



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-134

PANEL: Mr. Mel Myers, Q.C., Chairman
Dr. Patrick Doyle
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], was represented by [Appellant's representative]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

HEARING DATE: August 12, 2003

ISSUE(S): 1. Entitlement to Income Replacement Indemnity benefits
2. Entitlement to treatment benefits

RELEVANT SECTIONS: Sections 85(1)(a) and 86(1) of the Manitoba Public Insurance Act (the "MPIC Act") and Section 5 of MPIC Regulation 40/94

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

On January 13, 1995 the Appellant suffered injuries as a result of an accident when she stepped off a [text deleted] bus. The initial medical information on file indicated that these injuries were to her right arm, right wrist, left arm, right buttock, neck and back.

At the time of the accident the Appellant was employed as a term data entry clerk with the [text deleted]. As a result of the injuries she sustained in the accident, she was unable to return to work, was in receipt of Income Replacement Indemnity (IRI) benefits until on or about June 27, 1995 when she returned to work.

The Appellant received Employment Insurance sick benefits and regular Employment Insurance benefits between July 15, 2001 and March 10, 2002. On March 11, 2002 the Appellant commenced a gradual return to work program with [text deleted] until June 7, 2002 when she was laid off. In the month of April 2002 the Appellant advised her employer that she was unable to increase her hours of work due to the chronic pain in her right wrist and the Appellant asserts that as a result thereof she was laid off from her employment on June 7, 2002.

On June 28, 2002 the Appellant believed that her lay off of employment with the [text deleted] was due to her inability to work regular hours of work due to the pain she was suffering in her right wrist as a result of the motor vehicle accident of January 13, 1995. The Appellant requested MPIC provide IRI benefits and fund treatment benefits in respect of the pain to her right wrist. In this respect MPIC obtained information from the Appellant's caregiver, [text deleted], who had been treating her in respect of her right wrist, as well as information from the Workers Compensation file relating to the Appellant's medical status in order to assist MPIC in determining the Appellant's entitlement to any benefits. MPIC referred the entire medical file to its Health Care Services Team and requested their opinion as to the Appellant's entitlement to claim IRI benefits as well as treatment benefits.

The MPIC Health Care Services Team provided reports to MPIC dated November 30, 2001, April 2, 2002 and April 8, 2002. These reports concluded that a portion of the Appellant's wrist

symptoms might be causally related to the motor vehicle accident even though the documentation does not identify a specific condition that developed as a result of the incident in question that would account for her symptoms.

The Health Care Services Team further concluded:

- that the evidence did not indicate a medical condition involving the right wrist that would prevent the Appellant from performing her full-time occupational duties as a data entry operator
- that further treatment including acupuncture would not be considered medically required
- that the information on file does not support an inability to work or the need for treatment and therefore the Appellant is not entitled to coverage for same

On receipt of the report from the Health Care Services Team, dated April 2, 2002, MPIC's case manager wrote to the Appellant on April 11, 2002 advising the Appellant that based on the opinion of the Health Care Services Team the medical documentation did not support the Appellant's inability to work or the need for treatment. As a result, the Appellant was not entitled to IRI benefits or funding for any medical treatment from MPIC.

On April 18, 2002 the Appellant made application to the Internal Review Office to review the case manager's decision and the Internal Review hearing took place on June 13, 2002. The Internal Review Officer issued a decision dated November 12, 2002 rejecting the Appellant's Application for Review and confirming the case manager's decision dated April 11, 2002 denying the Appellant's claim for IRI benefits and funding for any medical treatment.

In his decision, dated November 12, 2002, the Internal Review Officer reviewed the medical reports of the MPIC's Health Care Services Team as well as the reports of [Appellant's doctor #1] of the [text deleted] Clinic who had treated the Appellant in respect of her complaints to her wrist. The Internal Review Officer noted a report from [Appellant's doctor #1] dated December 19, 2001 wherein [Appellant's doctor #1] stated that the Appellant could not continue to work doing her regular keyboarding due to a chronic wrist problem and that her condition was permanent unless surgery occurred.

The Internal Review Officer in his decision also noted that the Appellant had applied to the Workers Compensation Board for compensation payments and stated:

You were provided with a decision letter from the WCB adjuster on December 19, 2001. Pointing out that medical evidence of June 19, 2001 indicated similar findings to those in January and March, 1998, it was their decision:

In the opinion of Rehabilitation and Compensation Services, the evidence indicates the current disability beyond June 9, 2001 is the result of an underlying or pre-existing condition.

