Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-3

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by** **Mr. Tom Strutt** **[Text deleted], the Appellant, appeared on her own behalf**
HEARING DATE:	**April 9th, 1998**
ISSUE:	**Whether MVA injuries prevented Appellant's employment.**
RELEVANT SECTIONS:	**Section 85(1) of the 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

THE FACTS:

[Text deleted], the Appellant, was a passenger in a [text deleted] automobile when, on October 4th of 1996, that vehicle was rear-ended by a [text deleted]. The back of the seat was apparently covered by a mantle of wooden beads, of the kind believed by some motorists to bring a measure

of comfort by a form of massaging motion. In the event, she complained of pain in her neck, mid and lower back as a result of that accident.

At the time of her motor vehicle accident, [the Appellant] was unemployed. Some time prior to 1991 she had been employed for about twenty years as a Bookkeeper for [text deleted]; from early 1991 to late 1992 she had worked for a manufacturing firm as a Bookkeeper, but had not been gainfully employed from the end of 1992 until the date of her accident. On August 19th, 1996 she had registered with [text deleted] by way of an application for employment as an Accounting Clerk, either on a temporary or full-time basis, whichever first became available, although it is noteworthy that, having moved from [text deleted] to stay with her sister in [text deleted] at or about the middle of October of 1996 (shortly after her motor vehicle accident) she did not think fit to mention that to the people at, who found that she had disconnected her phone on November 1st of 1996 and had no idea where she was.

On September 10th of 1996, [the Appellant] had made a tentative arrangement with a company called [text deleted], whereby she was to purchase ladies' lingerie from that company and resell it by organizing parties at the homes of her customers. She was to have received what might be called a starter kit, consisting of fourteen different items of lingerie; if, within three weeks of receiving that kit, she had held a so-called Grand Opening, had made from $310.00 to $450.00 in sales and had booked a further five residential lingerie sales parties, then she would be entitled to keep the free fashion kit; failing the achievement of those targets, the kit had to be returned or paid for. In fact, by the time of her motor vehicle accident [the Appellant] had not even received the kit, let alone held her Grand Opening or made any sales.

On the strength of that background, she claims that she was either employed at the time of the accident and prevented from continuing that employment because of the accident, or in the alternative that she was precluded from commencing employment either as a Bookkeeper or as a [text deleted] Salesperson because of the accident.

Now, let us look briefly at the medical evidence, all of which is given by [the Appellant's] own medical and chiropractic caregivers and not by anyone in the employ of, or selected by, Manitoba Public Insurance Corporation.

THE EVIDENCE OF [APPELLANT'S DOCTOR]:

[Appellant's doctor] is a family physician practising in [text deleted] who has been [the Appellant's] general practitioner for some time. He saw [the Appellant] twice following her motor vehicle accident of October 4th. At the first examination, on October 25th of 1996, [the Appellant] complained of an ongoing, sharp pain in the neck and of insomnia. He did not attribute the insomnia to any particular discomfort since, as he put it, she has always been a poor sleeper. The range of motion of her neck and shoulder joint was normal, as were the results of examinations of her lungs, chest wall and blood pressure. [The Appellant] complained of tenderness over the right scapula, especially at the site of supraspinatus and infraspinatus. [Appellant's doctor] arranged for an X-ray to be taken of [the Appellant's] neck which disclosed no abnormalities of any kind.

His second exam was carried out on April 22nd of 1997 when, for the first time, [the Appellant] complained of right-sided lower chest wall pain overlying the rib cage. She told him that the pain had been continuous and was worse with lifting weight. [Appellant's doctor] noted "minor tenderness with compression of the chest wall". The location of the maximum pain was overlying the right rib cage at the level of T10 and mid-axillary line. Otherwise her chest and abdominal examinations were normal and a subsequent chest X-ray and bone scan were also normal. At the time, [the Appellant] was receiving chiropractic treatments about four times per week. [Appellant's doctor] expressed the opinion that she required only minimal ongoing therapy and that chiropractic manipulations should be reduced. He had been subpoenaed by [the Appellant] to give evidence at the hearing, at which point he explained that his written opinion really meant that she should be weaned away from chiropractic manipulation as soon as possible since he was concerned about the likelihood, in this particular patient, of increased dependency. He expressed the opinion, both in writing and at the hearing, that [the Appellant] was able to bend or lift and had no marked functional limitation. He saw no difficulty with her returning to full-time work.

At the time of [the Appellant's] visit to [Appellant's doctor] her only complaint related to her neck; on the second visit, her only complaint related to her rib cage. At the April 22nd visit, [Appellant's doctor] added, [the Appellant] had driven into [text deleted] from [text deleted] and was lying on the floor of his outer office, insisting that she had to lie down somewhere because of her pain. [Appellant's doctor] was unable to discover any objective signs giving rise to such a display.

THE EVIDENCE OF [APPELLANT'S CHIROPRACTOR #1]:

[Appellant's chiropractor #1] is a doctor of chiropractic, whose office is in [text deleted]. He had treated [the Appellant] on eleven different occasions between July 15th of 1996 and the date of her accident, for a previous history of left sacroiliac discomfort with radiating pain to the posterior aspect of her left knee. He expressed the view, both orally and by an earlier, written report, that none of [the Appellant's] symptoms related to the lower back were in any way connected to her motor vehicle accident; those symptoms predated her accident. [Appellant's chiropractor #1] who, like [Appellant's doctor] and [Appellant's chiropractor #2], was candid and helpful in his evidence, also expressed the view in written reports and in his oral testimony that he did not believe [the Appellant's] motor vehicle accident caused any functional limitations in terms of lifting abilities.

