symptoms. He has no notes of his conversation with the Appellant over the telephone on the day of the incident and no notes of the Appellant's clinic visit. He acknowledged that he could be recollecting things incorrectly and this is evidenced by his inability to recall some things and inconsistencies in his own evidence and reports.

Counsel pointed out inconsistencies between the Appellant's and [Appellant's surgeon]'s evidence. For example, the Appellant testified about her appointment with [Appellant's surgeon] after the right hand surgery and that [Appellant's surgeon] discussed the cancelling of her left hand surgery because of the swelling in her left hand due to the MVA. However, [Appellant's surgeon]

testified that he was concerned about swelling in her right hand. He wanted to be sure her right hand was sufficiently healed before performing surgery on her left hand. Counsel submitted that the fact [Appellant's surgeon] performed the left hand surgery as planned shows that the right hand was okay as he wouldn't have proceeded with the surgery if it wasn't. Further, he acknowledged that if he had had concerns, he would have documented them.

Counsel pointed out that [Appellant's surgeon] wasn't even aware that the Appellant returned to work almost immediately after the August surgery. Despite the Appellant's assertions that she was having significant problems with her wrists, the Appellant started working at a construction company as a flagger which required her to work long days and hold a sign on the highway. The Appellant testified that she didn't recall ever discussing ability to return to work with [Appellant's surgeon] or any other health care provider. Counsel submitted that if the Appellant was experiencing pain one would expect her to be concerned about making her condition worse by returning to work.

It is important to note that the Appellant's carpal tunnel condition was severe and carpal tunnel release surgery needed to be done on urgent basis. [Appellant's surgeon] agreed that the success of the surgery in alleviating symptoms can be effected by severity of the carpal tunnel syndrome and in this case her condition was severe.

[Appellant's surgeon] agreed that carpal tunnel syndrome causes numbness, tingling and pain and the pain can be in the wrist and hand. He agreed that surgery can induce an inflammatory process with surgical incision, that following carpal tunnel surgery it is normal to experience pain and

swelling in one's wrists and hands, and that the degree of pain and swelling varies for the individual.

[Appellant's surgeon] initially diagnosed the Appellant with postinflammatory pain secondary to a severe MVA. However, there was no objective evidence of any inflammation. Further, [Appellant's surgeon] provided this diagnosis on an incorrect understanding of the mechanism of injury. It does not make sense that this diagnosis is causally related to an MVA as pain and swelling can come from surgery. In any event, [Appellant's surgeon] never examined the Appellant after the MVA.

Following the incident, the Appellant didn't attend the hospital that was only 2 minutes away from the parking lot or attend the hospital in [text deleted] located just outside her backyard. She couldn't have been too concerned about the swelling in her wrists if she didn't seek medical attention. She started working as a flagger as well as for [Appellant's employer] after the second surgery and didn't seek medical attention for her wrists before returning to work.

The Appellant acknowledged that she didn't know what the cause of her pain was and that it was [Appellant's surgeon] who told her to contact MPIC to file a claim. However, [Appellant's surgeon] based his opinion on an incorrect understanding of the mechanism of injury, never examined her after the incident in the motor vehicle and based his opinion solely on the Appellant's subjective reporting. MPIC submits a probable causal relationship cannot be established without objective evidence in this case. Counsel stressed that there is no other medical opinion than from [Appellant's surgeon] that the Appellant's wrist complaints are caused by the MVA.

Counsel submitted that there is insufficient evidence that there was any bodily injury from an MVA. Even if there was an MVA, there was no trauma from the MVA that resulted in the Appellant's wrist complaints.

The Appellant's Reply Submission

The Appellant submitted that she is still in a lot of pain and as a result has to take a lot of painkillers and anti-inflammatories. The pain in her wrists is not from carpal tunnel syndrome and she had no problems prior to her surgery and the accident.