Therefore, it is the opinion of Rehabilitation and Compensation Services you sustained right wrist flexor tendonitis as a result of your workplace activities in March, 2001. In our opinion based on your history of injury, our medical advisors' opinion, diagnosis, expected symptom duration, subsequent investigations, and clinical findings, that as of June 9, 2001 you had essentially recovered from your workplace injury.

The Internal Review Officer also noted that the case manager has received a report from [Appellant's doctor #1] dated January 14, 2002 in which [Appellant's doctor #1] stated:

Currently, the patient has done well with intermittent keyboarding for short periods of time, although she cannot do her full job. It is my opinion she suffers from laxity to the carpals which after prolonged keyboarding results in mechanical aggravation to the median nerve. I believe the original injury relates to her fall from the bus and is responsible for the instability reported on [Appellant's hand and wrist specialist's] exam. Historically the patient report's comments were made by [Appellant's doctor #2] during his examinations which also suggest similar findings although I have been unable to corroborate this report. My examinations have also shown some subtle laxity to the wrist as well as a click of the lunale. Wrist laxity with carpal instability does not occur with keyboarding in my view, but rather as a result of trauma or connective tissue damage. There is no evidence of a connective tissue disorder in this patient. This is likely related to trauma. (underlining added)

In his decision, the Internal Review Officer comments that [Appellant's doctor #1] felt that the position of the Appellant's wrist while keyboarding was irritating the median nerve with the presence of instability.

The Internal Review Officer had requested [MPIC's doctor] of MPIC's Health Care Services Team to review [Appellant's doctor #1's] report dated January 14, 2002. The Internal Review Officer received a memorandum from [MPIC's doctor], wherein [MPIC's doctor] states:

- that [Appellant's doctor #1] did not provide any new medical evidence which would relate the Appellant's symptoms to the motor vehicle accident;
- that the Appellant had not been objectively identified as having carpal instability; and
- that [Appellant's doctor #1's] report did not lead him to alter the opinions contained in his prior memorandum of November 30, 2001.

On April 8, 2002 [MPIC's doctor] provided a supplementary note indicating that acupuncture was not a medical necessity for the treatment of nonspecific wrist pain.

The Internal Review Officer further noted in his decision that [text deleted], a reconstructive hand and wrist specialist, had been involved in the Appellant's care both before and after the Workers Compensation work related incident. The Internal Review Officer had written to [Appellant's hand and wrist specialist] and requested his opinion on the relationship, if any, between the motor vehicle accident and the Appellant's symptoms. [Appellant's hand and wrist specialist] was provided with all the reports from MPIC's file.

[Appellant's hand and wrist specialist] provided a report to the Internal Review Officer dated August 29, 2002 and in this report [Appellant's hand and wrist specialist] indicates that he had seen the Appellant on a number of occasions for chronic right wrist pain commencing in January 1997. [Appellant's hand and wrist specialist] reports that in January 1997 the Appellant has a history of sustaining a fall injury from a bus in January 1995. [Appellant's hand and wrist specialist] states that the Appellant advised him when he initially saw her that she had denied any history of wrist pain prior to her injury when she fell from a bus. [Appellant's hand and wrist specialist] further stated:

“Examination revealed some tenderness over the wrist but there was no specific abnormality identified and there was no evidence of carpal instability. [The Appellant] went on to be further investigated with an MRI, which was reported as normal. Since her original visit she has returned on a number of occasions complaining of pain. The intensity of the pain has varied and at times it has gotten better. Overall it was felt that her wrist pain was related to some ligamentous instability that was minor in nature and that did not cause gross dissociation of any carpal bones. Arthroscopic examination was entertained at some times when the wrist pain was bad, but again, overall it was felt that nothing significant would be gained from the procedure, so [the Appellant] should manage her symptoms conservatively with modification of activities, the use of a wrist brace and anti-inflammatories as needed. (underlining added)

Based on [the Appellant’s] history, her wrist pain is causally connected to her accident of January 13th 1995, and the pain and difficulties that she is experiencing since April of 2001, would again be related to her original injury in January of 1995. (underlining added)

[The Appellant] does state that with any form of lifting or gripping or repetitive activity she does have difficulty. This would be accounted for by the possible ligamentous injuries in her wrist. To my knowledge she does not have any mental injury caused from the accident that would prevent her from carrying out her duties. [The Appellant] was advised that if she is performing heavy and/or repetitive activities she is to try to modify these activities to avoid exacerbating her

symptoms. This may or may not prevent her from returning to her original occupation as a data entry clerk.

