



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by I.W.
AICAC File No.: AC-04-31

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Mary Lynn Brooks
Ms. Diane Beresford

APPEARANCES: The Appellant, I.W., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mark O'Neill.

HEARING DATE: July 19, 2005

ISSUE(S): Entitlement to permanent impairment benefit for tinnitus.

RELEVANT SECTIONS: Section 127 of the Manitoba Public Insurance Corporation
Act ('MPIC Act') and Division 12, Section 5 of Manitoba
Regulation 41/94

**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

I.W. (hereinafter referred to as the 'Appellant'), who was employed as an automotive mechanic, was involved in a motor vehicle accident on May 27, 2002 and suffered several injuries. Shortly after this motor vehicle accident the Appellant complained about ringing to his ears which he believed was caused by the motor vehicle accident. The Appellant was referred by his personal physician to Dr. Barker, an ear specialist, who examined the Appellant and provided a report dated November 7, 2002. In this report Dr. Barker stated the Appellant was exposed to loud noise in the past and that it was likely that the Appellant had some mild neurosensory changes from the motor vehicle accident that has caused the tinnitus.

In a further report to MPIC, dated June 16, 2003, Dr. Barker stated that:

1. although the Appellant had no direct ear trauma in the motor vehicle accident it is possible the accident caused his tinnitus.
2. based on the Appellant's history "I am inclined to favor the accident as the cause of the tinnitus".

MPIC provided their medical consultant, Dr. Baydock, with all the relevant medical reports and requested Dr. Baydock to advise whether it was enough medical information on file to determine whether the claimant was entitled to impairment award for tinnitus.

Dr. Baydock, in a report dated August 7, 2003 to MPIC, indicated tinnitus was not a ratable impairment and it was questionable if tinnitus was related to the motor vehicle accident.

The case manager wrote to the Appellant by letter dated September 18, 2003 and rejected the Appellant's entitlement to permanent impairment award in respect to the tinnitus based on Dr. Baydock's assessment. In his report the case manager stated:

...
"The Medical Information on your file indicates that the tinnitus is not a ratable impairment and is questionable as to whether the tinnitus is related to the circumstance of the motor vehicle accident."
...

Internal Review Officer's Decision

The Appellant applied for a review of the case manager's decision and the appeal hearing took place by telephone on November 19, 2003. The Internal Review Officer issued a decision on December 1, 2003 confirming the case manager's decision and dismissed the Appellant's application for review. As a result the Appellant filed a Notice of Appeal dated February 16, 2004

Appeal

The relevant provisions for this appeal are set out in Division 12, Section 5 of Manitoba Regulation 41/94 which states:

5. Tinnitus, unilateral or bilateral

Class	Symptom or condition	Impairment Rating
Class 1 (mild)	Tinnitus is intermittent and noticeable only in quiet environment.	0.5%
Class 2 (moderate)	Tinnitus is constantly present and bothersome in quiet environments, disturbing concentration and sleep.	1.0%
Class 3 (severe)	Tinnitus is constantly present and bothersome in most environments, disturbing concentration, sleep and activities of daily living.	2.0%

The Appellant appeared on his own behalf and MPIC was represented by Mr. Mark O'Neill.

The Appellant testified at this hearing and stated that:

- a) he was employed as an automobile mechanic and had no problem with any ringing to his ears prior to the motor vehicle accident.
- b) the motor vehicle accident caused the ringing to his ears.
- c) this ringing noise was intermittent in nature which he only noticed in a quiet environment.
- d) while he was working as an automobile mechanic he wore ear protectors for the noise emanating from his place of employment and during that period of time did not note the ringing in his ears.
- e) the ringing was of a permanent nature which was caused by the motor vehicle accident and he was therefore entitled to a permanent impairment award.

MPIC's legal counsel submitted that the Internal Review Officer's decision was correct for the Commission should affirm this decision and dismiss the Appellant's appeal.

Discussion

The Commission notes that Dr. De Wit's, a General Practitioner, who examined the Appellant, stated in a clinical note that the tinnitus was not caused by the accident. However this medical opinion was not supported by any objective evidence.

Dr. Barker in his initial report dated, November 7, 2002 indicated that in his opinion the Appellant's tinnitus was likely caused by the motor vehicle accident. In his subsequent report dated June 16, 2003, based on the Appellant's history, he stated that he was inclined to favor that the accident caused the Appellant's tinnitus.

The Commission finds that Dr. Baydock, MPIC Consultant, in his report to MPIC erred in concluding that tinnitus was not a ratable impairment. The Commission notes that Division 12, Section 5 of Manitoba Regulation 41/94 provides three (3) different classes of impairment rating in respect of tinnitus which are 0.5%, 1.0% and 2.0%. As a result Dr. Baydock erred in failing to consider which class of impairment rating applied to the Appellant's tinnitus. However, Dr. Baydock also indicated that it was questionable whether the tinnitus was related to the motor vehicle accident given the reasons of Dr. Barker and Dr. De Wit's clinical note.

The Commission does not give any weight to Dr. De Wit's opinion, as set out in her clinical note that the tinnitus was not caused by the accident because Dr. De Wit does not provide any objective basis for this medical opinion. The Commission also notes that Dr. Baydock never examined the Appellant and provided his medical opinions based on a paper review of the relevant medical reports. Therefore, Dr. Baydock was not in a position to assess the credibility of the Appellant when he provided his medical opinions. However, Dr. Barker, who was an ear specialist, personally examined the Appellant and therefore was in a position to assess the Appellant's credibility. Dr. Barker concluded, based on the Appellant's history that he was inclined to favour that the motor vehicle accident did cause the Appellant's tinnitus.

The Commission finds that the Appellant was a credible person, who testified in a clear and direct fashion without equivocation and the Commission accepts his evidence that prior to the

motor vehicle accident he did not have any ringing to his ears and that immediately after the motor vehicle accident the ringing of the ears commenced and has continued thereafter.

Decision

The Commission finds that Dr. Barker's medical opinion corroborates the Appellant's testimony as to a casual connection between the motor vehicle accident and the Appellant's tinnitus. The Commission therefore determines that the Appellant has established on the balance of probabilities that the Appellant's tinnitus was caused by the motor vehicle accident.

The Appellant testified, at the hearing, that the tinnitus was intermittent and noticeable only in a quiet environment. Having regard to the schedule set out in Division 12, Section 5 of Manitoba Regulation 41/94 the Commission concludes that the Appellant's tinnitus is of a mild nature, consistent with Class 1 of the Schedule, which provides that tinnitus which is intermittent only in a quiet environment falls within the impairment classification rate of 0.5%. As a result the Commission allows the Appellant's appeal and rescinds the Internal Review Officers decision dated December 1, 2003.

Dated at Winnipeg this 18th day of August, 2005.

MEL MYERS

MARY LYNN BROKS

DIANE BERESORD