Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-20-202

PANEL:	**Pamela Reilly, Chairperson** **Sandra Oakley** **Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Hayley Main.**
HEARING DATE:	**April 27, 2022**
ISSUE(S):	**Whether there is a causal link between the MVA and the Appellant's right shoulder injury and need for surgery.**
RELEVANT SECTIONS:	**Section 70(1) of The Manitoba Public Insurance Corporation Act ('MPIC 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:

On May 24, 2017, the Appellant was stopped at a red light when he was rear-ended and propelled into another vehicle, resulting in approximately $5,342.07 of damages to his vehicle (the "MVA"). The Appellant contacted MPIC and scheduled a medical appointment. The Appellant continued to work in his [text deleted] business.

On or about July 19, 2017 the Appellant attended his first medical appointment post-MVA. In or about August 2017, the Appellant attended for his initial physiotherapy treatment, which continued until April 4, 2018.

On or about February 25, 2020 the Appellant contacted MPIC to advise that he had right shoulder surgery on February 24, 2020 for a torn labrum and was seeking Income Replacement Indemnity ("IRI") benefits.

MPIC opened a file and obtained medical records from the Appellant's physiotherapist (dated August 2017 to April 2020), treating physician and surgeon. MPIC concluded that there was no medically probable cause and effect between the MVA and the Appellant's right shoulder condition. This decision was upheld on review by Internal Review Decision ("IRD") dated November 20, 2020.

The Appellant disagreed and appealled the November 20, 2020 Internal Review Decision ("IRD") to the Commission.

Issue:

Whether there is a causal link between the Appellant's right shoulder condition and need for surgery, and the May 24, 2017 MVA.

Decision:

The Commission finds that the Appellant has not proven, on a balance of probabilities, that there is a casual link between his MVA and his right shoulder condition. The appeal is dismissed and the IRD of November 20, 2020 is confirmed.

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 videoconference 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. These documents are numbered for ease of reference by the parties and the Panel. Attached to these reasons and marked as Schedule "A" is a copy of the Indexed File Table of Contents.

Appellant testimony

The Appellant testified that, at the time of the MVA, he was [age]. He owned, operated and had worked in his own [text deleted] company for 22 years. He has a degree in business administration. He, his wife and three children live outside of the city and he does not have reliable internet access. He said that he has always been in "great health."

He said that on May 24, 2017, he was stopped at a red light when he was rear-ended by a 5-ton truck, which propelled his truck into the vehicle ahead of him. He said that he started experiencing right shoulder pain and booked an appointment to see [text deleted] ([Doctor], [clinic]) on July 19, 2017. [Doctor] ordered an x-ray, an MRI and prescribed physiotherapy.

The Appellant attended his first physiotherapy treatment on August 1, 2017. He said that MPI paid for the physiotherapy and therefore accepted that his right shoulder injury

is motor vehicle related. In referring to the August 1, 2017 physiotherapy assessment, he noted the comment about his hand being on the top of the steering wheel at the time of impact. He confirmed that this was his right hand.

The Appellant referred to [Doctor]'s note dated January 23, 2018 and the comment, "no change mri normal p labral tear". The Appellant said that the "p" meant 'partial' "labral tear."

The Appellant referred to a letter dated January 26, 2018 addressed to [Doctor] from [text deleted] (orthopaedic surgeon, [clinic]) to whom [Doctor] had referred him. Pending his appointment with the Appellant to assess his "shoulder pain," [Orthopaedic Surgeon] recommended treatment modalities of oral analgesics and anti-inflammatories; activity modification; physiotherapy; and, corticosteroid injection.

The Appellant said that physiotherapy was not working and referred to the chart note of his physician dated April 3, 2018 that showed his physician referred him to another doctor to receive a corticosteroid injection, which first occurred on April 19, 2018. He said he continued with corticosteroid injections every 2-3 months for the next 11 months. The injections only temporarily eased his pain. He knew the injections were not a long-term solution.

