



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-128

PANEL: Ms. Yvonne Tavares, Chairperson
The Honourable Mr. Armand Dureault
Mr. Bill Joyce

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Dean Scaletta.

HEARING DATE: June 3, 2004

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits and
Reimbursement of Medical/Rehabilitation Expenses

RELEVANT SECTIONS: Sections 81(1) and 136(1)(a) of The Manitoba Public
Insurance Corporation Act (the 'MPIC Act') and Section
5(a) of Manitoba 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

The Appellant, [text deleted], was involved in a motor vehicle accident on January 19, 2001, when his vehicle was rear-ended while travelling at a high rate of speed. As a result of the motor vehicle accident, the Appellant was diagnosed with a cervical sprain, abdominal wall contusion and a contusion of the left hand by his family physician, [text deleted]. On his Application for Payment, the Appellant reported sustaining a sore neck, sore stomach/abs, sore left hand, sore right knee and sore back as a result of the accident.

At the time of the motor vehicle accident, the Appellant was employed as a city pickup and delivery driver. Due to the injuries sustained in the motor vehicle accident, the Appellant was off work from January 20 – February 7, 2001. He started back to work on a gradual basis on February 8, 2001, slowly increasing his work load and hours of work. By February 26, 2001, the Appellant had returned to work on a full-time basis.

The Appellant's condition progressively improved over the ensuing months with chiropractic care and physiotherapy treatments. [Appellant's chiropractor] in a chiropractic report dated June 21, 2001 describes the Appellant's cervical and mid-thoracic symptoms as resolving and noted less overall pain and increased motion. The Appellant's cervical spine range of motion was near normal. [Appellant's chiropractor] commented on spinal joint fixations through the entire spine. Neurological examination was normal. A reduction in frequency of treatment to once weekly was suggested.

In a subsequent chiropractic report of September 20, 2001, [Appellant's chiropractor] noted minimal cervical discomfort with improved range of motion and less headaches. The Appellant reported recurrent pain through the mid-thoracic spine and cervical spine with prolonged sitting at work or significant duties. Objective findings referenced cervical and costovertebral joint fixations with associated rhomboid and trapezius muscular hypertonicity. [Appellant's chiropractor's] treatment plan was to continue weekly treatments through late October, then decreasing to three visits per month through November and December 2001, with an anticipated discharge date of December 31, 2001.

In October 2001, the Appellant initiated an injury claim with the Workers Compensation Board ('WCB'). In his report to WCB, the Appellant provided a history of discomfort around the hip and groin area and lower back subsequent to having been provided a new truck in mid-October. The Appellant attended his family physician on November 21, 2001, with the physician documenting acute backache. At that time, the Appellant reported left buttock pain radiating down the thigh. The physician noted a normal lumbosacral x-ray obtained November 30, 2001. The Appellant indicated that the newer symptoms began while pushing a stiff clutch on his new truck. The Appellant discontinued work as of November 20, 2001.

A chiropractic report based on an evaluation of November 8, 2001, noted the history of stiff clutch use, documenting progressive irritation until signs of true disc injury occurred. The Appellant had presented in acute pain with difficulty moving. Spasms to the lumbosacral muscles were noted with lumbar and gluteal muscular hypertonicity. The chiropractor noted that prior to this presentation, the Appellant was at the end stage of care for the motor vehicle-related injuries. The chiropractor provided a diagnosis of lumbar disc protrusion.

A CT scan of the lumbar spine, dated January 26, 2002, identified a moderately large left posterior lateral disc protrusion at the L4-L5 level involving the left L5 nerve root.

On February 1, 2002, WCB advised the Appellant that his claim would not be accepted based on there being no causal relationship between his work duties and the low back injury. Based on the finding that his problem could not be caused from the clutch of the new truck, the Appellant rationalized that his low back injury must still be related to the motor vehicle accident of January 19, 2001. On this basis, the Appellant contacted his MPIC case manager to make a further claim

for Income Replacement Indemnity ('IRI') benefits and reimbursement of associated medical and rehabilitation expenses.

