Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [APPELLANT]
AICAC File No.: AC-16-094

PANEL:	**Pamela Reilly, Chairperson** **Linda Newton** **Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf;** **Manitoba Public Insurance Corporation (MPIC) was represented by Anthony Lafontaine Guerra.**
HEARING DATE:	**August 25, 2022 and August 26, 2022**
ISSUE:	**Whether the Appellant's seizure activity and dizziness is related to the June 19, 2015 MVA, thereby entitling him to PIPP benefits.**
RELEVANT SECTIONS:	**Section 70(1) of The Manitoba Public Insurance Corporation Act (MPIC Act).**

Reasons for Decision

Background:

On June 19, 2015, the Appellant was a front seat passenger in a cube van that was struck in an intersection, causing a multiple vehicle collision (the MVA). The Appellant immediately exited the vehicle, called 911 and assisted passengers in another vehicle. Shortly after paramedics arrived, the Appellant had a seizure, fell, struck his head on a metal hydro pole, and lost consciousness. He suffered a laceration and hematoma.

The Appellant was transported to hospital where he underwent testing to rule out intracranial and cervical spine injuries. He was diagnosed with alcohol withdrawal. He received four staple sutures in his left temporal region to close the laceration.

The Appellant's Initial Health Care Report recorded symptoms of sleep disturbance, fatigue, anxiety and depression. The physician diagnosed head trauma and questioned PTSD. The Appellant sought and received counselling. He reported memory issues. He was unable to work steadily as an eaves-trough installer due to subsequent dizziness, which a neurologist suggested may be resolved through vestibular therapy.

MPIC denied PIPP benefits on the basis that the Appellant's episodic seizures and dizziness were not causally related to the MVA. The Appellant appealed that decision to the Commission.

Issue:

Whether the Appellant's seizure disorder and dizziness were causally related to the MVA.

Decision:

The Panel finds that the Appellant has not proven, on a balance of probabilities, that his seizures and dizziness are MVA-related. Therefore, he has not proven that he suffered a bodily injury caused by an automobile, pursuant to section 70(1) of the Act. The Panel confirms the decision of MPIC and dismisses the appeal.

The Hearing

As a result of safety considerations arising from the pandemic, and with the parties' consent, the hearing of the appeal was conducted remotely, through teleconference technology.

In preparation for the hearing, the Commission compiled an Indexed File, which contains all documents agreed upon by the parties as evidence to be relied upon at the hearing. For ease of reference by the parties and the Panel, these documents are sequentially numbered. Attached to these reasons and marked as Schedule "A" is a copy of the Indexed File Table of Contents.

Appellant testimony and documents:

At the time of the hearing, the Appellant was [age] years old. He said that prior to the MVA, he had worked as a [text deleted] for 35 years. He did his best to stay active and involved in his community. His adult daughter lives in [text deleted]. He had only contracted with a handful of companies throughout his career. He had 11-12 years experience with the company to which he was contracted at the time of the MVA.

The Appellant explained that he was unable to work because of "light-headedness and dizziness." He said that these symptoms started about a month after the MVA and more particularly he started experiencing dizziness if he moved quickly. His inability to work depleted his life savings.

He described the MVA by recalling that he was the middle seat passenger in a cube van. When the light turned green, the driver of his vehicle proceeded into the intersection, behind the car ahead of them. An eastbound vehicle ran the red light and

smashed into the vehicle ahead of them creating a multi-vehicle collision. The Appellant said he hit his head on the dashboard but recovered after a few seconds.

He said he exited the vehicle to help calm and assist the two occupants of the vehicle in front, which had been flipped onto its roof from the force of the impact. After approximately three to four minutes, the paramedics arrived and took over. While he was walking back to his vehicle, he felt his 'heart skip a beat' at which point he "went down" and hit his head. He said he ended up in the hospital and "started experiencing dizziness."

The Appellant referred to the medical reports of [neurologist #1], and of his [physician], in support of his testimony that he suffered dizziness caused by the MVA. The Appellant spoke of a psychological report. In response to the Chair's questions, the Appellant agreed he could not locate such report, and confirmed that he had declined to attend for a recommended psychological assessment.