He said that during this time he had minimal contact with MPI and that he was assigned to a team. He was never assigned a case manager and had never been informed of Personal Injury Protection Plan ("PIPP") benefits. He said that he anticipated being booked for his shoulder surgery in the fall of 2019, because the fall is past his busy part

of the year for [text deleted]. He said that had he known that compensation for lost wages was available, he may have opted to have the surgery earlier in the year.

The Appellant held up a copy of a PIPP Benefits Booklet and said this booklet is not readily available in any of the more rural MPIC outlets; only the more limited folded brochure. Therefore, he knew nothing about PIPP benefits. He was critical of the manner in which MPIC handled his file, and in particular, how MPIC failed to provide information.

Unfortunately, the Appellant's surgery was delayed until February 24, 2020 because his pre-op medical forms were lost and he had to attend for another pre-op assessment and complete further forms. He said that it was only post-surgery that his surgeon suggested he contact MPI to advise that his physiotherapy should recommence. This is why he contacted MPIC on February 25, 2020. This is also the first time MPIC made him aware of the PIPP Benefits booklet.

The Appellant referred to the MPIC file note dated February 25, 2020 in which he asked why he had not been provided with the information earlier and was told that "MPI is being environmentally friendly." The Appellant characterized this response as MPI hiding what an insured motorist is entitled to.

The Appellant said that he submitted his receipts and was paid his travel expenses up until his surgery date, as confirmed in the file noted dated March 30, 2020. He pointed out that since MPI paid his medical and travel expenses, his physiotherapist visits and cortisone shots to December 2019, it therefore accepted responsibility right up until 2

months just prior to his surgery. He said the implication was that MPIC alleged he injured his arm in that two-month window.

The Appellant requested that MPIC pay for post-surgery medical expenses such as a pulley mechanism for exercising his shoulder and TENS equipment, which MPIC denied. He said this denial of expenses affected his treatment and it took 19 weeks for him to get back to normal duties.

The Appellant referred to the Indexed File documents that state the damages to his truck totalled $5,342.07. He referred to this as “a lie” because he in fact received a cheque for a total write off amount. He also disagreed with the description in the April 27, 2020 Health Care Services (“HCS”) Review of his MVA being “minor”.

The Appellant referred to the photo accompanying the HCS Review that depicted a hitch at the back of his truck. He said “This hitch prevented more damage to the truck.” He also said that “this receiver is rated for 12,000 pounds. So this will take the brunt of 12,000 pounds.” He said we must consider that he was propelled into the vehicle ahead of him. Therefore, he said, “The comment about ‘minor rear collision’ – that’s false.”

The Appellant took issue with the author of the MPIC HCS reports being referred to as a “consultant”, saying this did not provide enough information of their credentials or expertise, or whether the person was even a doctor. He presumed that “consultant” meant ‘health care aide’ who would, therefore, be unqualified to provide a report.

The Appellant stressed that he "was in great health" prior to his MVA. He had no medical history of shoulder pain or anything of that nature, which is why he did not have a regular doctor. Conversely, he said that after his MVA, he had not stopped seeing doctors. Therefore, to say that his injury occurred years after his MVA is false.

He said that his injury begins and ends with his shoulder problem and from day-one he started feeling pain in his shoulder. He had no prior problem and asked, rhetorically, where in the two-month period between December 2019 and February 2020 did his injury occur?

The Appellant said that MPIC had a flawed system; one in which he reported to a team rather than a case manager. No one provided him with the PIPP information booklet to advise him what his entitlements were as an insured motorist. He said that everything to which he had testified stemmed from his MVA, which led to his shoulder injury. He sought IRI benefits for the work he missed in relation to his shoulder surgery.

