

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by B. B.
AICAC File No.: AC-01-34**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
The Honourable Mr. Armand Dureault

APPEARANCES: The Appellant, B. B., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: March 6, 2003

ISSUE(S): Whether Appellant's neck, back and shoulder complaints
are causally connected to motor vehicle accident of
November 11, 1998

RELEVANT SECTIONS: Section 70(1) of The Manitoba Public Insurance
Corporation Act ("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

B. B. (hereinafter referred to as the "Appellant") sustained injuries in a motor vehicle accident on November 11, 1998. At the time of the accident the Appellant was unemployed.

In a statement to MPIC, dated January 12, 2000, the Appellant stated "*After the accident my neck got sore. It was sore for a couple of weeks and then it went away.*" The Appellant

further stated in his statement to MPIC that *“At the end of January 1999 my neck started to get worse. By the end of June 1999 I could not stand it any longer and I went to see Dr. Cheam.”* The Appellant states he saw Dr. Cheam on three occasions and he was informed by Dr. Cheam that he had arthritis.

In a report submitted by Dr. Cheam to MPIC, dated February 17, 2000, Dr. Cheam states that the Appellant attended at his office on July 29, 1999 complaining of neck and back-aches, on and off for 2 months, with pain radiating down left arm and upper half of the thoracic spine. Dr. Cheam, in his report, stated that the Appellant *“had been attending 2 chiropractors for same and that all he wanted was x-rays of his spine.”*

In a letter dated January 26, 2000 to the Case Manager at MPIC, Dr. Peter Nemeth, who is associated with the Pan Am Sports Medicine Centre, states:

“[B. B.] presented to my clinic on August 5, 1999. He is a 34-year old left hand dominant self defence teacher who complained of onset of neck, back and left arm problems in December of 1998 while working a punching bag. He stated he initially improved with chiropractic care and had attended a chiropractor locally in [text deleted]. He had a substantial relapse in July of 1999 after a chiropractic treatment and subsequently developed increased arm pain on the left side.

Physical examination revealed muscular spasm with diminished range of motion of the neck. He had reduced sensation to the forearm and mildly diminished left tricep reflex.

History and examination were consistent with cervical radiculopathy affecting the left arm. Subsequent examinations and CAT scanning confirmed a posterolateral disc herniation on the left side at C6,7 compromising the left C7 nerve root. He has subsequently been treated and has improved with conservative therapy but reached an

end point or plateau. There has been a referral made to an orthopaedic surgeon to consider a decompressive procedure and discectomy in view of the ongoing arm pain and the size of the disc herniation.

At no time has the patient mentioned any relationship to a motor vehicle accident. Your letter is the first I have heard about a motor vehicle accident as the initiating event about this condition. It is not consistent with the history that the patient presented to me.”

Dr. Michael J. MacKay, Medical Consultant for MPIC Health Care Services, conducted a paper review of all of the medical reports received by MPIC in respect to the Appellant. In relation to Dr. Nemeth’s and Dr. Cheam’s medical reports Dr. MacKay states:

“Comments

The medical evidence obtained from these documents identified [B. B.] as having clinical features in keeping with a cervical radiculopathy that appears to have developed after a chiropractic treatment in July 1999. The radiological investigations identified structural changes to the cervical spine that would account for the radiculopathy. The health care professionals that assessed [B. B.] in 1999 did not provide documentation identifying his symptoms as arising from the November 11, 1998 motor vehicle collision. Dr. Nemeth documented that [B. B.] had symptoms involving his neck, back and left arm in December 1998 that improved with chiropractic care.”

The Appellant was referred by his personal physician to Dr. Goytan, an experienced orthopedic surgeon, who examined the Appellant on March 6 and August 15, 2000 and provided several reports to MPIC including a report dated October 11, 2000. In this report

Dr. Goytan states:

“The injuries sustained to [B. B.] in the motor vehicle accident on the 11th of November 1998 appeared to have been neck pain which he states persisted for two weeks and resolved spontaneously. His present complaints are that of improving mechanical neck pain and shoulder pain which may be secondary to a rotator cuff

problem. I do not believe that these are directly related to the motor vehicle accident of November 11th, 1998 but are likely cumulative.”