In a letter dated June 25, 2002, MPIC's case manager advised the Appellant that his claim was being denied. Specifically, the case manager advised as follows:

Decision

Based on a review by our Health Care Services, the clinical evidence does not support a causal relationship between your current problem and the injuries sustained in this motor vehicle accident for the following reasons:

1. The initial injuries/treatment focussed (*sic*) on your cervical/thoracic spinal region based on objective findings.
2. A Work Site Assessment May 1, 2001 documented your symptoms as headaches, neck pain, and difficulty managing your workload.
3. [Appellant's doctor #1's] initial diagnosis did not record any lumbar injuries.
4. [Appellant's chiropractor's] narrative report of May 22, 2002 clearly indicated that from the outset of your injury, your low back was secondary in nature compared to the cervical/thoracic spinal region, and that the low back was of minor significance compared to these regions.
5. Your declaration of lower back stiffness subsequent to riding an all-terrain vehicle over rough ground on a hunting trip September 29, 2001.
6. Your declaration that you first experienced discomfort in your hip, groin and lower back subsequent to driving a new semi-tractor with a new clutch beginning in October, 2001.
7. Your incapacity to work as a truck driver for [text deleted] began November 2, 2001, 9 months post your return to work from the injuries sustained in this motor vehicle accident.

Based on the above and on the balance of medical probabilities, it is most likely that you sustained a cervical/thoracic whiplash associated disorder as a result of the motor vehicle accident January 19, 2001, and that your onset of lower back pain in October/November, 2001 is a separate entity. As such, you are not entitled to IRI or rehabilitative care relative to your lower back problem.

The Appellant sought an internal review of that decision. The Internal Review decision, dated August 11, 2003, confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer found that the Appellant had failed to establish that his low back disc herniation/low back pain was causally related to the motor vehicle accident of January 19, 2001.

The Appellant has now appealed from the Internal Review decision, dated August 11, 2003, to this Commission. The issue which requires determination in this appeal is whether there is a causal relationship between the Appellant's lumbar disc protrusion and the motor vehicle accident of January 19, 2001, in order to establish an entitlement to IRI benefits and coverage for the related medical expenses.

The Appellant submits that the relapse of low back pain which he experienced commencing in October 2001, was due to the motor vehicle accident of January 19, 2001. He maintains that after the motor vehicle accident, his physical condition never returned to pre-accident status, and he never completely recovered from the effects of the accident. He feels that he returned to work too quickly and never allowed his body to fully recover from the injuries sustained in the accident.

The Appellant testified that he was in constant pain after the motor vehicle accident and unable to do many of the activities which he did prior to the accident. He advises that he was only able to progress to the point that he did, because his wife helped him. He submits that his injuries from the motor vehicle accident had never completely healed and that the low back problems which he began to experience in October 2001 were related to the motor vehicle accident.

In support of his position, the Appellant also relies on the opinions of his caregivers. He insists that MPIC's Internal Review Officer failed to properly consider those opinions and attach sufficient weight to their position. Specifically, the Appellant relies on the following opinions from his care providers:

- In his letter dated September 18, 2002, [Appellant's doctor #1] advised as follows:

The charts indicate that this man has been my patient since 1988 and there has been no record of previous back problem and it would be very difficult to ascribe his disc protrusion to the stiffness of his clutch of the semi-tractor. In the absence of any other injury I would be inclined to believe that he probably sustained injury to his back during the motor vehicle accident which was not apparent at the time and which in fact did show up later on resulting in his present predicament. I hope this is sufficient for your needs. Thank you.

- [Appellant's doctor #2], in his report dated February 25, 2003, opined as follows:

1. Keeping in view the mechanism of injury of the motor vehicle accident of January 19, 2001 this was a high speed accident and I feel that he suffered a significant degree of flexion/extension and axial rotation injury to the spine. He complained of significant neck pain but not significant back pain and I am surprised by this clinical presentation because the studies have shown that there is at least 50% incidence of posterior disc herniations/prolapse resulting from anterolateral reflexion or hyperflexion injury to the spine.¹ There is a possibility that he did not suffer significant prolapse of the L4-5 disc but there is a possibility that he suffered radial fissure/tear in the annulus fibrosis and post accident activities including routine activities of daily living, chiropractic manipulations, the hunting trip and doing his job caused increase axial and rotational loading on the disc leading to disc herniation in November 2001.

- [Appellant's chiropractor], the Appellant's chiropractor, noted in his report dated July 23, 2003 that:

In a discussion we had of November 30, 2001 we discussed a work truck with a stiff clutch you drove in approximately October 2001. Overall it is impossible to know what exactly caused your disc protrusion of November 2001. It is unlikely difficult clutching alone caused your disc problems.