The Appellant submitted that she had to return to work when she did because she needed the money and her job mostly required her to be sitting on the side of the road waiting for cars. Most of the time she wasn't even holding the sign.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that her wrist complaints are related to an accident which occurred on July 24, 2013.

The relevant statutory provisions are as follows:

Definitions

70(1) In this Part,

"accident" means any event in which bodily injury is caused by an automobile;

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile...

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

The Appellant had a long history of carpal tunnel syndrome in both hands. In February 2013, a physician to which the Appellant attended for a nerve conduction study, noted the Appellant had a 12 year history of bilateral hand paresthesias and pain with worsening symptoms in the last year. As a result, the Appellant's right carpal tunnel release surgery was scheduled on a "relatively urgent" basis. In early 2013, at least 6 months before the MVA, the Appellant also reported bilateral wrist pain lasting 2 to 3 weeks after she had been shovelling.

The first documentation from a health care provider regarding a possible wrist injury in an MVA is a chart note from the Appellant's family physician dated September 5, 2013 which states that the Appellant was complaining of right wrist pain due to banging her hand on the dashboard of a vehicle due to sudden braking. The chart note originally stated this occurred 5 days prior to the visit but the physician later corrected this to be 5 weeks. While noting the carpal tunnel surgery, the family physician queried whether the Appellant had a right wrist sprain.

The Appellant attended to her family physician on 3 subsequent occasions and there is no reference to wrist pain in these chart notes. However, on November 14, 2013, the family physician noted that the Appellant had pain in both hands post carpal tunnel surgery. The family physician made no mention of an MVA. The Appellant attended to a clinic in [text deleted] on December 30, 2013 and was diagnosed with bilateral wrist synovitis/possible mechanical and flexor tendinopathy and carpal tunnel syndrome. There is no mention of an MVA in the chart notes.

The Appellant did not file an application for compensation until 8 months post incident. At the time she filed her application for compensation she indicated that [Appellant's surgeon] believed she had "tendon damage and ligament damage in both hands/wrists due to the accident". However, further medical investigation determined that the Appellant had no tendon or ligament damage and by August 2014, a specialist to which the Appellant attended for a second opinion stated there was no objective evidence of the cause of the Appellant's pain. On December 23, 2014, this specialist noted that the Appellant had full range of motion of her fingers, thumbs and wrists and there was no objective inflammation to indicate the cause of the Appellant's pain.

The only physician that indicated there is a causal relationship between the Appellant's wrist complaints and a July 24, 2013 MVA is [Appellant's surgeon]. However, the panel finds that there are factual inaccuracies and misconceptions in the reports provided by [Appellant's surgeon]. In his report of April 3, 2014, [Appellant's surgeon] diagnosed the Appellant with "postinflammatory pain secondary to a severe motor vehicle accident" that occurred on snow covered roads. The evidence established that there was no collision with another vehicle and the Appellant's mother was driving very slowly on clear pavement in a parking lot when she applied the brakes to avoid a collision.

In his report of July 2, 2015, [Appellant's surgeon] stated that the Appellant jammed her hands up against the dashboard of the vehicle in the MVA which resulted in "significant inflammation" to the Appellant's wrists. With respect to the mechanism of injury, the panel agrees with counsel for MPIC that it is unclear what happened on July 24, 2013 as there are inconsistencies between what

was documented in the various medical reports and chart notes and what the Appellant testified to at the hearing. The Appellant testified that there was no contact between her hands and the dashboard, but rather that her fingers hit the dashboard and snapped back. [Appellant's surgeon] was asked whether it would change his opinion if he knew the Appellant's wrists didn't hit the dashboard at all. His response was that it would then be unlikely that she developed complex pain syndrome from the MVA.

While [Appellant's surgeon] noted "significant inflammation" to the Appellant's wrists as a result of an MVA, there is no documentation of [Appellant's surgeon] actually having observed inflammation in the summer of 2013 and he acknowledged on cross examination that he based this entirely on the Appellant's reporting.