In cross-examination, the Appellant confirmed that he has a Grade 10 education and had been unemployed since the MVA. At the time of the MVA, he was an independent contractor with a roofing company. Since the MVA, he had supported himself financially with Employment and Income Assistance.

The Appellant agreed with MPIC Counsel that at the time of the MVA, he was sitting on a milk crate between the two front seats of the van, and not wearing a seat belt. He confirmed there was a cooler of beer in the back of the van which was inaccessible from the cab where he was sitting. The Appellant disagreed with the [text deleted]

emergency room report that stated he had a few drinks that day. He conceded the blood alcohol reading in the records, but emphasized that he did not drink at work. The Appellant admitted that, at the time, he was an alcoholic who drank to excess.

The Appellant confirmed further details of the MVA stating that the hood of the cube van lifted on impact. The van stopped immediately, causing him to hit his head "straight on" on the dashboard, and he then hit the back of his head. MPIC Counsel referred to a photo showing four staples used to close a laceration on the left side of the Appellant's head, and asked whether the laceration was caused by him hitting his head on the dashboard, or by his later fall.

The Appellant replied, "I would say, after, or like before, is what I would say." The Appellant asked, rhetorically, 'why would I fall?' and then suggested "there could have been lots of things that made me fall. Panic that made me go down and then I hit that hydro pole." The Appellant unequivocally responded that he did not have a head bleed before "the seizure."

The Appellant agreed with the ambulance record that when paramedics first arrived, he initially declined to be transported to the hospital. He said, "Well, yes, yes…I was walking to my vehicle and I was by my vehicle and then I fell and hit my head." A second team of paramedics arrived and transported him to the [hospital].

When asked to clarify his statement about his 'heart skipping a beat', the Appellant replied that the doctor made that comment. He did not recall the doctor explaining that he had experienced a seizure. He admitted that he did not recall much of what happened after he fell and hit his head, but thought his heart had been restarted at the

hospital. The Appellant denied that the medical record recorded a diagnosis of "withdrawal seizure". He believed this was a comment made in an MPIC report.

The Appellant agreed that prior to falling and hitting his head he had not suffered a severe injury saying, "yeah, I could have walked away easy." He agreed that when he fell and struck his head on the hydro pole, that fall caused the laceration.

MPIC Counsel referred to his physician chart note dated June 26, 2015 that recorded complaints of leg soreness but no headaches, nausea or visual disturbance. The Appellant replied that whatever his doctor had provided in writing, should be correct.

Counsel referred to the July 6, 2015 chart note that stated, "…denies headaches or dizziness". Counsel next referred to a December 22, 2015 letter from the Appellant's doctor that stated he had been off work since July 27th and would continue to be off work until January 15, 2016, because his MVA "caused physical and psychological side effects".

Counsel questioned why there was no record advising the Appellant to remain off work because of headaches or dizziness. The Appellant replied that he remembered seeing a counsellor, and the medical records should record that he was off work due to dizziness. However, the Appellant could not recall when the dizziness started.

At the conclusion of MPIC's questions, the Chair read aloud the following paragraph from [neurologist #1]'s November 23, 2018 report, as follows:

> Fortunately, he was not severely injured and was able to extricate himself from the cab, attending to some of the other injured drivers. When the paramedics arrived, he stood up and walked away from the car only to collapse, apparently demonstrating a generalized seizure.

The Appellant agreed that he provided [neurologist #1] with this information saying, "Yes, it's all correct. I provided the information. That's exactly how I remember it."

Appellant closing submissions:

The Appellant submitted that most of his submission and case is contained in the Indexed File. He voiced his frustration with having to deal with different individuals at MPIC and the Commission, and losing his representative from the Claimant Advisor Office, for reasons he did not understand. He felt that MPIC "dropped the ball" after his Claimant Advisor withdrew from the case.

MPIC closing submissions:

MPIC Counsel provided his written submission to the Commission and the Appellant two days prior to the hearing. Counsel submitted that the Commission must be satisfied, on a balance of probabilities that, but for the MVA, the Appellant would not have suffered a seizure and dizziness.