Appellant: cross-examination

In response to questions, the Appellant confirmed that he has age-related arthritis but that his surgery was for a tear and "they cleaned up the arthritis." MPIC Counsel questioned the Appellant about a March 19, 2020 report from [orthopaedic surgeon] regarding his follow-up visit. [Orthopaedic surgeon] noted the Appellant's comments about his left shoulder being uncomfortable, and also referred to a left shoulder MRI which "demonstrated degenerative tearing of his posterosuperior labrum, but no rotator cuff pathology". The Appellant said that he had left shoulder pain as a result of overcompensating with his left arm after his right shoulder surgery. The Appellant did

not deny the diagnosis of degenerative changes but said this was basically wear and tear, which is a part of aging.

The Appellant said that immediately after the MVA he contacted MPI and made a medical appointment, however, he was not able to see a doctor until July. MPIC Counsel suggested that the "p" in front of [Doctor]'s January 23rd medical note referred to "possible" rather than "partial", as he believed. The Appellant maintained that the interpretation of 'partial' corresponded with everything else in the file.

Counsel referred the Appellant to the MRI Arthrogram (also referred to as an MRIA) of the Appellant's right shoulder, dated March 15, 2018, which states "no evidence of labral tear. Mild to moderate acromioclavicular joint osteoarthritis." MPIC Counsel next directed the Appellant to [Doctor]'s notes dated April 3, 2018 which state "ac mri a no labral tear…" The Appellant maintained that the December MRI follow-up does show a labral tear.

MPIC Counsel referred the Appellant to a December 20, 2017 MRI report of his right shoulder which states "no labral tear is demonstrated…" The Appellant maintained that [Doctor]'s chart note of January 23rd, to which he had previously referred, contradicted the MRI, and the labral tear was reaffirmed by [Orthopaedic Surgeon] in that he repaired a labral tear. In support of this, the Appellant referred to the February 24, 2020 operative report of [Orthopaedic Surgeon] that reported a "partial articular-sided supraspinatus tear".

In response to further questions about medical evidence of a labral tear, the Appellant said his understanding is that the labrum is part of the rotator cuff. He conceded he is

not a doctor and the only tear he was aware of was the rotator cuff. He did not know what the labral was. He said he did not call his doctor to testify and explain because "it's in the report."

When pressed on the fact that, after having an MRI, his doctor's notes on April 3, 2018 recorded "no labral tear", the Appellant responded that his doctor is not the surgeon and the surgeon said there was a tear. He reiterated that prior to 2017 he had no issues. He said that the mechanism of having his arm on the steering wheel, being hit by a 5-ton truck, then hitting the car in front, caused his right shoulder injury. He reiterated that July 19, 2017 was the earliest medical appointment he could get after his MVA.

MPIC Counsel addressed the Appellant's testimony about the lack of qualifications of the HCS consultant and asked if the Appellant received the Commission email dated March 25, 2021 that updated the Indexed File Table of Contents by providing the name of the consultant who completed medical reviews on behalf of MPIC. The Appellant denied receiving the email and noted that his internet accessibility is not great.

In response to questions about the physical demands of his [text deleted] work, the Appellant agreed that he also does some of the manual labour. However, he said that he uses machinery to complete the physically demanding work, such as digging post holes. He has never had a workplace injury, nor have his employees had workplace injuries because he chooses to work smart.

The Appellant said that because he owns his business he can dictate work to his employees. He confined his lifting or wheelbarrow work to less than 10 lbs. He said he

only lifted empty pallets weighing 15-20 lbs. to a height of 1 ½ feet off the ground, into the back of a truck or trailer. If he did overhead work, such as installing Christmas lights with plastic clips or staple guns, he stopped if he felt pain.

The Appellant said that his busy season is July and August and, at best, during the busy season, the time he spent performing the physical work would range from 15-20 hours per week. He reiterated that if work such as pulling gravel with a rake or any major arm extension movement caused him pain, he would stop.

He agreed that after the MVA he continued with his work-out routine at the gym, which consisted mostly of cardio. He worked with weights every 2nd or 3rd week, at best. His work with weights involved free weight dumbbells performing curl-ups. He said that he is a [sport] player and as such, he uses his legs. He said, “I have manual work, I don’t need to go to the gym for that.”