¹ Adams, M. A., Hutton, W. C. 1982 "Prolapsed Intervertebral Disc – A Hyperflexion Injury Spine). 7:184-191.

However, with injuries to the disc possibly being present from your January 19, 2001 MVA this clutching could have been enough to exacerbate this condition. Although only theory, I feel this is the most likely scenario of your injury. In summary I feel that an injury occurred on January 19, 2001. Due to a resultant weakness, further injury was much easier when stress and strain was applied to your lower back at work. Without your injuries of January 19, 2001, I feel there is a good likelihood progression to a disc injury would not have occurred.

- In a follow up report dated November 28, 2003, [Appellant's doctor #2] advised that:

After reviewing my narrative medical report dated February 25, 2003, further review of [the Appellant's] chart and review of the reports of [Appellant's doctor #1] and [Appellant's chiropractor], my opinion is as follows: on the balance of probabilities that [the Appellant] was involved in a high speed head on collision accident and in this accident, he suffered anterolateral flexion or hyperreflexion injury to the spine leading to radial fissure/tear in the annulus fibrosis and this kind of tear predisposes a disc to herniated or prolapse. Any routine activities of daily living, chiropractic manipulation, hunting trip and doing his job may have caused increased axial and rotational loading on the disc leading to disc prolapse/herniation in November 2001.

As far as driving a new truck with a stiff clutch causing disc herniation, you do require significant forces on the disc to cause prolapse and by sitting in a truck and using more than usual force to operate the stiff clutch, does not cause any significant compression forces on the disc and it is unlikely that operation of a stiff clutch of a truck has contributed to disc herniation.

- In a follow up report provided by [Appellant's doctor #1], dated October 17, 2003, he reports that:

This is to verify that the above named, [the Appellant] was diagnosed with chronic backache as a result of disc lesion at L5-S1 level as a result of a motor vehicle accident in January 2001.

He was recently reviewed by the Manitoba Public Insurance adjuster and various other possibilities have been raised as to what has caused his backache. However, under the circumstances I feel the motor vehicle accident seems to be the only possible culprit for his disability. Thank you.

- In a report dated February 18, 2004, [text deleted], the Appellant's physiotherapist, advised that:

It was stated in an August 2003 Injury Claim Decision by the Internal Review Officer, [text deleted], that based on the balance of medical probabilities that the onset of lower back pain in 2001 was a separate entity. Examination in February 2002 indicated clearly that [the Appellant] was experiencing signs and symptoms of radiculitis at the L5 level. The severe compressive, torsional and translational forces experienced by [the Appellant] in the MVA constituted a significant local trauma to his lumbar spine. There are references to activities on an all terrain vehicle, as well as use of vehicle with a stiff clutch. On balance, while these tasks may add some axial loading or length tension stresses to the lower spine and L5 nerve root, they are comparatively less when compared to the extreme forces sustained in the type of motor vehicle accident in question. Therefore, it is logical to ascribe a significant level of damage to his lumbar disc during the motor vehicle accident.

Trauma to a lumbar disc is often a cumulative process. The most significant local trauma sustained took place in the motor vehicle accident and not on the ATV or while pressing a stiff clutch. To consider that the forces involved in the motor vehicle accident had no effect on his lumbar disc annular fibers is in my opinion an unreasonable stand to take. Operating a stiff clutch would not tear the annular fibers of a disc and cause this level of pain and discomfort. [The Appellant's] physical status regarding his neck, low back and leg is a direct result of the January 2001 motor vehicle accident.

Based upon all of the foregoing opinions from the practitioners who had the opportunity to treat him, and observe him personally, the Appellant submits that the acute low back injury which he sustained in October and November 2001, was indeed related to his motor vehicle accident of January 19, 2001, and therefore he is entitled to IRI benefits and reimbursement of various medical expenses for which he is out-of-pocket.

In his written submission to the Commission, counsel for MPIC submits that the Internal Review decision should be confirmed. In particular, counsel for MPIC provides the following analysis with respect to the issue of causation in this matter:

IV. REVIEW OF MEDICAL EVIDENCE AFTER SEPTEMBER, 2001

The medical evidence specifically related to the onset of acute low back symptoms is dealt with in considerable detail in the case manager's decision dated June 25, 2002 [Tab 21], the Internal Review decision dated August 11, 2003 [Tab 3], and the memoranda prepared by [MPIC's doctor], dated June 5, 2002 [Tab 22], May 2, 2003 [Tab 9], and March 25, 2004 [not tabbed].