Counsel pointed out that the issue initially included potential psychological injury but the Appellant withdrew this issue and declined to attend for an independent psychological assessment as requested by MPIC.

Counsel submitted that the following facts appeared to be undisputed. That is, the Appellant was a passenger in a vehicle that collided with another vehicle at an intersection, and that the Appellant suffered two blows to the head: one during and one after the MVA. The Appellant did not complain, or show any signs, of injury or trauma. He declined EMS treatment.

However, shortly thereafter, the Appellant suffered a tonic clonic seizure that lasted approximately one minute. During this seizure, the Appellant fell and struck the left temporal region of his head, resulting in a laceration and hematoma. A second EMS team arrived, treated the Appellant and transported him to the [hospital] for further investigation.

Notwithstanding the conflicting evidence about how and where the Appellant hit his head prior to the seizure, or how much alcohol the Appellant may have consumed prior to the MVA, Counsel submitted that the ultimate issue for the Commission was whether the Appellant's seizure was the result of the MVA. This issue is fundamental because the evidence did not establish that either blow to the head alone, caused the Appellant's dizziness.

On the matter of the first blow to the head, Counsel reiterated both the testimony and documentary evidence that the Appellant exited the vehicle, helped other victims, showed no signs of trauma, and declined initial treatment by EMS. Further, the [hospital] CT scan showed no signs of intracranial hemorrhaging. The emergency physician did not diagnose an MVA-injury (for example, whiplash) but rather, diagnosed a seizure resulting from alcohol withdrawal.

Counsel noted that MPIC's Health Care Services (HCS) Traumatic Brain Injury (TBI) consultant found that the Appellant did not meet the criteria for a permanent impairment related to cerebral concussion or contusion.

MPIC Counsel submitted that the opinions of the Appellant's treating physician did not appear to reference the ER record of seizure, or clarify the nature of the Appellant's head trauma and therefore, were of little assistance. Counsel did note that the Appellant's physician documented and diagnosed the Appellant's struggle with alcohol.

A 2017 assessment and opinion by [neurologist #2] confirmed the Appellant suffered a seizure following the MVA, but he did not comment on a cause. [neurologist #2] also suspected the Appellant's dizziness might be caused by a peripheral vestibular lesion, but he did not comment on which head injury may have led to the suspected lesion. In a second written opinion, [neurologist #2] commented that both trauma, and being in a state of alcohol withdrawal, were known causes of seizures.

[Neurologist #1] examined the Appellant three years post-MVA. His 2018 report confirmed that the Appellant did not sustain the left-sided laceration during the MVA. Counsel submitted that [neurologist #1] two opinions (that alcohol withdrawal was an unlikely diagnosis of the Appellant's seizure, and his dizziness appeared to be a result of the MVA) did not state whether the Appellant's medical records were reviewed.

In fact, [neurologist #1] opinion appeared to contain errors about the Appellant's history with seizures and alcohol. Counsel further pointed out the unanswered question of how

the seizure could be linked to the MVA, considering that the Appellant did not display trauma and was able to function immediately after the MVA

MPIC Counsel then reviewed the HCS opinions by MPIC's medical consultant who considered all of the Appellant's available medical records. The medical consultant noted the EMS record describing the Appellant as not severely injured and able to leave the vehicle to help others, then collapsing from a generalized seizure. This described normal function after the original crash, and mitigated against a diagnosis of TBI.

The medical consultant considered the Appellant's pre-MVA medical history that showed issues with alcohol and, in particular, the Appellant's symptoms of panic attack, shaking, palpitations and sweating when he reduced his alcohol use. In 2014, the medical record showed the Appellant was admitted to the [hospital] with atrial fibrillation. In November 2015, the record showed the Appellant continued to struggle with alcohol use disorder, then entered into sobriety in January 2016.

Counsel referred to the medical consultant's comment about [neurologist #1] conclusion that the Appellant's dizziness was MVA-related. The medical consultant noted that [neurologist #1] did not describe the nature of the dizziness nor any findings commensurate with that diagnosis. Conversely, the Appellant's physician notes say that the Appellant denied headaches and dizziness. Further, the Appellant's physiotherapist queried Benign Paroxysmal Position Vertigo (BPPV) as opposed to post-concussion dizziness. This query was never resolved.