The Appellant maintained his position that MPIC had assumed responsibility for his shoulder injury because it paid for his physiotherapy and that MPIC had “dropped the ball” by not telling him he could claim for other expenses such as cortisone treatment. He said he did not know who to call when his physiotherapy ended and further pointed out that, if he is unaware that he is entitled to benefits, why would he call.

In response to MPIC Counsel putting to the Appellant MPIC’s position that his right shoulder surgery in 2020 was the result of degenerative changes and not related to the MVA, the Appellant responded that if his right shoulder resulted from degenerative changes then, being ambidextrous, his left shoulder would be similarly affected. He

said that while he might have arthritis in his left shoulder he can move it freely and fully (which he demonstrated).

In response to a Panel member question, about whether he considered attending to a hospital emergency room upon learning that he could not see a doctor until July, the Appellant responded that he has a high pain threshold, his injuries were mostly overhead and cross adduction, he was working long hours in May and did not have time to sit in an emergency room for 5-6 hours. He managed his pain with Tylenol, Aleve and other pain medications. The Appellant concluded saying that given the mechanism of the blunt force trauma while holding the steering wheel, there was no other explanation for his injury.

Appellant Closing Submission

The Appellant submitted that prior to his May 2017 MVA he had no prior medical history of injuries or treatment for stiffness, pain, suffering or anything like that, related to his shoulder. Post MVA, he saw doctors and surgeons, and had cortisone shots, all stemming from his MVA.

He submitted that it is false for MPI to say his injuries are not MVA-related, because the evidence shows that they are all MVA-related. MPIC assumed responsibility for his expenses up to December 2019 but then responded in February 2020 that it was not responsible. He said that in this two-month time period he was not [working], playing [sport] or doing anything. Therefore, he asked, rhetorically, where did his injury occur? He submitted that he demonstrated how the blunt force from the MVA, with his arm on the steering wheel, was the only explanation for his shoulder injury.

MPIC Closing Submission

MPIC Counsel submitted that the issue is governed by s. 70(1) of the Act and whether the Appellant's right shoulder injury was caused by the MVA. The onus is on the Appellant to show, on a balance of probabilities that his right shoulder condition leading to surgery, was caused by the MVA 3 years prior.

Counsel submitted that there are three parts to the causal relationship; was there a probable cause; was there a probable effect; and, was there a temporal connection between the cause and effect. MPIC's position is that the diagnosis that required surgery involved symptoms of degenerative changes in the acromioclavicular ("AC") joint.

These degenerative changes in the AC joint are noted in the surgeon, [text deleted]'s report. In addition, the first MRI dated December 20, 2017 states "Mild to moderate acromioclavicular joint osteoarthritis." Counsel submitted that the objective evidence and physician notes of [Doctor] show that, while it may have been suspected, there was no evidence of a labral tear.

[Doctor] was not called to clarify what the "p" meant in his notes. Further, even if the "p" in [Doctor]'s January 23, 2018 notes meant 'partial', after the Appellant's MRIA, [Doctor] reconsidered that assessment in his April 3, 2018 note, which states, "ac mri a no labral tear".

On the matter of the distinction between labral tear and rotator cuff tear, counsel noted again that the first MRI dated December 20, 2017 concluded with "no rotator cuff tendon

tear demonstrated." The following MRIA dated March 15, 2018 stated, "There is no evidence of rotator cuff tear" and "no evidence of a labral tear."

Counsel next referred to the April 1, 2020 report of [Orthopaedic Surgeon], in which he states on page 2, as follows:

> It was also evident arthroscopically that he had a low-grade partial articular-sided supraspinatus rotator cuff tear. Whether or not this was a degenerative tear versus a traumatic tear is difficult to discern.

