

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by D.C.H.  
AICAC File No.: AC-98-78**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mr. Charles T. Birt, Q.C. Mr. F. Les Cox

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC') represented by  
Mr. Keith Addison  
the Appellant, D.C.H., appeared on his own behalf

**HEARING DATE:** July 29th, 1998

**ISSUE:** (i) Causation - whether symptoms appearing 3 1/2 months  
after apparent full recovery related to mva;  
(ii) Whether Appellant consequentially entitled to income  
replacement and chiropractic care.

**RELEVANT SECTIONS:** Sections 81(1) and (2), 110(1)(a) and 136(1)(a) of the MPIC Act,  
and Section 5(a) of Regulation 40/94

**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 underlying this appeal are not complicated. D.C.H., a [text deleted] for 13 years, was the victim of a motor vehicle accident on March 26th, 1997, resulting in a Grade II whiplash associated disorder accompanied by lumbar strain. His physician prescribed analgesic and muscle relaxant medication plus physiotherapy, and recommended that he avoid any heavy lifting or repetitive bending for 2 to 3 weeks. He therefore received physiotherapy from April 8th until about May 20th, 1997, when he was discharged from therapy, apparently, in his own belief and that of his physiotherapist, fully restored. He was given a set of exercises to perform; he testified, and we believe, that he has continued to follow that regimen quite faithfully, except for a period of

incapacity due to a broken leg.

Meanwhile, D.C.H. had returned to work on a part-time basis on April 18th, sorting mail at the [text deleted] in Winnipeg and then delivering mail to only a portion of his usual route, with a lighter than normal load.

D.C.H. returned to work full-time on May 1st, 1997, and appears to have been symptom-free from about May 20th, at the latest, until September 20th of that year. Over the course of Saturday, September 20th, and starting some time between 9:00 and 10:00 A.M., D.C.H. experienced increasing and steady pain in his thoracic and lumbo-sacral regions; he describes that pain as having become 'full-blown' by 5:00 o'clock that evening. Although more localized and not radiating to his neck, shoulders and arms as had been the case in the weeks immediately following his accident, he testified that, by the evening of September 20th, the pain had nearly immobilized him. He and Mrs. H. had kept an engagement to spend the evening out with friends, but he had had to return home after a short while. D.C.H.'s discomfort prevented him from returning to work from September 22nd, until October 31st, both inclusive. On Monday, September 22nd, he had returned to the clinic where his original physician, Dr. Bharadwag, had practised, but Dr. Bharadwag had moved and D.C.H. therefore consulted two other members of that same clinic who prescribed analgesics and Robaxacet. The medications seemed to be of little help, and D.C.H. therefore consulted his present physician, Dr. Irma Reich, who referred him to his chiropractor, Dr. Gerald Tole. Drs. Reich and Tole have each rendered a report, expressing the opinion that D.C.H.'s most recent low back pain may well have been a delayed result or flareup of his previous injury. Indeed, Dr. Tole seems quite satisfied

that the motor vehicle accident was indeed the cause of the September flareup; Dr. Reich is somewhat more cautious, but can offer no other explanation. That view is also shared by D.C.H.'s physiotherapist, Ms Sheri Walton.

D.C.H. seeks an award of income replacement for the 6 weeks that he was necessarily away from his workplace, September 22nd to November 3rd, and payment for the cost of his chiropractic care from his first visit to Dr. Tole on October 8th until December 19th of 1997. (On this latter date he unfortunately slipped and fell on a stairway, sustaining a fractured leg, unrelated to this claim under the MPIC Act.)

MPIC has rejected his claim, primarily on the basis of an opinion prepared by Dr. Michael MacKay, Medical Consultant to its Claims Services Department. Dr. MacKay's opinion, combined with the submission of counsel for MPIC, may be summarized this way:

- the No. 1 cause of back pain in the general population is found in the general vicissitudes of daily living, rather than in motor vehicle accidents or other forms of trauma;
- D.C.H. suffered soft tissue injury; he had no spinal nor other skeletal problems;
- his September discomfort appeared gradually over the course of a whole day, rather than as a sudden spasm such as might have been expected had there been an underlying, but latent, weakness such as a disc protrusion;
- the causal relationship between his motor vehicle accident of March 26th and the onset of his lower back pain in September would be more readily established had there been any continuing, residual symptoms spanning that 5-months period. The apparent, total absence

of such symptoms for over 3 months makes it highly unlikely that the later symptoms were caused by the accident.

Dr. MacKay does note that, depending of course upon the magnitude of the injury and the amount of scar tissue formation that develops, changes in tissue formation resulting from an injury such as that sustained by D.C.H. will usually resolve in four or five months. Dr. MacKay felt, therefore, that D.C.H.'s recovery would have been complete some time prior to September 20th, leaving no sequelae likely to render the Appellant's lower back more susceptible to flare-up.

As Dr. MacKay and Dr. Tole have, each in his own way, remarked, the issue before us is not one that is capable of scientific proof and, as in so many cases in which we are confronted with two or more divergent views expressed by competent and honest professionals, we must rely upon what we perceive as a reasonable balance of probabilities after carefully weighing all of the evidence. That evidence tells us that D.C.H., [text deleted] years of age at the time of his accident, had been a healthy, physically active postal carrier for some 13 years, following an honourable discharge from the Canadian Armed Forces. Throughout his entire working life he had never been off work due to sickness. He enjoys his work (to which he is again fully restored) and it is not even suggested that his September complaints were anything but genuine. He engaged in no unusually strenuous activities between mid-May and September 20th, leading the normal domestic and working aspects of his life. The Collective Agreement between his Union and Canada Post proscribed any weight in excess of a 35 pound maximum, so that strains imposed upon his musculoligamentous system were not great. He experienced nothing untoward in the days and hours leading up to the onset of his pain

on September 20th. The recurrence of that pain falls within the 5-month period suggested by Dr. MacKay as being the likely, maximum time frame within which tissue alterations would be fully restored although, as noted above, Ms Walton and the Appellant himself both seemed to feel that full restoration had already taken place by mid-May.

In light of D.C.H.'s comparative youth, his obviously healthy history and unblemished employment record in the context of sick leave, and the total absence of any other cause to which we can rationally attribute his September regression, we find that the most likely cause of the problems that he started to encounter in September was his motor vehicle accident.

**DISPOSITION:**

We therefore find that D.C.H. is entitled to income replacement indemnity at the rate of \$[text deleted] bi-weekly for the six weeks from September 2nd to November 3rd, 1997 and, to the extent that he is not entitled to be reimbursed under the Health Services Insurance Act, he is also entitled to payment for the cost of his chiropractic care by Dr. Tole, commencing October 8th and continuing up to and including his last visit to Dr. Tole on or before December 19th of 1997.

Dated at Winnipeg this 5th day of August 1998.

**J. F. REEH TAYLOR, Q.C.**

**CHARLES T. BIRT, Q.C.**

**F. LES COX**