

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-020

PANEL: **Ms Laura Diamond, Chairperson**
Ms Janet Frohlich
Mr. Paul Johnston

APPEARANCES: **The Appellant, [text deleted], was not present at the appeal hearing;**
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Steve Scarfone.

HEARING DATE: **April 29, 2015**

ISSUE(S): **1. Whether the Appellant's current medical symptoms are causally related to the motor vehicle accident of January 14, 2011.**
2. Entitlement to Income Replacement Indemnity benefits and Personal Injury Protection Plan benefits.

RELEVANT SECTIONS: **Sections 70(1) and 71(1) of The Manitoba Public Insurance Corporation Act ('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 issue before the Commission is whether the Appellant's current medical symptoms were causally related to his motor vehicle accident, thereby entitling him to further Income Replacement Indemnity ("IRI") and Personal Injury Protection Plan ("PIPP") benefits. Upon review of the evidence and submissions, the panel finds that the Appellant has failed to meet the

onus upon him to show, on a balance of probabilities that his symptoms were causally related to his motor vehicle accident and that he should be entitled to further benefits.

Background:

The Appellant was injured in a motor vehicle accident on January 14, 2011. At the time of the accident, the Appellant was employed full-time as a [text deleted]. He applied to MPIC for compensation for low back injuries and was in receipt of IRI and physiotherapy treatment benefits.

On June 9, 2011, the physiotherapist reported the Appellant was able to return to work with some modifications to his ability to lift. He returned to work on June 13, 2011 and his entitlement to IRI benefits concluded as of June 12, 2011.

On July 22, 2011 the Appellant reported a relapse from his motor vehicle accident related injuries that precluded his continuing employment as a [text deleted]. Documentation indicated he had re-aggravated his right hip and back symptoms.

Following investigation into the Appellant's medical records as well as diagnostic imaging testing, a disc abnormality was diagnosed at the L4-L5 level, that could adversely affect his right L5 spinal nerve.

MPIC's Health Care Services medical consultant reviewed the Appellant's file and opined:

“It is medically probable [the Appellant's] present back, right hip and leg symptoms are a byproduct of a disc abnormality that affects a spinal nerve. At the present time the file does not contain documentation indicating [the Appellant] developed a condition as a

result of the incident in question that would render his back and/or spinal nerve more vulnerable to being adversely affected by regular day to day and work activities in the future.”

On December 6, 2011, the Appellant’s case manager issued a decision stating that the Appellant’s current symptoms were not causally related to the motor vehicle accident.

The Appellant sought an Internal Review of this decision. On January 10, 2012, an Internal Review Officer for MPIC reviewed documentation which indicated that the motor vehicle accident was a minor one that would not expose him to a level of trauma which would adversely affect his lower back. The Internal Review Officer also reviewed documentation of previous back problems in the form of a disc herniation dating back to the age of [text deleted]. He also considered the Appellant’s improvement following the motor vehicle accident and his return to work.

The Internal Review Officer found that while it was not possible to determine the origin of the Appellant’s disc abnormality, based on the documentation of a previous disc herniation as well as information relating to the circumstances surrounding the motor vehicle accident, his conclusion was that the disc abnormality predated the incident in question. The medical evidence did not support the Appellant’s contention that the injury was caused by an automobile or the use of an automobile. The case manager’s decision was upheld. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Preliminary and Procedural Matters:

The Appellant’s appeal was scheduled for hearing on April 29, 2015 at 10:30 a.m., with the Appellant to participate via teleconference. The Appellant was served with a Notice of Hearing

dated March 18, 2015 sent to him by regular mail and Xpresspost. The Notice of Hearing sent by Xpresspost was accepted and signed by the Appellant on March 31, 2015. The Notice sent by regular mail was not returned to the Commission.

On April 29, 2015, the hearing of the Appellant's appeal was convened with counsel for MPIC present. The Chair dialed the telephone number which had been provided by the Appellant to the Commission in his appeal letter.

The Appellant did not answer the telephone and no telephone call from the Appellant was received by the Commission's staff.

The Commission's Notice of Hearing provided that the time and date of the hearing are firm and that postponements will only be granted under extraordinary circumstances. The Notice also provided that should either party fail to appear or be represented at the time and place of the hearing, the Commission may proceed with the hearing and render its decision.

Accordingly, the appeal hearing proceeded and the panel heard submissions from counsel for MPIC.

Submission for MPIC:

Counsel for MPIC submitted that the Appellant had failed to meet the onus upon him to show, on a balance of probabilities, that the Internal Review decision erred in concluding that the Appellant's current back pain and other symptoms were not caused by the motor vehicle accident. Further, he submitted that the Appellant had even failed to perfect his appeal when requested to do so by the Commission, and not shown a continuous desire to pursue his appeal.

Counsel noted that the Appellant had filed his Notice of Appeal, in the form of a letter with reasons, on February 16, 2012. Since that time, he had failed to fill out the Commission's Notice of Appeal forms, which the Commission staff had asked him to complete. He had failed to file any evidence or submissions in support of his appeal. He had indicated to the Appeals Officer that he had no real interest in pursuing his appeal. He had also indicated his desire to withdraw his appeal but failed to complete the appropriate Notice of Withdrawal forms with the Commission. The Appellant failed to participate in the appeal hearing, even when given the opportunity to do so by teleconference.

Counsel reviewed the facts and medical evidence contained in the Appellant's indexed file. He noted evidence of pre-existing back pain and disc problems which had troubled the Appellant since he was [text deleted] years old, with an initial injury of a ruptured disc which had caused him back pain since he was [text deleted].

Counsel also reviewed the nature of the motor vehicle accident, which was not a significant one, occurring when the Appellant's vehicle hit a curb. The Appellant then underwent physiotherapy and was able to return to work. He later reported a relapse of his injury, complaining of back pain and pain to his hips and legs.

Medical investigation concluded that this was caused by a disc abnormality affecting his spinal nerve. Opinions provided by MPIC's Health Care Services team indicated that the disc abnormality was causing the Appellant's relapse symptoms and that nothing resulting from the motor vehicle accident would have rendered his back and spine more vulnerable to his work duties, especially when, as counsel noted, the Appellant had returned to work in more of a managerial role.

Counsel submitted that there was nothing in the evidence which would support a link between the symptoms upon the Appellant's relapse and the motor vehicle accident.

Counsel submitted that the Appellant's appeal should be dismissed and the Internal Review decision confirmed.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that the current back pain and other symptoms of which he complains were caused by the motor vehicle accident, thereby entitling him to IRI and PIPP benefits.

The MPIC Act provides:

Definitions

70(1) In this Part,

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

The panel has reviewed the evidence contained in the Appellant's indexed file as well as the submissions of counsel for MPIC. The panel notes that the Appellant failed to perfect or pursue his appeal, even when requested by the Commission and has failed to file any evidence or further

submissions to support his appeal after filing the letter of February 16, 2012 to indicate his desire to appeal.

MPIC has submitted evidence of a pre-existing back condition, yet the Appellant has not brought forward any evidence or submissions to establish, on a balance of probabilities, that his symptoms were caused or exacerbated by the motor vehicle accident, and not attributable to his pre-existing condition.

Therefore, the panel agrees with counsel for MPIC that the medical and other evidence before the Commission does not establish, on a balance of probabilities, a causal connection between the Appellant's complaint of relapse and injuries sustained or caused by the motor vehicle accident. Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated January 10, 2012 is upheld.

Dated at Winnipeg this 13th day of May, 2015.

LAURA DIAMOND

JANET FROHLICH

PAUL JOHNSTON