Counsel pointed out that [Orthopaedic Surgeon] could not say whether the tear he found during surgery was degenerative or traumatic in nature. However, she submitted that the probable effects we are talking about are the diagnoses set out in [orthopaedic surgeon]'s February 24, 2020 operative report, as follows:

> 1. Right shoulder low grade partial articular-sided supraspinatus tear.
> 2. Subacromial impingement/subacromial bursitis.
> 3. Symptomatic acromioclavicular joint arthritis.

Counsel submitted that the medical opinions in the Indexed File do not conflict, which was the reason MPIC did not call its medical consultant as a witness. She referred again to [Orthopaedic Surgeon]'s April 1, 2020 narrative report at page 2 and read, as follows:

> It is very difficulty for me to discern whether the symptoms he is having in his shoulder are the result of a motor vehicle accident. He certainly did have some degenerative changes within his acromioclavicular joint, which would not be related to a motor vehicle accident but he was asymptomatic in his shoulder prior to this accident. It is possible that the motor vehicle accident aggravated the underlying arthritis within his acromioclavicular joint rendering it symptomatic.
>
> At the time of his arthroscopic shoulder surgery on February 24th, 2020, the diagnosis of subacromial bursitis as well as acromioclavicular joint arthritis were confirmed. It was also evident arthroscopically that he had a low-grade partial articular-sided supraspinatus rotator cuff tear.

> Whether or not this was a degenerative tear versus a traumatic tear is difficult to discern.
>
> [The Appellant] did not describe any pre-existing shoulder pain prior to his motor vehicle accidents [sic]. He did however have radiographic evidence of acromioclavicular joint arthritis, which is a very common finding amongst the patients in this age category and is often asymptomatic.

Counsel submitted that the opinion of [Orthopaedic Surgeon] speaks to a possibility but not a probability. He was unable to say whether these conditions that led to the Appellant's surgery were probably related to the MVA.

Counsel next referred to MPIC's medical consultant reports dated April 7, 2020 and June 27, 2020. She read the following from the April 7, 2020 report:

> Information relating to the circumstances surrounding the incident in question seems to indicate [the Appellant] was involved in a minor rear collision on May 24, 2017. With this in mind it is reasonable to opine [the Appellant] was not exposed to a significant transfer of force.
>
> According to information obtained from the physiotherapy clinic notes and [Orthopaedic Surgeon] [the Appellant] was employed as a landscaper, which has been described as a labour intensive form of work. It is noted that [the Appellant] was able to continue working following the incident in question as well as work out at the gym.
>
> . . .
>
> Presently the claim file does not contain information indicating the incident in question structurally altered [the Appellant's] right shoulder. It is reasonable to opine the physical challenges [the Appellant] exposed the right shoulder to (i.e., work, gym work outs and day-today [sic] living) following the incident in question, far exceed the physical challenge the shoulder might have been exposed to during the incident.

Counsel acknowledged that no collision is insignificant and that the Appellant disputes the characterization of his collision being "minor". However, she submitted that it was important to keep in mind that the Appellant did not require immediate hospital

attendance and he did not suffer any other injuries. She submitted that the medical consultant's opinion that the Appellant was "not exposed to a significant transfer of force" was supported by the other evidence of his ability to continue working and go to the gym.

Counsel referred to the second medical consultant opinion, which was provided after MPIC received additional medical information from [Doctor], as well as Manitoba Health Records. The consultant concluded that, based upon the totality of the evidence in the claim file, a medically probable cause and effect relationship cannot be established between the MVA and the documented right shoulder issues.

Counsel summarized the evidence. She noted the consultant's comments about the Appellant's other physical activities which might have exceeded the force of the MVA. The Appellant testified that during his landscaping duties he felt pain, his activities caused flare-ups and he would stop the activity. She submitted that these activities made it less likely and very difficult to attribute the shoulder surgery to the MVA.

She noted that the evidence of degenerative tearing to the Appellant's left shoulder is some evidence that his right shoulder condition is also the result of natural degenerative changes and not the MVA.