Counsel reiterated that the test for causation is the “but for” test; that is, has the Appellant proven on a balance of probabilities that his seizure and dizziness would not have occurred but for the MVA. If the Commission is satisfied that the Appellant would have experienced the seizure (and resulting dizziness) in any event, then the appeal cannot succeed. Counsel submitted that the facts and medical evidence do not support a finding that the seizure and dizziness would not have occurred, but for the MVA.

Alternatively, Counsel considered the potential situation in which the Commission was unable to decide between two proven scenarios: but for the MVA and but for his alcohol dependency, the Appellant would not have experienced a seizure and dizziness. If, through no fault of his own, the Appellant cannot prove which of these scenarios caused his seizure and dizziness, then the Commission may consider whether the MVA trauma materially contributed to the risk of the Appellant’s seizure and dizziness.

Counsel referred to MPIC’s medical consultant comment that the Appellant’s prior 5-year medical records would have helped clarify the nature of his alcohol use disorder and any propensity for alcohol withdrawal. However, the Appellant refused to provide the signed medical information authorizations to obtain this history. Therefore, the fault lies with the Appellant as to why the causation issue cannot be better resolved.

MPIC Counsel submitted that the Appellant had not proven his claim on a balance of probabilities and requested that the Commission dismiss the appeal.

Legislation:

The applicable sections of the MPIC Act are as follows:

Definitions

> **70(1)** In this Part,
> **"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, . . .
>
> **Powers of commission on appeal**
> **184(1)** After conducting a hearing, the commission may
>
> (a) confirm, vary or rescind the review decision of the corporation; or
>
> (b) make any decision that the corporation could have made.

Substantive Issue:

Whether the Appellant's seizure disorder and dizziness were causally related to the MVA.

Discussion:

The Appellant has the onus of proving his claim on a balance of probabilities. At the start of the hearing, the Appellant confirmed that the real issue for him was his alleged MVA-related dizziness, which prevented him from performing his work as an [text deleted].

The Panel must determine whether the Appellant's dizziness was caused by the MVA as opposed to some other cause. If there is more than one probable cause of the Appellant's dizziness, and the Appellant is unable to establish through no fault of his own, which is the cause of his dizziness, then the Panel may consider whether the MVA materially contributed to his dizziness.

Seizure

The Appellant was forthright in admitting to his struggles with alcohol, but maintained that this was irrelevant to the issue of whether his seizures and dizziness were MVA-related. The Panel appreciated the Appellant's candor about his past alcohol use.

While the Panel agrees that it is unnecessary to focus the analysis on the Appellant's past struggles with alcohol, the Panel disagrees that his past medical history, including withdrawal seizures, is irrelevant.

The Appellant experienced a seizure at the scene of the MVA which may have resulted in a head injury with related dizziness. Therefore, the Panel must look at whether the seizure (and potential dizziness) was MVA-related or related to a pre-existing seizure condition. This necessarily required a review of the Appellant's past medical history.

The Panel finds that the medical records are clear and undisputed that immediately following the MVA the Appellant did not display any trauma and was able to exit the vehicle, call 911 and assist victims in the other vehicle. The medical records are clear, and the Appellant testified, that approximately 3-4 minutes later he experienced a "tonic clonic" (i.e. grand mal) seizure and fell, hitting his head on a metal hydro pole. He lost consciousness and suffered a laceration on the left temporal region of his head that required four staples to close.

Imaging at the [hospital] determined that the Appellant suffered no intracranial or cervical spine abnormalities, and the emergency physician diagnosed "seizure/ETOH withdrawal". This diagnosis appeared to also be based upon the Appellant's information

that he drank daily, had a few drinks that day, and the EMS documented signs of intoxication.

The Panel also considered the Appellant's December 2014 hospital record for treatment when he fell off a ladder, possibly from a seizure. That emergency record diagnosed "alcohol withdrawal". (The Panel also notes that the record referred to a prior visit in September 2014 at which the Appellant was diagnosed with atrial fibrillation. The Appellant testified that this heart issue was diagnosed at the time of his MVA. He apparently confused the September 2014 visit with the June 2016 MVA visit.)

