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Indexed as:  
T.E.B. (Re)

IN THE MATTER OF an appeal by T.E.B.  
AICAC File No.: AC-99-66

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[1999] M.A.I.C.A.C.D. No. 44

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and  
L. Goodspeed

Heard: August 19, 1999.  
Decision: November 16, 1999.  
(14 paras.)

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Issues(s):

Whether surgery and consequent expenses and loss of  
income were attributable to motor vehicle accident.

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Relevant Sections:

Section 81(1) of the MPIC Act.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Keith Addison.

The appellant, T.E.B., appeared on her own behalf, accompanied  
by her husband.

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MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE  
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING  
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

#### REASONS FOR DECISION

[para1] T.E.B. was involved in an automobile accident on  
February 14th, 1996. At the time of the accident, T.E.B. had  
been off work and in receipt of workers' compensation benefits  
by reason of an injury to her lower back that she had  
sustained on July 11th, 1995 in the course of her part-time,  
casual employment as a slot machine attendant in the employ of  
[text deleted] at its [text deleted] in Winnipeg.

[para2] Since the motor vehicle accident ('MVA') appeared to have produced soft tissue injuries to T.E.B.'s right shoulder and to the right side of her neck, she did receive income replacement indemnity from MPIC from the time when her workers' compensation benefits ran out in June of 1996 until, on December 4th, 1996, MPIC decided to terminate those benefits. T.E.B. appealed from that earlier decision and, as the result of a hearing held on April 8th, 1998, this Commission extended her income replacement benefits for a further thirty days, for the reasons set forth in our decision bearing date April 10th, 1998.

[para3] Since that time, T.E.B. continued to receive physiotherapy and chiropractic treatments. On November 30th, 1998 she underwent surgery on her right shoulder by Dr. V. R. Adduri, an orthopaedic surgeon.

[para4] Not having returned to work since December 5th, 1996, T.E.B. sought reinstatement of her income replacement indemnity from the latter date, to continue until such time as she felt able to return to work. MPIC's claims team turned down that application, and their decision was confirmed by a decision of MPIC's internal review officer, Mr. Dean Scaletta, in a decision of June 2nd, 1999. It is from this latter decision that T.E.B. now appeals to this Commission.

[para5] Part of Mr. Scaletta's decision reads as follows:

Although your Application seeks a number of PIPP benefits going back to December 5th, 1996, we agreed at the outset of the hearing that the issue to be determined on this review is whether you are entitled to various benefits in connection with the surgery which was performed on your right shoulder on November 30th, 1998. The specific benefits being sought are an income replacement indemnity, coverage for physiotherapy and medication expenses, and reimbursement for travel expenses.

I wish to make it clear at this point that I am satisfied that the surgery in question, and the subsequent physiotherapy treatment and medications, were all medically required, and that your absence from the workforce for a period of time following the surgery was fully justified. Both of these points are well established by the material on file. The real issue in my mind is whether the available medical evidence establishes, on a balance of probabilities, the requisite causal connection between your motor vehicle accident on February 14th, 1996 and the shoulder condition which required surgery on November 30th, 1998.

It is this last-noted issue that confronts us now.

[para6] The Commission referred the Appellant to Dr. Man N. Sharif, an orthopaedic surgeon, for an independent medical examination in November, 1997. His report of December 15th, 1997 relates that T.E.B. presented with some "ache and discomfort situated over the right side of her cervical spine with radiation to the right shoulder as well as extended towards the thoracic spine and right scapula".

[para7] T.E.B. told Dr. Sharif that the collision caused her to be "jerked forward, hurting her neck".

[para8] On examination by Dr. Sharif, she "appeared to be slightly apprehensive on deep palpation of the dorsum of the right sacroiliac joint as well as on finger pressure over the upper border of the right trapezius muscle and at the tip of the right shoulder" which Dr. Sharif attributes to her motor vehicle accident. He referred to it as "minor muscular fascial ligamentous sprain" and offered the opinion that it would heal within a few months to a year. He added that she had excellent range of motion in her right shoulder girdle.

[para9] (Although Dr. Sharif's report also speaks of T.E.B.'s right shoulder being "slightly sore and stiff due to multiple trauma received a number of years ago during baseball games", she denies having either sustained injuries in that matter or saying so to Dr. Sharif.)

[para10] At the hearing of T.E.B.'s appeal, we had been provided with a report from Dr. V. R. Adduri bearing date December 7th, 1998. Since the question of causation was not clear from that report of Dr. Adduri's, we wrote to him on August 25th, 1999 to ask, specifically, whether the condition of T.E.B.'s shoulder that he had discovered during the course of his surgery on her right shoulder on November 30th, 1998 was, on a reasonable balance of probabilities, caused by her motor vehicle accident. Dr. Adduri responded under date of October 4th, 1999. That response reads, in part, as follows:

The rotator cuff impingement syndrome can be caused by numerous conditions..... The impingement could be caused by encroachment of the space from above, like in congenital deformity of the acromion when it curves down like a bird beak, formation of osteophytes on the acromion or in the area of acromio-clavicular joint, or it could be caused by thickening of the rotator cuff tendons themselves which usually occurs because of degenerative tendonitis or because of partial or complete tear of the tendon.

[para11] In his earlier report of December 7th, 1998, Dr. Adduri had confirmed that an arthroscopic examination of T.E.B.'s right shoulder showed that the shoulder was structurally normal and that there was not, in fact, any

tearing of the rotator cuff. However, he said, the acromion was noted to be down-sloping and he had therefore carried out an anterior acromioplasty. The impingement was related to the downward sloping of the acromion, but trauma to the rotator cuff might have precipitated the symptoms.

[para12] We interpret Dr. Adduri's most recent opinion of October 4th, 1999 as saying, in effect, that the impingement from which T.E.B. was suffering could have been caused by one of three things:

- (a) a congenital deformity of the acromion;
- (b) an arthritic condition of the shoulder; or
- (c) a thickening of muscle tendons caused either by a degenerative tendonitis or due to a partial or complete tear of the tendon.

Since Dr. Adduri found no evidence of rotator cuff tear, nor does he describe any thickening nor other pathology of the tendons, and since arthritis is not an applicable factor here, we are left with congenital deformity of the acromion, which is the condition that Dr. Adduri did find and did correct by surgery.

[para13] Dr. Adduri does comment that the condition of T.E.B.'s shoulder could have been exacerbated by direct or indirect trauma, such as had been described to him by T.E.B. T.E.B. herself has written to this Commission, to say that at the time of the collision she was reaching down with her right arm and hand in order to adjust her car radio. With great respect, however, we have to point out that T.E.B. made no mention of any such movement in any of the material on file, nor at the hearing of either her first or second appeal. On both these latter occasions, she described the mechanics of her accident in some detail, including the fact that she was looking to the right rather than straight ahead when the collision occurred. At no time did she mention any contact between her right hand and the radio or dashboard, nor any other trauma of the kind that could have been transmitted through her hand, wrist and arm up into the right shoulder. If that is T.E.B.'s recollection now, we are obliged to rely upon her several recollections that are much closer, temporally, to her accident.

[para14] We therefore concur in the decision of Mr. Scaletta, to the effect that T.E.B.'s most recent surgery was medically necessary, but that the need for it was not caused by her motor vehicle accident. It follows that her appeal must be dismissed.

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