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Indexed as:  
J.P.V. (Re)

IN THE MATTER OF an appeal by J.P.V.  
AICAC File No.: AC-00-83

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[2000] 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), Y. Tavares, and  
C.C. Settle, Q.C.

Heard: November 30, 2000.  
Decision: December 1, 2000.  
(5 paras.)

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Issues(s):

Calculation of permanent impairment award.

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Relevant Sections:

Sections 126, 127, 129(1) and 130 of the MPIC Act and  
Section 4 of Schedule A to Manitoba Regulation No.  
41/94.

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Appearances:

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

The appellant, J.P.V., was represented by Randie N. Kushnier.

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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] The only issue properly before this Commission is whether the calculation of an award for permanent impairment to J.P.V.'s right shoulder, made by MPIC's adjuster, was correct. The dispute arises from the fact that there were, in all, four different sets of measurements performed, by four different experts, with respect to the ranges of motion of J.P.V.'s right shoulder. Those measurements were taken by Dr. David M. Huebert, orthopedic surgeon, Ms. Giesela Davidson, occupational therapist, Ms. Lesley Milne, physiotherapist, and Ms. Cindy Grant, also a physiotherapist.

[para2] The differences between the various sets of measurement are only significant in one or two areas.

[para3] Without, in any way, expressing criticism of any of the three therapists, we adopt the opinion of Dr. Huebert in each of the three ranges of motion disputed by the Appellant. Each limitation of range of motion is to be calculated as a percentage of the maximum permanent impairment award which, by the date of J.P.V.'s accident, was \$108,664. We find that the total impairment award for his shoulder injury should be 15.6%, calculated as follows:

Relevant Sub-section	Nature of Impairment		
4(c)(i)	Partial loss of abduction		
4(c)(ii)	Partial loss of front elevation or flexion		
4(c)(iii)	Partial loss of external rotation		
4(c)(iv)	Partial loss of internal rotation		
4(c)(v)	Partial loss of adduction or extension		
4(d)	Loss of head of humerus		

  

Range of Motion	Calculation	Percentage
30 [degrees]	$(1-30/180) \times 6$	4.99
40 [degrees]	$(1-40/180) \times 3$	2.33
10 [degrees]	$(1-10/90) \times 2$	1.78
	Maximum	1.00
	Maximum	0.50
	Maximum	5.00

  

Total Impairment Award for Shoulder Injury	15.6%
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[Quicklaw note: The above five columns appear side by side in the original.]

[para4] In the course of the hearing, counsel for J.P.V. raised four other issues: a claim for permanent impairment to J.P.V.'s wrist; a claim for permanent impairment in the form of paraesthesia involving J.P.V.'s right deltoid region (a Class II sensory impairment); a claim that J.P.V.'s permanent impairment awards should be increased by an enhancement factor of 0.25, under Section 2 of Manitoba Regulation No. 41/94; and a further claim that Table 17 in Regulation 41/94 should be applied, by reason of a change in form and symmetry resulting from the injury to J.P.V.'s right shoulder.

[para5] We make no comment upon the merits of any of these four, additional claims. None of them has been the subject of a decision by J.P.V.'s adjuster at MPIC, nor by an Internal Review Officer. It is therefore outside the mandate of this Commission to deal with them and, if J.P.V. and his counsel wish to pursue them, they should be referred back to the

adjuster.

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