The Panel does not place significant weight on [neurologist #1] November 23, 2018 opinion that "alcohol withdrawal seizure…is an unlikely diagnosis." [Neurologist #1] opinion is three years post-MVA and essentially relied upon information from the Appellant. The Appellant agreed he had little memory about the MVA seizure, and his medical history recall is not accurate concerning his atrial fibrillation. [Neurologist #1] also appeared unaware of the Appellant's past difficulty with alcohol. Therefore, the Panel did not rely on [neurologist #1] opinion as it was based upon unreliable underlying facts.

MPIC's medical consultant reviewed all of the Appellant's available medical records, and discussed the deficiencies in [neurologist #1]'s opinion. Based upon the medical records, which the Appellant deemed correct, MPIC's medical consultant opined that the Appellant's seizure was probably related to alcohol withdrawal and not the MVA.

The Panel prefers MPIC's medical consultant opinion over [neurologist #1]. Therefore, based upon the medical evidence and MPIC's expert opinion, the Panel finds that the seizure was probably not MVA-related.

Dizziness

According to his available medical records dated between May 1, 2013 and January 29, 2016, the only mention of dizziness is a chart note dated July 6, 2015, which stated, "denies headaches or dizziness." The Appellant saw [neurologist #2], on or about April 25, 2017. MPIC requested from [neurologist #2] a detailed narrative report, opining on "the most probable diagnosis/etiology of the event that took place after the MVA, where-in [the Appellant] fell and was injured". MPIC provided [neurologist #2] with the Appellant's medical evidence available at that time.

The October 11, 2017 report of [neurologist #2] referred to the MVA and stated "since that time" the Appellant experienced dizziness, which he described as a light-headed sensation when he bends over or turns quickly. Presumably, "since that time" meant since the MVA.

The Appellant variously testified that "it was a while after the MVA" and, "it took about a month" for the dizziness to start. However, his medical chart notes do not record dizziness at all. [Neurologist #2] 'suspected' a peripheral vestibular lesion as a result of "the head injury". However, while noting that the Appellant hit his head both on impact, and again after the seizure, [neurologist #2] did not define what he meant by "head injury". [Neurologist #2] recommended vestibular therapy.

The vestibular therapist's report dated January 3, 2018 queried possible BPPV versus post concussion dizziness. First, the Panel notes that the Appellant was never diagnosed with an MVA-related concussion. Second, the therapist's vestibular report does not resolve whether BPPV or concussion was causing the dizziness, because the Appellant experienced panic and anxiety during the treatment, which was then discontinued. There are no medical records evidencing follow-up assessments.

In his report of November 23, 2018, [neurologist #1] opined that "the dizziness appears to be the sequelae of the accident". However, [neurologist #1] did not identify what was causing the dizziness or provide any basis for his opinion.

MPIC's medical consultant pointed out [neurologist #1]'s lack of description about the nature of the Appellant's dizziness, and the absence of an underlying factual basis for his conclusion about the Appellant's dizziness. MPIC's medical consultant concluded that the probable diagnosis for the Appellant's dizziness was unknown. The Panel again found MPIC's medical consultant opinion to be more objective and well founded in respect of the Appellant's dizziness, and therefore prefers it over [neurologist #1]'s opinion.

Based upon the current available medical records and MPIC's expert opinions, the Panel finds on a balance of probabilities that the Appellant's dizziness is not MVA-related. Because the Panel finds that neither the seizures nor dizziness is MVA-related, it is not necessary to consider any material contribution to risk.

Disposition:

The Panel finds that the Appellant has not proven on a balance of probabilities that his dizziness is MVA-related. Therefore, he has not proven that he suffered a bodily injury caused by an automobile pursuant to section 70 of the Act. The Panel confirms the decision of MPIC and dismisses the appeal. Of course, should the Appellant provide new medical information, the corporation may make a fresh decision in respect of the Appellant's claims for compensation.

Dated at Winnipeg this 21st day of September, 2022.

PAMELA REILLY

LINDA NEWTON

PAUL TAILLEFER