



The Appellant filed a Notice of Appeal with the Commission, dated November 4, 2002. The appeal hearing before the Appeal Commission was set for December 11, 2003.

On December 9, 2003 the Appellant advised the Commission that he would not attend the hearing and requested an adjournment. The Commission determined that the reasons that the Appellant gave for an adjournment were not of a compelling nature and on December 10, 2003 advised the Appellant that the hearing would continue as scheduled on December 11, 2003 whether the Appellant attended or not.

The Appellant did not attend the hearing on December 11, 2003. On review of the material filed in the appeal, the Commission determined that prior to proceeding any further with this appeal it desired to obtain an independent neurological assessment of the Appellant. An officer of the Commission communicated this request to the Appellant, who agreed to have a neurological assessment done and, as a result, the Commission adjourned the proceedings on December 11, 2003.

On January 20, 2004, [text deleted], Director of Appeals, wrote to the Appellant setting out the circumstances in respect of which the Appellant refused to sign a Medical Release Authorization form in order for a independent neurological assessment to take place. Attached hereto as Exhibit A is a true copy of a letter from [Director of Appeals] to the Appellant, dated January 20, 2004.

The Commission set a new date for the hearing for June 2, 2004. Attached hereto and marked Exhibit B is an Affidavit of Service of [text deleted] confirming that the Appellant was personally served with a notice of the hearing on March 15, 2004.

Attached hereto and marked as Exhibit C is an unsigned letter which requests, on behalf of [the Appellant], that the hearing set for June 2, 2004 be postponed indefinitely.

Attached hereto and marked as Exhibit D is a letter from the Commission dated May 27, 2004 to the Appellant and MPIC's legal counsel rejecting the Appellant's request for a indefinite postponement of the appeal proceedings confirming that the appeal hearing would take place on June 2, 2004.

On June 2<sup>nd</sup> at 1:30 p.m. Mr. Mark O'Neill, legal counsel for MPIC, attended at the hearing but the Appellant did not appear. The Commission waited until 1:45 p.m. prior to commencing the appeal hearing.

At the commencement of the hearing the Commission filed as an Exhibit 1 in the proceedings the Commission's letter to the Appellant and MPIC's legal counsel, dated May 27, 2004 (attached hereto and marked as Exhibit D).

MPIC's legal counsel submitted that the onus was upon the Appellant to establish the merits of his appeal and he failed to do so. MPIC's legal counsel further submitted that having regard to the material filed in evidence in this appeal, the Commission should confirm the decision of the Internal Review Officer, dated August 28, 2002, and dismiss the Appellant's appeal.

The Commission, after considering the submission by MPIC's legal counsel and the material filed in evidence in this appeal, determines that the Appellant has not, on a balance of probabilities, suffered a permanent impairment as a result of the injuries sustained in the motor

vehicle accident on December 17, 1999. As a result, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was entitled to receive a permanent impairment award from MPIC nor that MPIC was required to continue to fund any further physiotherapy treatments. The Commission therefore concludes that for these reasons it is dismissing the Appellant's appeal and confirming the decision of the Internal Review Officer dated August 28, 2002.

Dated at Winnipeg this 16<sup>th</sup> day of June, 2004.

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**MEL MYERS, Q.C.**

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**BARBARA MILLER**

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**WILSON MACLENNAN**