THE EVIDENCE OF [APPELLANT'S CHIROPRACTOR #2]:

[Appellant's chiropractor #2] carries on his chiropractic practice in [text deleted], Manitoba, to which city [the Appellant] moved at about mid-October of 1996. He first saw [the Appellant] on November 7th, 1996. She told him that she had had no low back pain prior to her motor vehicle accident - a statement that was patently untrue. She also told [Appellant's chiropractor #2] that she was a self-employed Bookkeeper and that she had missed work up to the present time (i.e. November 7th, 1996) as a result of her accident. Rather wisely, she did

not indicate to him what work she had missed, since there was none.

[Appellant's chiropractor #2] agreed that [the Appellant] neither had, at the time of her first examination, nor developed later, any significant functional limitation in range of motion. He felt that, at least in the earlier stages of his treatments of her, she would have been wise to avoid lifting anything more than 30 pounds at a time.

The treatment plan developed for [the Appellant] by [Appellant's chiropractor #2], composed some time in April of 1997, related primarily to [the Appellant's] mid back, centering around the thoracic spine at T8-T12. She did not tell [Appellant's chiropractor #2] about having suffered any rib cage pain at T10 prior to consulting him, and that pain, if it existed at all, had not developed before she made her temporary move from [text deleted] to [text deleted].

THE EVIDENCE OF [the Appellant]:

[the Appellant's] evidence was that the wooden beads referred to above were bunched up at a point just below her waist and that the impact of the motor vehicle accident thrust her forcefully against that bunch of beads, causing lower back injury. However, she did not mention this to [Appellant's chiropractor #1] when she went to see him that same day, nor did she mention it to [Appellant's doctor] nor, indeed, to anyone else until some time after reaching [Appellant's chiropractor #2's] office.

She agreed that [Appellant's chiropractor #2] suggested that she limit her lifting ability to about 30 pounds but, she added, "I never could lift 30 pounds". In that context, she made reference to an orthopaedic consultation that she had had some years ago, when one leg was found to be about one-half an inch shorter than the other, requiring her to use a lift in her shoe and, apparently, limiting her lifting ability from that point on. She had been receiving chiropractic care for many years because her pelvic bone was out of place, as she put it, and she found this particularly difficult at inventory time at [text deleted]. [The Appellant] had described herself to all of her caregivers and to [text deleted] as a Bookkeeper or as an Accounting Assistant, but her skills in terms of office technology were minimal - she was not computer literate in the accounting or bookkeeping field, if at all.

THE LAW:

Under Section 85(1) of the MPIC Act, a victim of a motor vehicle accident is entitled to income replacement indemnity for any period within the first 180 days following that accident during which she is prevented from holding an employment which, but for the accident, she would have held. Assuming that the only occupation for which she has any training is that of a Bookkeeper, that would be the occupation for which she would be deemed suitable even after the 180 days.

THE ISSUE:

The only issue, therefore, is whether there is any employment which, but for the accident, [the

Appellant] would have held during the first 180 days following her accident and, by the same token, whether she has been prevented from holding down the job of a Bookkeeper at any time following that first 180 days.

DISPOSITION:

The answer to each of the questions that we have posed in the preceding paragraph is, without any doubt, in the negative.

Indeed, at the hearing of her appeal, [the Appellant] herself did not seriously suggest that she had been offered the job of a Bookkeeper by anyone since the date of her accident, and acknowledged that she had not even kept in touch with [text deleted] nor made any job applications in the intervening months.

As to the near-hypothetical career as a direct Salesperson of [text deleted], there are only two comments that need to be made: firstly, it seems quite clear from the evidence of the [text deleted] company that, as one of its Vice-Presidents phrased it, it would take about as much strength and effort to lift the complete kit of [text deleted] used for show purposes as it would take to lift a one litre carton of milk out of the refrigerator. The suggestion that [the Appellant's] injury prohibited her from lifting fourteen small pieces of [text deleted] is ludicrous. Secondly, she had never received the kit of [text deleted] in the first place, so how she was able to tell us that she was unable to lift it is a question that does not even call for speculation.

While the written medical and chiropractic reports, together with the other documentary material made available to us, did leave us wondering what possible grounds [the Appellant] could have for her appeal, it goes without saying that we were anxious to hear the oral testimony which, in many cases, sheds light on an otherwise darkened picture. However, at the hearing of [the Appellant's] appeal it quickly became apparent that not only did she have no expectation of success but also that the outcome of her appeal was a secondary objective. It became clear that her primary purpose in launching the appeal was to use this Commission as a forum in which to attempt to discredit her medical and chiropractic caregivers with each of whom she had apparently (but unjustifiably in our view) become disillusioned, by asking them a series of questions, almost all of which were irrelevant and many of which were downright insulting. We therefore regard this entire appeal as an abuse of the process of this Commission. It is, therefore, perhaps unnecessary to add that [the Appellant's] appeal is dismissed.

Dated at Winnipeg this 15th day of April 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED