

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by V.S.
AICAC File No. AC-00-136**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Wilson MacLennan
Ms. Laura Diamond

APPEARANCES: The Appellant, V.S., was represented by Mr. Scott Abel;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: May 15, 2002

ISSUE: Entitlement to Income Replacement Indemnity ('IRI')
benefits.

RELEVANT SECTION: Section 81(1) of The Manitoba Public Insurance
Corporation Act (the 'MPIC Act')

**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 Appellant, V.S., was involved in a motor vehicle accident on May 15, 1996, wherein she sustained a whiplash injury. She had intermittent lower backache and cervical pain as a result of this injury. She attended for chiropractic treatment of her injuries, firstly, with Dr. Kaminski and then, later on, with Dr. Cymbalisky, which assisted in her recovery.

At the time of the motor vehicle accident, V.S. was employed as a [Text deleted] with [Text deleted] in [Text deleted], Manitoba. On July 12, 1996, V.S. was dismissed from her employment with [Text deleted]. Subsequently, she applied for Income Replacement Indemnity

(‘IRI’) benefits from MPIC, on the basis that the injuries she sustained in the motor vehicle accident rendered her incapable of performing her job requirements, which ultimately resulted in her dismissal.

MPIC conducted an investigation and a review of her claim for IRI. In a letter dated February 12, 1999, her adjuster advised her that:

At this time, based on the information on file, there is insufficient evidence to suggest that the motor vehicle [*sic*] in question, is responsible for your overall clinical condition. We therefore are denying your claim for Income Replacement Indemnity.

V.S. sought an internal review of that decision. In a decision dated July 9, 2001, the Internal Review Officer advised V.S. that:

Having reviewed your entire file, including your clinical notes from the [Text deleted] Medical Clinic, I am upholding the Case Manager’s decision of February 12, 1999 and dismissing your Application for Review. It is my decision that you were not disabled from working as a result of your May 15, 1996 motor vehicle accident.

The Internal Review Officer based her decision on her review of the file and the opinion of MPIC’s medical consultant, Dr. Neil Craton. In her decision, she goes on to note that:

You were not advised to remain off work as a result of your motor vehicle accident nor were you prescribed any specific treatment as a result of any condition arising from the collision. After the motor vehicle accident of May 15, 1996, the [Text deleted] Medical Clinic notes make no notation on your file that you were in a motor vehicle accident or that you had any musculoskeletal complaints from that accident.

It wasn’t until Dr. Cymbalisky’s March 15, 1997 report that there is any information that you had a severe lumbosacral and sacral-coccygeal pain. Next, in Dr. Cymbalisky’s report of December 31, 1998 he states that you are receiving treatments for severe lumbosacral and coccyx subluxation. At this point Dr. Cymbalisky states that you were unable to perform your regular duties as a result of your pain and discomfort. This degree of pain and level of dysfunction was not previously identified by the healthcare professionals that initially assessed you following your motor vehicle collision. It would be unusual for a condition to

remain relatively undetected for a period of time only to present in a severe state ten months later.

There are many examples in the medical information on file that you had significant psychosocial stressors prior to your collision of May 15, 1996. Dr. Craton is of the opinion that those stressors are important to your overall clinical symptomatology at present. You have also experienced subsequent stressors of a traumatic nature, not related to your motor vehicle accident, that have affected you, giving you difficulty coping. All of these stressors have affected your present symptoms.

It is therefore my decision to agree with the medical opinion of Dr. Craton and determine that your current condition cannot be attributed to the motor vehicle accident of May 15, 1996. Consequently, your inability to work is not due to injuries sustained in that motor vehicle accident and no income replacement indemnity benefits are owed to you from the Manitoba Public Insurance Corporation.

The Appellant has now appealed the decision of the Internal Review Officer dated July 9, 2001, to this Commission. The issue which requires determination in the Appellant's appeal is whether the injuries which V.S. sustained in the motor vehicle accident on May 15, 1996, rendered her incapable of continuing with her employment.