Dr. MacKay, in his report to MPIC, dated December 7, 2000, reviews Dr. Goytan’s report dated October 11, 2000 and states:

“In Dr. Goytan’s October 11, 2000 report, it is documented that [B. B.] was examined on March 6, 2000. It is noted that [B. B.] stated that he was involved in a rearend collision in November 1998 for which he suffered a stiff neck for a period of two weeks that spontaneously resolved. It is documented that he had a recurrence of his stiffness in April 1999. In June 1999 [B. B.] was noted as suffering an acute increase in pain in his lower neck with radiation to his left shoulder blade and arm following a chiropractic manipulation of the neck. It is documented that Dr. Goytan’s examination did not identify a neurologic abnormality and [B. B.] was referred for a course of physiotherapy treatments. It is noted that a follow-up examination identified an improvement in his condition. Dr. Goytan identified a mildly positive impingement sign involving the left shoulder during a follow-up examination. It was his recommendation that [B. B.] should be referred to Drs. Froese or MacDonald for an evaluation of his shoulder. Dr. Goytan was of the opinion that [B. B.’s] present complaints are that of improving mechanical neck pain and shoulder pain which are not directly related to the November 11, 1998 motor vehicle collision.

CONCLUSION

The medical evidence obtained from the documents reviewed indicates that [B. B.] might have sustained a musculotendinous strain to the cervical spine, which resolved spontaneously. There is no documentation of [B. B.] being assessed following the collision in question for symptoms he might have been experiencing. The medical evidence indicates that he was not having any problems until April 1999 when he developed some symptoms involving his cervical spine and again in June or July 1999 when he developed an acute onset of neck pain and left arm pain following a chiropractic manipulation.”

Dr. Ahweng, the personal physician of the Appellant, provided a report to MPIC dated August 10, 2000. In this report Dr. Ahweng states that he saw the Appellant with respect to the Appellant’s complaints on August 10, 1999, approximately 9 months after the motor

vehicle accident on November 11, 1998. Dr. Ahweng subsequently saw the Appellant in respect to this matter on August 18 and 23, 1999, as well as April 4, April 25 and November 7, 2000. Dr. Ahweng states that the Appellant continued to have pain and swelling to his left shoulder and neck, had difficulty lifting or pushing any weight and it was “likely related to his whiplash injury.”

Dr. MacKay reviewed Dr. Ahweng’s report and advised MPIC in a letter dated November 29, 2000:

“Dr. Ahweng did not assess [B. B.] until nine months after the motor vehicle collision in question. There is no documentation that indicates [B. B.’s] symptoms and/or clinical findings identified by Dr. Ahweng are causally related to the collision in question.”

“In the Manitoba Health Summary of patient purges, it is noted that [B. B.] received chiropractic care from Dr. Marsh between 1996 and February 27, 1998.”

The Commission subsequently received Dr. Marsh’s notes relating to the Appellant’s attendances to Dr. Marsh’s office in respect of chiropractic examination/treatment. The Appellant received numerous treatments on a consistent basis between July 1993 and February 1998. The Internal Review Officer, in his decision dated February 21, 2001, notes that between January 3, 1996 and February 27, 1998, being the last pre-accident visit referred to in the records, the Appellant attended at Dr. Marsh’s office for treatment on 31 separate occasions.

The Appellant applied to MPIC for compensation pursuant to the Personal Injury Protection Plan (“PIPP”). On December 11, 2000, MPIC wrote to the Appellant apprising him that the Health Care Services team, after reviewing all of the medical information on the file, provided an opinion that the Appellant’s current complaints/symptoms were not related to the motor vehicle accident of November 11, 1998 and, as a result, rejected the Appellant’s claim for compensation.

INTERNAL REVIEW

The Appellant, in a written application to MPIC, requested a review of the Case Manager’s decision denying the Appellant’s request for compensation. A hearing before the Internal Review Office took place on February 12, 2001 and the Internal Review Officer, in a written decision dated February 21, 2001, rejected the Appellant’s Application for Review and confirmed the Case Manager’s decision.