Currently [the Appellant] will be treated conservatively. There are no therapeutic interventions planned or medically required on account of the injuries arising out of the January 13th 1995 accident.

In summary, I would be of the opinion that [the Appellant's] right wrist pain is a direct result of her accident in January of 1995. This would be based on her clinical history, as well as the clinical findings. Although no investigations to date have documented a specific injury to her wrist, the working diagnosis is a ligamentous injury to the carpal ligaments of the wrist, which is consistent with her symptoms. [The Appellant] is employable and she is able to perform some duties but she must avoid activities that exacerbate her symptoms. This may prevent her from returning to her original job as a data entry clerk. (underlining added)

The Internal Review Officer provided [MPIC's doctor] with the opportunity of commenting on [Appellant's hand and wrist specialist's] report and in an inter-departmental memorandum dated October 2002 [MPIC's doctor] reported that he remained of the view that there was no causal connection between the bus accident of January 13, 1995 and the Appellant's ongoing problems and stated:

Since there are no diagnostic and/or clinical findings identifying a condition that would be causally related to the incident in question, it appears that the cause effect relationship is based solely on the persistency of symptoms and the absence of a history of pre-existing symptoms.

Referring to [MPIC's doctor's] Memorandum, the Internal Review Officer in his decision states:

He also reiterated his view that, in any event of the cause, there was no reason why the Appellant would be unable to resume her previous occupation. Finally, [MPIC's doctor] felt that the Appellant did not require any specific treatment beyond her own conservative interventions.

The Internal Review Officer in his decision further states:

The medical evidence indicates that the effect of the WCB related injury would have ended on or about June, 2001. Presumably you would have then have returned to your pre-WCB accident condition which saw you working (albeit with symptoms) on a continuous basis from the end of June, 1995 until April, 2001. This reflects almost a six year period of time.

The medical evidence does not establish, on a balance of probabilities that you have experienced a "relapse" or that you are unable to resume your previous position as a data entry clerk. The Record of Employment form obtained states that the reason for termination was "End of Term" and "WCB claim filed". Under these circumstances, I am upholding [text deleted] decision of April 11, 2002 and dismissing your Application for Review.

Similarly, it has not been established that you require any ongoing treatment on account of wrist symptoms caused by the bus incident.

Appeal

The Appellant's entitlement to IRI benefits are governed by Section 83(1)(a) and Section 86(1) of the Act which provides:

Entitlement to I.R.I. for first 180 days

83(1) A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:

- (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred.

Entitlement to I.R.I. after first 180 days

86(1) For the purpose of compensation from the 181st day after the accident, the corporation shall determine an employment for the non-earner in accordance with section 106, and the non-earner is entitled to an income replacement indemnity if he or she is not able because of the accident to hold the employment, and the income replacement indemnity shall be not less than any income replacement indemnity the non-earner was receiving during the first 180 days after the accident.

In respect of funding for paramedical care, the Appellant's entitlement by Section 5 of MPIC Regulation 40/94 which provides:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Upon receipt of the Internal Review Officer's decision rejecting her Application for Review, the Appellant filed a Notice of Appeal dated December 2, 2002. Subsequently, the Commission received a report from [Appellant's doctor #1] dated January 7, 2003 wherein he states that based on her visit of November 7, 2002, [Appellant's doctor #1] felt that the Appellant was suffering

from ligamentous laxity which was also the opinion of [Appellant's hand and wrist specialist]. [Appellant's doctor #1] further stated that he recommended that the appellant continue to use the brace and avoid repetitive work during data entry activities and only pursue these at one or two hours at a time.

At the appeal hearing, the Appellant testified:

- (a) about her current complaints to her right wrist which made it extremely difficult for her to work on a regular full time basis as a data entry clerk with the [text deleted].
- (b) she received sick benefits from Employment Insurance from July 15, 2001 to December 29, 2001 and regular Employment Insurance benefits from December 30, 2001 to March 10, 2002.
- (c) on March 11, 2002 she started a gradual return to work while still on Employment Insurance benefits.

The Appellant further testified that:

- (a) [Text deleted] would have rehired her as a term employee but laid her off because she was unable to work full time as a data entry clerk because of the pain to her right wrist.
- (b) in the past she had been employed by the [text deleted] for a number of years on term contracts and these contracts were always renewed without any problems.
- (c) there was no lack of work at her place of employment on June 7, 2002 when she was laid off.

- (d) her fellow employees at [text deleted] who did the same work that she did were rehired on term contracts to perform the same work that she had been performing at the time of her lay off.

