

@B00000052,MAIC  
@1  
@Z19961224  
@2

Indexed as:  
J.D.S. (Re)

IN THE MATTER OF an appeal by J.D.S.  
AICAC File No. AC-96-50

@3

[1996] M.A.I.C.A.C.D. No. 36

@4

Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,  
and L. Goodspeed  
Heard: December 5, 1996.  
Decision: December 24, 1996.  
(4 pp.)

@6

Issue:

Calculation of compensation for permanent impairment.

@5

Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, ss. 127, 129(1) and 130.  
Regulation 41/94, Table 17.

@8

Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Keith Addison.

J.D.S., the appellant, appeared in person.

@7

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

THE FACTS:

[para1] The appellant was injured in a motor vehicle  
accident, while he was driving his motor bike on August 6,  
1994. He sustained injuries, including scarring to the left  
forearm and hand as well as scarring on the thigh. His  
injuries required surgery from which the doctor said recovery  
could take as much as 3 months. He was employed as a currency  
custodian at the [text deleted], a job which required lifting  
and carrying currency as well as typing and transporting

files. He returned to work 3 weeks after his surgery at which time he did not see any problems for his future. He undertook lighter duties for 2 months after his return to work and then resumed his currency custodian position. A month after that he arranged to take a lateral position with all the original job tasks except for the heavy lifting. He notes that after 2 1/2 hours of continuous typing he still needs to take a break because of discomfort.

[para2] J.D.S. testified that, in his mind, at least his injury has left him disabled because his life has changed. He has considerable lifting restriction; whereas in the past he could lift 200 lbs, he cannot now carry as great a weight nor for as long a time or distance. He no longer can lift his 6-700 pound snowmobile. He plays baseball but cannot throw or catch as well, as there is some discomfort at the point of catching the ball in play. He stated he cannot sustain pressure to his left hand without discomfort in his wrists; cold on his arm, in which a steel plate has been placed, causes stiffness.

[para3] On his own admission there is nothing he cannot do, when carrying out tasks such as gardening, home maintenance, or vehicle repair; however, it may take him longer require assistance and at times, cause discomfort.

[para4] Mr. Lacey, a supervisor in the PIP Program at the Rehabilitation Care Management Centre, outlined the method followed for Permanent Impairment Assessments and clarified the process that was used to arrive at the compensation for permanent impairment awarded to J.D.S.

#### THE LAW:

[para5] The issue is whether or not the compensation awarded to J.D.S. was correctly assessed.

[para6] Mr. Lacey testified that, in the course of any evaluation, the adjuster relies on the appellant's medical reports for making a final calculation of permanent impairment benefits. The amount of compensation is calculated as a percentage of the maximum allowed by Section 127 of the Act; the percentage is determined according to Table 17 under Regulation 41/94. An assessment of the appellant's condition was undertaken by Dr. Carrick some 14 months after the accident, a timeframe that is considered optimum for assessing the extent of injury and recovery. Dr. Carrick's report, dated October 13, 1995, indicated that the appellant has a full range of motion, a full normal grip and completely healed scarring causing no difficulty. Otherwise there is full functionality and nothing in the medical report indicating impairments affecting structure or function. Accordingly, the calculation for impairment was based only on the disfigurement or scarring impairment section of the prescribed

schedule at Table 17. Section 129 (1) of the Act requires that the percentage of the total maximum amount of compensation for each compensable, permanent impairment, is to be calculated in accordance with the regulations. MPIC, following Regulation 41/94, calculated the extent of J.D.S.'s impairment as follows:

Forearm	Severe change	maximum 5%	\$5,000.00
Hand	Minor/moderate	1.29%	\$1,290.00
Thigh	Minor	.39%	\$ 390.00
Total Award:			\$6,680.00

[para7] In other words, based on the report of the Appellant's attending physician and applying the provisions of Regulation 41/94, J.D.S. was found to be entitled to 6.68% of the maximum impairment benefit of \$100,000.00 in effect at the time of the accident in 1994.

[para8] Although there is no evidence of functional loss, the appellant feels consideration should be given to the discomfort and pain he experiences at times while carrying out daily functions. While we are not unsympathetic towards J.D.S.'s condition, the simple fact is that, there is no provision in the Act to cover the concept of damages or compensation for "pain and suffering", nor is there an implied or inherent jurisdiction on the part of the Commission to exercise relief other than that which falls within the four corners of the Legislation.

[para9] In that there is no medical evidence to contradict the assessment of J.D.S.'s condition and functionality made by his attending physician, the Commission finds that the calculations arrived at for his cicatricial (scarring) impairment appear to be accurate.

DISPOSITION:

[para10] For the foregoing reasons, J.D.S.'s appeal is dismissed and the decision of M.P.I.C. is confirmed.

@1

@XQL @XUpdate: 20000627  
qp/d/dcb  
@H  
MVRT  
@1<QLDATE C=19961224 U=20000919>