



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-12

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Wilson MacLennan
Ms. Barbara Miller

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

HEARING DATE: February 26, 2004

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits

RELEVANT SECTIONS: Section 83(1) of The Manitoba Public Insurance Corporation
Act (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 Appellant, [text deleted], was involved in a motor vehicle accident on January 15, 1996. As she was changing lanes and applying the brakes, the vehicle she was driving slid and hit the rear bumper of the car in front of her. Prior to that accident, the Appellant had been involved in numerous motor vehicle accidents, in August 1985, March 1986, September 1990, March 1994, and then again on July 29, 1994.

At the time of the January 15, 1996 accident, the Appellant was employed as the manager of a [text deleted]. Following the accident, the Appellant continued to work until January 18, 1996, when she was fired from her position with the [text deleted]. Following her dismissal from the [text deleted], the Appellant applied for and received U.I.C. sick benefits due to stress-related factors. This stress-related leave had been initiated by her family physician due to the Appellant's personal problems and was unrelated to the motor vehicle accident. When her U.I.C. sick benefits expired, in the middle of May 1996, the Appellant switched to regular U.I.C. benefits.

The Appellant is appealing the Internal Review decision dated December 4, 2001, with regards to her entitlement to Income Replacement Indemnity ('IRI') benefits. The Internal Review decision determined that the Appellant was not entitled to IRI benefits due to the fact that she had left her employment for reasons other than the motor vehicle accident, and the fact that the Appellant had declared herself ready, willing and able to work by the middle of May 1996. As a result, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision dated August 19, 1998.

At the appeal hearing, counsel for the Appellant submitted that as a result of the January 15, 1996 accident, the Appellant sustained injuries which have prevented her from returning to regular full-time employment. They also claim that the cumulative effects of the Appellant's numerous accidents have resulted in her inability to return to the workplace. Counsel for the Appellant insist that the January 15, 1996 motor vehicle accident likely aggravated problems, which lingered from the Appellant's previous automobile accidents. In this respect, counsel for the Appellant rely on [text deleted], the Appellant's family physician, who noted in his report dated March 28, 2000 that:

She (*the Appellant*) has made several attempts at returning to work and they have always been unsuccessful because of the previous injuries limiting her ability to endure a full shift regardless of the type of work which has been quite varied both in terms of being a sedentary desk position to a sales position where she is on her feet a lot. She has been extremely compliant in following through on exercises, physiotherapy, medication, etc. This is in contrast to her pre-accident condition where she worked regularly apart from brief time off work for injuries. No doubt her previous motor vehicle accident injuries contribute to her current status but it would seem that the accident in 1996 was the proverbial straw that broke the camel's back and she had not been able to resume normal activity since then.

Counsel for the Appellant also submit that the opinions of the Appellant's treating physicians should be preferred to those of [text deleted], Medical Director of MPIC's Health Care Services team. Counsel for the Appellant assert that the Appellant is not malingering since her physicians corroborate her inability to return to full-time employment. They also maintain that the Appellant's personal physicians are in a better position to opine on the Appellant's medical condition, rather than [MPIC's doctor], who never personally examined the Appellant, but merely conducted reviews of the reports on the Appellant's file.

Counsel for the Appellant conclude that whatever the Appellant's diagnosis, she is entitled to receipt of ongoing IRI benefits since her injuries, which are causally connected to the motor vehicle accident of January 15, 1996, prevent her from continuing to hold employment.

Counsel for MPIC submits that the Appellant has not established an entitlement to IRI benefits arising out of the January 15, 1996 motor vehicle accident. He argues that the Appellant's medical conditions, which prevent her from working, cannot be attributed to the motor vehicle accident. Counsel for MPIC maintains that the Appellant's pre-existing medical problems and ongoing stress are more likely to account for her continuing disability. He notes that none of these conditions were caused by the January 15, 1996 motor vehicle accident. Counsel for MPIC

also insists that there is no evidence to connect an exacerbation of the Appellant's symptoms or her ongoing poor tolerance for work to the motor vehicle accident of January 15, 1996. As a result, counsel for MPIC submits that the appeal should be dismissed and the Internal Review decision dated December 4, 2001 confirmed.

After a careful review of all of the evidence, both oral and documentary, we are unable to conclude, on a balance of probabilities, that any injury sustained by the Appellant in the motor vehicle accident of January 15, 1996, prevented her from holding employment from January 15, 1996 and thereafter.

We find that the Appellant has not established, on a balance of probabilities, that she was unable to hold employment beyond January 15, 1996, due to injuries related to the motor vehicle accident. The evidence on the file simply fails to establish, on a balance of probabilities, a causal connection between the Appellant's ongoing chronic medical conditions and the motor vehicle accident of January 15, 1996. Despite the opinions of the Appellant's family physician and her other caregivers, we find that there is a lack of objective medical evidence to connect the Appellant's persistent medical problems to the motor vehicle accident of January 15, 1996.

Additionally, we are not satisfied, on a balance of probabilities, that the reduction in the Appellant's work capacity was connected to the motor vehicle accident of January 15, 1996. Rather, the evidence on the Appellant's file establishes that she was ready, willing and able to return to work in May of 1996, when she indicated as much to Human Resources Development Canada, in relation to her U.I.C. claim. Prior to that time she was off work due to a stress-related leave, unrelated to the motor vehicle accident. As a result, we find that the Appellant has failed

to establish, on a balance of probabilities, that she was unable to continue her employment as a result of injuries sustained in the motor vehicle accident of January 15, 1996.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated December 4, 2001.

Dated at Winnipeg this 17th day of March, 2004.

YVONNE TAVARES

WILSON MacLENNAN

BARBARA MILLER