The salient points, with some additional commentary, are as follows:

1. In his report dated May 22, 2002 [Tab 23], [Appellant's chiropractor] endeavours to elevate the status of the low back complaints immediately post-accident by saying they were "secondary in nature compared to" the neck and mid-back complaints (thereby suggesting that the low back complaints were, indeed, significant early on). In describing this relationship in late September, 2001, [Appellant's chiropractor] says that he "considered the low back of minor significance", again "compared to" the neck and mid-back.

What he fails to mention, however, is that – in late September, 2001 – he considered the neck and mid-back symptoms "minimal" [Tab 58]. If the low back situation was of "minor significance" compared to other conditions (which were essentially resolved!), the low back condition was clearly not at all serious at that time.

2. In his report dated September 18, 2002 [Tab 15], [Appellant's doctor #1] speculates that [the Appellant] "sustained injury to his back during a motor vehicle accident which was not apparent at the time and which in fact did show up later on."

This seems highly unlikely, particularly when one considers the extremely painful nature of a protruded disc with nerve root involvement, and the fact that [Appellant's doctor #1] has no record whatsoever of low back complaints prior to November 21, 2001 – more than 10 months after the motor vehicle accident.

3. In his report dated February 25, 2003 [Tab 12], [Appellant's doctor #2] describes the low back condition as having resolved by late June, 2002, with virtually nothing in the way of active "treatment" apart from exercise.

[Appellant's doctor #2] expresses surprise that [the Appellant] did not experience significant back pain after his rear-end accident because a 20-year-old study had found that about 50% of people involved in such accidents exhibit evidence of disc protrusion. The significance of this statistic is somewhat dubious because the same study must also have shown that about 50% of persons involved in similar accidents do not sustain disc protrusions.

[Appellant's doctor #2] goes on to say that it is a "possibility" that [the Appellant] did not suffer a disc protrusion in the accident and it is also a "possibility" that he did suffer "a radial fissure/tear in the annulus fibrosis".

This is hardly the type of language triers of fact are looking for when they are trying to determine whether – on a balance of probabilities – a specific medical condition is causally related to a specific traumatic event.

Finally, [Appellant’s doctor #2] comments on the theory that [the Appellant’s] use of a stiff clutch caused his disc protrusion. He concludes that it did not.

[Appellant’s doctor #2] does not comment on the likelihood that the other daily aspects of [the Appellant’s] employment – particularly the lifting, pulling, pushing, and carrying of medium-to-heavy boxes and objects – were contributing factors to the development of the protruded disc.

4. [MPIC’s doctor] deals with the theory advanced by [Appellant’s doctor #2] in a thorough and balanced fashion on Page 3 of her May 2, 2003 memorandum [Tab 9].

Of particular note is her observation that [the Appellant] participated, shortly before exhibiting acute symptoms, in activities involving the very types of forces which [Appellant’s doctor #2] had said could lead to a disc protrusion.

5. The report of [Appellant’s chiropractor] dated July 23, 2003 [Tab 4] – couched as it is in the language of “possibility” and “theory” – is of little assistance to the Commission in determining causation on a balance of probabilities.

The penultimate paragraph of the report is somewhat odd given that there is no suggestion anywhere in the material that [the Appellant] lacks a “strong work ethic” or that his absence from work due to his low back symptoms was anything other than “completely justified”.

6. The report from [Appellant’s doctor #2] dated November 28, 2003 [Tab 1] advances a theory which is essentially the same as the one outlined in his previous report.

The problem with the theory on this occasion is that it has as its apparent foundation a collision scenario which is completely wrong! The accident in question was not a “high speed head on collision”. It was a rear-end collision where [the Appellant] – accelerating to almost highway speed – was struck by another vehicle already travelling at highway speed.

Of greater concern, however, is the fact that what [Appellant’s doctor #2] had previously described as a “possibility” (that is, the “anterolateral flexion or hyperflexion injury to the spine leading to [a] radial fissure/tear in the annulus fibrosis”) has, in this report, been elevated to the status of a definitive diagnosis.

[Appellant’s doctor #2] then tacitly agrees with [MPIC’s doctor] that a variety of daily activities, including work-related activities, could have led to the protrusion of the disc. While he does say that the motor vehicle accident could have predisposed to disc to protrude with these normal daily activities, he does not go so far as to say that the protrusion could not have occurred in the absence of the motor vehicle accident. He again relies on the “50-50” study to support his theory on causation.