The Internal Review Officer, after reviewing the medical reports of Dr. Nemeth, Dr. Cheam, Dr. Ahweng, Dr. Goytan and Dr. MacKay, stated:

“You dispute the conclusion of Dr. Goytan (whose involvement in your case you were otherwise pleased with) to the effect that your current neck and shoulder problems are not directly related to the accident. The only contrary opinion is the one line in the report from another general practitioner in The Pas (Dr. A. Ahweng, MD) which states your continuing difficulties are “likely related to this whiplash injury”. It was noted by Dr. MacKay, and you did agree, that your first post-accident visit to Dr. Ahweng was on August 10, 1999, approximately nine months after the accident.”

The Internal Review Officer accepted the medical opinion of Dr. Goytan, who unequivocally stated that in his view the Appellant's current neck and shoulder problems were not directly related to the accident, and rejected Dr. Ahweng's opinion that the Appellant's continuing medical difficulties were "likely related to this whiplash injury."

The Internal Review Officer therefore concluded that, based on a review of all of the medical reports on MPIC's file, he was unable to conclude that the Appellant has established an entitlement to PIPP benefits and, as a result, dismissed the Appellant's claim for compensation.

As a result the Appellant filed a Notice of Appeal in respect of the Internal Review Officer's decision dated April 17, 2001.

APPEAL

The issue under appeal was whether the current problems with respect to the Appellant's neck, back and shoulders are the result of an injury due to the motor vehicle accident.

In respect of this issue, the relevant sections of the MPIC Act are as follows:

Definitions

70(1) In this Part,

"**accident**" means any event in which bodily injury is caused by an automobile; («
accident »)

"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death; (« dommage corporel »)

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile; (« dommage corporel causé par une automobile »)

The Commission notes that the initial complaints that the Appellant had in respect of injuries sustained in the automobile accident of November 11, 1998 spontaneously resolved themselves within two weeks of the accident. The Appellant did not indicate any further complaints in respect of his current difficulties until approximately nine months after the accident took place.

The Commission, after a careful review of all of the material filed, including the written legal submission filed by Mr. Kumka and the reply filed by the Appellant, finds that the Internal Review Officer committed no error in preferring the medical opinion of Dr. Goytan to the medical opinion of Dr. Ahweng on the issue of causation. The Commission also accepts the medical opinion of Dr. Goytan that the current complaints that the Appellant is suffering from are not causally connected to the accident and that the Appellant has not suffered any permanent impairment as a result of the accident.

Dr. Goytan is very clear in his opinion that the present complaints that the Appellant has are that of an improving mechanical neck pain and shoulder pain which may be secondary to a rotator cuff problem and are not directly related to the motor vehicle accident of November 11, 1998 but are likely cumulative. Dr. MacKay, MPIC's medical consultant, agrees with Dr. Goytan's opinion and rejects Dr. Ahweng's opinion who stated that the Appellant's continuing difficulties were "likely related to the whiplash injury."

Dr. Ahweng in his medical report does not provide any objective evidence to support his medical opinion. The motor vehicle accident occurred on November 11, 1998. Dr. Ahweng did not see the Appellant until August 10, 1999, approximately 9 months after the motor vehicle accident. It appears to the Commission that Dr. Ahweng assumed that the Appellant was suffering from a whiplash injury connected to the motor vehicle accident.

On the other hand, Dr. Goytan, who is an experienced orthopedic surgeon, has set out his reasons for his conclusion that there is no causal connection between the motor vehicle accident and the Appellant's current medical difficulties. It is for these reasons that the Commission prefers the medical opinion of Dr. Goytan to that of Dr. Ahweng.

The Commission therefore concludes that the Appellant has not established on the balance of probabilities that the current medical difficulties that he is suffering to his neck, back and shoulder were causally connected to the motor vehicle accident.

As a result, the Appellant is not entitled to compensation from MPIC in respect of PIPP benefits. Accordingly, and for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date February 21, 2001.

Dated at Winnipeg this 27th day of March, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

HONOURABLE ARMAND DUREAULT