Finally, Counsel pointed out the notable break in the temporal relationship between the MVA and treatment for the Appellant's right shoulder. She submitted that if the MVA had caused an aggravation of his degenerative condition, he likely would have required medical attention sooner than his initial July 19, 2017 visit to [Doctor].

MPIC Counsel addressed the Appellant's comments that MPIC's coverage for physiotherapy is evidence it accepted his shoulder condition. She submitted that there is no evidence on file of MPIC's express acceptance of liability. She also submitted that the failure to provide the Appellant with a PIPP Guide does not assist the Appellant on the issue of causation. The medical evidence does not conflict and there is no evidence that speaks against MPIC's medical consultant that no causal relationship exists.

Appellant rebuttal

The Appellant responded that there is nothing else in the evidence, other than the MVA, to show what caused his injury. He has no prior history of degenerative changes in his shoulder and therefore this is more than enough probable cause. He reiterated that being hit by a 5-ton truck is not minor. Rather, this is a huge hit, which created the second impact in front of him. He explained that this is the transfer of force that, more likely than not, caused the injury to his shoulder.

Substantive Issue:

Whether there is a causal link between the MVA and the Appellant's right shoulder injury and surgery.

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.

Discussion:

The onus is on the Appellant to prove on a balance of probabilities that it is more probable than not, that the MVA caused his right shoulder condition that led to his February 24, 2020 surgery.

Qualifications of HCS Consultant

As a preliminary matter, the Panel noted the Appellant's comments about not being informed as to the identity of MPIC's consultant, and his assumption that the author of the HCS Reviews was not qualified to provide opinion evidence. As the Panel stated to the Appellant during the hearing, the Commission has experience with MPIC's various consultants and the Panel had been informed of the identity of this particular consultant.

MPIC Counsel also questioned the Appellant about whether he received the March 25, 2021 email that attached the updated Indexed File Table of Contents showing the name of the HCS author. It appears that the Appellant either did not receive or retain this email. The Panel assures the Appellant that the file contains the March 25, 2021 email

addressed to him and further confirms that the HCS Reviews were completed by [text deleted] who is a known, qualified medical practitioner.

Causation

The Panel considered the mechanism of the MVA as described by the Appellant including being rear-ended by a 5-ton truck, while he had his right hand placed on the steering wheel. The Panel finds that there is no medical evidence that the position of his hand on the steering wheel affected or contributed to the type of symptoms he experienced with his right shoulder.

The Appellant emphasized and reiterated that the hitch located at the back of his truck can take the brunt of 12,000 pounds and this prevented worse damage to his truck. The implication of this testimony is that the hitch absorbed some of the impact from the collision. The Panel finds it noteworthy that the medical records do not document, nor did the Appellant testify to, any injury other than right shoulder injury (for example there was no evidence of whiplash type injury to the neck or back).

The Appellant testified that he “started experiencing right shoulder pain” and that he immediately made a medical appointment. His first medical appointment was with [Doctor] on July 19, 2017. The Appellant testified that he was working long hours in May 2017 and did not have time to wait in an emergency room for 5-6 hours. He managed with analgesic medication.

The Appellant’s March 10, 2020 Application for Compensation (“AFC”) says that his business is [text deleted] and his typical weekly average hours are: “spring 60-65,

Average about 40-50". He listed his "essential duties or tasks" as "[text deleted], [text deleted], depends on the season". During the hearing, he testified that his on-site work, assisting with [jobs], was in the range of 15-20 hours per week.

The Appellant's testimony about his busy season is somewhat inconsistent. He testified that his busy season is July and August. He next testified that he was working long hours in May. This testimony is corroborated by the statement in his AFC that he works longer hours in the "spring".

The Panel puts more weight on the Appellant's written statements in his AFC about his work duties and hours. The Panel finds that the Appellant worked long hours performing essential [text deleted] labour and [text deleted] duties, between his May 24, 2017 MVA and his July 19, 2017 appointment with [Doctor]. The Appellant's decision to continue working prior to his initial medical appointment, and to delay surgery until the fall also supports the Panel's finding that the Appellant was more involved in the hands-on physical aspects of his business than he presented.