The Appellant also testified that:

- (a) subsequent to June 2002, the Appellant collected Employment Insurance benefits for a period of time and then worked on a number of part-time jobs for [text deleted] and [text deleted] between June 10, 2002 and February 14, 2003.
- (b) on March 3, 2003 the Appellant obtained regular employment with [text deleted] as a general duty clerk and has been employed there ever since.
- (c) while employed with [text deleted], in her current job, she was not required to perform data entry duties and as a result was able to work regular hours.

The Commission was impressed with the testimony of the Appellant who testified in a direct, straightforward manner and answered all the questions that were asked of her by MPIC's counsel and the Commission without equivocation. The Commission is satisfied the Appellant is an honest, hard working person who wished to continue to work on a full time regular basis as a data entry clerk with the [text deleted] but had been unable to do so because of her right wrist pain. The Commission accepts the Appellant's testimony that the Appellant suffered an injury to her right wrist as a result of stepping off a [text deleted] bus on January 13, 1995 and as a result was unable to work regular hours in her employment with the [text deleted] during the months of March and April 2002. The Commission further accepts the Appellant's testimony that due to her inability to work on a full time basis the [text deleted] did not renew her current term contract as a data entry clerk and laid her off on June 7, 2002.

The Commission notes that the testimony of the Appellant in respect of the causal connection between the injury to her right wrist, which she sustained in the accident on January 13, 1995, and her inability to work on a full time regular basis in the months of March and April 2002 due to the pain to the wrist injury caused by the accident, is corroborated by the medical opinions of both [Appellant's hand and wrist specialist] and [Appellant's doctor #1]. [Appellant's hand and wrist specialist] has treated the Appellant since January 1997 and therefore had an opportunity on numerous occasions since that time to interview the Appellant, to physically examine the Appellant's wrist and to assess her credibility. [Appellant's doctor #1], who is currently treating the Appellant in respect of her chronic wrist pain, like [Appellant's hand and wrist specialist], had the opportunity of meeting with the Appellant, interviewing her, physically examining her and assessing her credibility.

On the other hand, [MPIC's doctor] of the Health Services Team did not personally interview the Appellant and his medical opinion is based on a paper review of the reports contained in MPIC's medical file. [MPIC's doctor], unlike [Appellant's hand and wrist specialist] and [Appellant's doctor #1], did not have the opportunity of personally interviewing the Appellant, assessing her credibility and examining her physically in respect of her complaints. In these circumstances, the Commission gives greater weight to the medical opinions of [Appellant's hand and wrist specialist] and [Appellant's doctor #1] than it does to the medical opinion of [MPIC's doctor].

The Commission is satisfied on the balance of probabilities that at the time the Appellant was laid off from her employment on June 7, 2002 there was work available for her as there was for other employees who performed similar jobs and who were rehired on term contracts and were not laid off by their employer. The Commission finds that, on the balance of probabilities, the Appellant would have continued to be employed by the [text deleted] but for the pain to her right

wrist which prevented her from working full time regular hours as a data entry clerk. The Commission therefore determines that the Appellant has established on a balance of probabilities that the injuries the Appellant sustained to her right wrist while stepping off a [text deleted] bus on January 13, 1995 prevented the Appellant from continuing to work full time regular hours as a term data entry clerk with the [text deleted]. As a result, the Appellant is entitled to IRI benefits pursuant to Sections 85(1)(a) and 86(1) of the Act from June 7, 2002, being the date the Appellant was laid off from her employment with the [text deleted].

The Commission is satisfied, having regard to the medical opinion of [MPIC's doctor], that the Appellant has not established on the balance of probabilities that the acupuncture treatment she has requested to be funded by MPIC is medically required in accordance with Section 5 of MPIC Regulation 40/94.

The Commission therefore determines:

- (i) that MPIC incorrectly denied IRI benefits to the Appellant pursuant to Section 83(1) and 86(1) of the Act;
- (ii) that MPIC pay to the Appellant IRI benefits from the date the Appellant was laid off from her employment with the [text deleted] as a data entry clerk from June 7, 2002, together with interest to date of payment;
- (iii) the Commission retain jurisdiction in this matter and if the parties are unable to agree on the amount of compensation either party may refer this matter back to this Commission for determination;
- (iv) the decision of MPIC's Internal Review Officer bearing date November 12, 2002 is therefore varied accordingly.

Dated at Winnipeg this 15th day of September, 2003.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

PAUL JOHNSTON