As a full-time earner at the date of the motor vehicle accident, the relevant section of the MPIC Act respecting an entitlement to IRI is Section 81(1), which provides as follows:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

Counsel for the Appellant submits that there was sufficient medical evidence on which to establish a causal connection between the Appellant's injury and her inability to work. He states that, shortly after the motor vehicle accident, Dr. Hu diagnosed the Appellant's lower back pain and cervical pain. This was later confirmed by Dr. Cymbalisty, her treating chiropractor, in his report of March 15, 1997. He also refers to a report dated December 31, 1998, wherein Dr. Cymbalisty notes that "*The patient was unable to perform regular duties, at place of employment, because of pain and discomfort.*" Counsel for the Appellant further submits that the statement of the Appellant's neighbour as to her status during the fall and winter of 1996-1997 should be regarded as further evidence of her inability to work at that time. Lastly, he argues that there is no evidence that the Appellant was facing other significant psychosocial stressors in her life at that time. Accordingly, counsel for the Appellant submits that there is a clear chain of causation between the motor vehicle accident of March 15, 1996, and the Appellant's subsequent inability to work which, therefore, establishes her entitlement to IRI benefits.

Counsel for MPIC submits that the Appellant only missed a couple of days from her employment at [Text deleted] immediately after the motor vehicle accident. After that, she returned to her employment and worked until July 12, 1996, when she was dismissed from that job due to unsatisfactory job performance. He also referred the Commission to the report of Dr. Kaminski, chiropractor, dated April 14, 1998. Dr. Kaminski treated the Appellant after the motor vehicle accident in 1996. He notes in his report that: "*In my opinion the treatments were not enough if this was a severe injury and she did not have many complaints.*"

Counsel for MPIC argues that there is no evidence that the Appellant could not work due to the injuries sustained in the motor vehicle accident of May 15, 1996. Rather, he submits that the information on V.S.'s file suggests that the Appellant was never told not to go to work.

The onus of proof in this appeal rests with the Appellant to show, on a balance of probabilities, that the injuries sustained in the motor vehicle accident prevented her from continuing her full-time employment. The Commission finds that the Appellant has not met that standard.

The Record of Employment from the [Text deleted], relating to the Appellant's employment, clearly states that the Appellant's last day worked was July 12, 1996. When questioned regarding her level of work after the motor vehicle accident, the Appellant could not rationally explain why she worked until July 12, 1996, or how much she worked from the time of the motor vehicle accident until July 12, 1996. However, the record of insurable earnings for the last 20 pay periods of the Appellant's employment demonstrates consistent average earnings of \$300 to \$400 per pay period. One would expect that, if the accident had affected her ability to work, her earnings in the final four pay periods would have reflected decreased earnings. Additionally, this clearly conflicts with the Appellant's testimony that she did not return to work after her motor vehicle accident because of her inability to perform the job requirements. The Commission accepts the Record of Employment as an accurate reflection of the Appellant's earnings from her employment at [Text deleted] to July 12, 1996. No explanation was provided by the Appellant regarding her ability to work until July 12, 1996, at a fairly consistent rate, but not beyond.

Even if we were satisfied that the Appellant stopped working after July 12, 1996, due to her injuries, we find that there is no medical evidence at the relevant time, that is, the summer of 1996, that she could not work. The report of Dr. Cymbalisky, dated March 15, 1997, is not until

10 months after the motor vehicle accident. His opinion, at that time, that she could work supernumerary is insufficient to establish a causal connection between the Appellant's functional deficits, her inability to continue her employment, and the motor vehicle accident of May 15, 1996. Additionally, Dr. Moolman's report, based on Dr. Hu's examination, provides no opinion as to the Appellant's ability to work. There is simply a lack of medical evidence to clearly establish that the injuries which the Appellant sustained as a result of the accident prevented her from continuing her employment.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date July 9, 2001.

Dated at Winnipeg this 30th day of May, 2002.

YVONNE TAVARES

WILSON MacLENNAN

LAURA DIAMOND

[Ed. Note: The note "[Text deleted]" indicates the removal of information which may identify individuals.]