The physiotherapy records document and support MPIC's HCS Consultant's comments that the Appellant experienced periodic worsening of his shoulder symptoms when performing his landscaping duties (i.e., moving a pallet, installing Christmas lights) and performing bench press at the gym.

The Panel does not find that the "p" referred to in [Doctor]'s medical note (i.e. "p labral tear") means "partial". This would be inconsistent with [Doctor]'s July 19, 2017 chart note stating "p xray mri". It makes little sense to perform a 'partial' x-ray or MRI. The 'p'

may also refer to a common medical record system known as SOAP that documents symptoms, objective or observed findings, assessment, and plan, and which is also found in the Appellant's physiotherapy treatment records from the same clinic. However, this is speculative and without [Doctor]'s testimony to explain, the Panel places little weight on this evidence.

The X-ray, MRI and MRIA reports conducted within the first 10 months after the MVA state that no soft tissue abnormality was identified, there was no labral tear and there was no rotator cuff tear. The MRI and MRIA reports showed mild to moderate acromioclavicular joint osteoarthritis. This was confirmed by the Appellant's surgeon, [Orthopaedic Surgeon], who stated that the Appellant had "joint space narrowing and osteophyte formation about the right AC joint", which was confirmed by the MRI scan. [Orthopaedic Surgeon] stated that these degenerative changes were not related to the MVA.

The Appellant focused on MPIC's payment of his medical expenses to December 2019 as proof that it accepted liability for his claim. MPIC's concession to pay for expenses appears to have been made after the Appellant made contact on February 25, 2020. It is not necessarily out of the ordinary for MPIC to cover certain expenses while investigating causation. The Panel agrees with MPIC Counsel that this concession during investigation does not equate to evidence that MPIC has made an assessment and finding of causation. To make that assessment, MPIC required and obtained the Appellant's medical records.

The Appellant submitted that MPIC considered his injury to have occurred in the two-month time period between December 2019 and February 2020. However, this disregards the eight-week time period between the May 24, 2017 MVA and his first medical appointment of July 19, 2017 in which he worked long hours during his busy season, performing physical duties in his [text deleted] business. It also disregards the August 17, 2017 to April 13, 2020 physiotherapy treatment records that document pre-surgical flair-ups of pain immediately after the Appellant performed certain [text deleted] duties or gym work-outs. These intervening time periods impact negatively upon finding a causal link.

The Panel finds that the medical documentation is unequivocal, consistent and undisputed that there was no labral or rotator cuff tear in the Appellant's right shoulder in the 10 months following the MVA. [Orthopaedic Surgeon], the Appellant's treating surgeon, can only state that it is possible, not probable, that the MVA aggravated the Appellant's underlying arthritis within his AC joint, rendering it symptomatic. [Orthopaedic Surgeon] stated that it was difficult to discern whether the supraspinatus rotator cuff tear noted during surgery, was degenerative or traumatic. This is not proof of causation on a balance of probabilities. The HCS Medical Consultant also concluded there was no causal link.

The Panel heard and understands the Appellant's frustration and indignation about not being advised in a timelier manner about his PIPP Benefits. The MPIC comment about being "environmentally friendly" came across as disingenuous.

However, the Panel finds that being more timely with this information would not have changed the outcome of the diagnostic X-ray, MRI or MRIA reports all of which were relied upon by the various medical practitioners to support their conclusions that the MVA and the shoulder condition and surgery are probably not causally related. The Panel therefore finds that the Appellant has not proven his case on a balance of probabilities.

Disposition:

The Appellant's appeal is dismissed and the Internal Review Decision dated November 20, 2020 is confirmed.

Dated at Winnipeg this 7th day of July, 2022.

PAMELA REILLY

SANDRA OAKLEY

PAUL TAILLEFER