The Appellant stated she complained of pain in her left hand to [Appellant's surgeon] and testified that [Appellant's surgeon] discussed postponing the left hand carpal tunnel surgery because of the pain and swelling in her left hand. However, [Appellant's surgeon] testified that his concern was about pain and swelling in her right hand as he would be operating on her left hand, which he described as her "good hand". He didn't want to operate on her left hand if she was having difficulty with her right hand. [Appellant's surgeon] testified that he wouldn't have operated on her left hand if it was injured.

In his testimony, [Appellant's surgeon] asserted that it was more probable than not that the MVA has caused the Appellant's ongoing wrist problems. However, [Appellant's surgeon] agreed on cross examination that there are other possible causes of the Appellant's pain, including that the

cause is unknown, that the wrist pain could be a complication from the carpal tunnel surgery, or that the Appellant's wrist pain could be caused by the Appellant's osteoarthritis.

The panel finds the Appellant to be an unreliable historian and has concerns about her credibility. In addition to her differing accounts of what happened in the MVA, the Appellant made dubious assertions that are unsupported by the documentary and viva voce evidence. For example, the Appellant testified that her left hand was so swollen after surgery that the physician could not remove the stitches so gave her a scalpel to do it herself. However, there are no chart notes to support this assertion. The Appellant testified that [Appellant's surgeon] almost cancelled her left hand carpal tunnel surgery due to the swelling in her left hand, but there is no evidence to support this assertion. Rather, [Appellant's surgeon] testified that his concern was whether her right hand had sufficiently healed from the surgery before performing surgery on her left hand. The Appellant wrote to MPIC and advised that the specialist who she saw for a second opinion told her that the damage to her hands was definitely caused by the accident. However, the report from the specialist does not support this assertion. The Appellant strongly asserted that carpal tunnel syndrome did not keep her from doing any of her normal activities but a chart note dated January 28, 2013, 6 months before the MVA, references that she had stopped making jewelry and doing beading as a result of her hand symptoms. While she acknowledged this on cross examination, she then asserted that her carpal tunnel syndrome never stopped her from doing anything.

In order to qualify for PIPP benefits, a victim must have sustained an injury as a result of an accident. Counsel for MPIC has asked the panel to conclude that there was no bodily injury in the incident in the motor vehicle on July 24, 2013 and therefore that no MVA occurred as defined in the Act. For the purposes of this analysis, the panel is prepared to assume that an MVA occurred on July 24, 2013 and notes the family physician's query of a possible right wrist sprain. However, the panel does not find, on a balance of probabilities, that the Appellant's bilateral wrist complaints are causally related to the MVA, which is the issue under appeal before the Commission. The Appellant's long history of bilateral hand problems predating the MVA, the carpal tunnel surgeries, the uncertain mechanism of injury, the lack of supporting documentation at the time of injury and in the weeks following the injury, the delay in reporting an injury to MPIC, the different diagnoses for the Appellant's ongoing wrist problems, and the various possibilities for the cause of the Appellant's ongoing wrist problems lead the panel to conclude that the Appellant has not met her onus to prove there is a causal relationship between her wrists problems and the MVA. The panel is mindful of [Appellant's surgeon]'s comments regarding causation, but he did not have the benefit of hearing the testimony and reviewing all the documentary evidence.

After a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing and giving careful consideration to all of the testimony and to the submissions of counsel for the Appellant and counsel for MPIC and taking into account the provisions of the relevant legislation, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that she had an injury in the July 24, 2013 MVA that has caused her wrist complaints.

Disposition:

For the reasons outlined herein, the Commission finds that the Internal Review Officer's decision of October 2, 2014 should be upheld and the Appellants appeal is dismissed.

Dated at Winnipeg this 13th day of July, 2018.

KARIN LINNEBACH

LORNA TURNBULL

BRIAN HUNT