7. The statement by [Appellant's doctor #1] in his October 17, 2003 report [not tabbed] to the effect that the motor vehicle accident is the "only possible culprit" for the disabling lower back condition is simply not true. The existence of a host of other possibilities is evident throughout the material.
8. The report submitted by [text deleted] (physiotherapist) dated February 18, 2004 provides no real assistance to the Commission in terms of the issue to be determined. The assertion that clear evidence of L5 radiculitis was present when he examined [the Appellant] more than a year after the accident is a mere restatement of the obvious.

The reason [the Appellant] was seeing [Appellant's physiotherapist] in the first place was because the CT Scan on January 22, 2002 had confirmed the presence of the L4-L5 disc protrusion with L5 nerve root involvement!

The report offers no new revelations regarding the presence or absence of signs and symptoms of radiculitis prior to October, 2001, which is the critical time period in terms of this appeal.

9. The memo from [MPIC's doctor] dated March 25, 2004 simply advises that the opinions she had previously expressed were unchanged by the new reports from [Appellant's doctor #1] and [Appellant's physiotherapist].

[MPIC's doctor] states, once again, that if the lumbar disc – which is known to be innervated (that is, having its own nerve supply) – had been injured in the motor vehicle accident, the pain would have been immediately obvious in a clinical setting. The fact that [the Appellant's] low back was essentially asymptomatic for many months prior to the Fall of 2001 leads her to conclude that the disc protrusion is not accident-related.

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VI. CONCLUSION

The decision of the Internal Review Officer dated August 11, 2003 [Tab 3] reveals a clear understanding of the issues and contains a thorough recitation and analysis of the relevant evidence.

The conclusions reached by the Internal Review Officer are amply supported by the evidence.

The appeal should be dismissed.

Discussion

After a careful review of all of the evidence, both oral and documentary, we are unable to conclude, on a balance of probabilities, that the lumbar disc protrusion sustained by the

Appellant in October/November 2001, was caused by or related to the motor vehicle accident of January 19, 2001. We find that the evidence on the file simply fails to establish, on a balance of probabilities, a causal connection between the Appellant's acute back problems/disc protrusion which started in October 2001, and the motor vehicle accident of January 19, 2001.

Despite the opinions of the Appellant's caregivers, we find that there is a lack of objective medical evidence to connect the Appellant's low back problems which first arose in October 2001, to the motor vehicle accident of January 19, 2001. Rather, the Commission prefers the analysis provided by [MPIC's doctor], who had the opportunity to review all of the medical evidence on the file. We accept her opinion, set out in her Inter-Departmental Memorandum of June 5, 2002 that:

Current review notes that medical, chiropractic and physiotherapy reports from January 19, 2001 through September 2001 focused on cervical/thoracic symptoms and objective findings. Predominant findings included hypertonicity through the paracervical and parathoracic musculature, with predominant treatment directed at same. The Work Site Visit Report of May 2, 2001 reviewed the claimant's symptoms within the context of the workplace, with mention of cervical symptoms only and recommendations directed at alleviating the cervical, thoracic and upper limb regions. The onset of low back/lower limb radiating symptomatology surfaced in October/November 2001. These symptoms and subsequent objective findings lead both the family physician and the treating chiropractor toward a suspected diagnosis of discogenic pain. This impression of discogenic causation had not been previously documented or advanced in any of the prior reports provided.

On the balance of medical probabilities, it is most likely that the claimant sustained cervical/thoracic whiplash associated disorder as a result of the January 19, 2001 motor vehicle collision. Documentation supports that the claimant was recovering from this injury, only attending chiropractic treatment once weekly when low back symptoms surfaced.

Additionally, the Commission accepts [MPIC's doctor's] opinion, expressed in her Inter-departmental Memorandum of March 25, 2004, that if the Appellant had sustained the disc protrusion in the motor vehicle accident, the pain would have been immediately obvious in a

clinical setting. The fact that [the Appellant's] low back was essentially asymptomatic for many months prior to the injury in October 2001 leads us to conclude, on the balance of probabilities, that the disc protrusion is not accident-related.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated August 11, 2003.

Dated at Winnipeg this 12th day of August, 2004.

YVONNE TAVARES

HONOURABLE ARMAND DUREAULT

BILL JOYCE