

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by R. P.  
AICAC File No.: AC-05-210**

**PANEL:** Ms Yvonne Tavares, Chairperson

**APPEARANCES:** The Appellant, R. P., appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

**HEARING DATE:** March 28, 2007

**ISSUE(S):** Whether permanent impairment benefits were properly assessed and calculated.

**RELEVANT SECTIONS:** Sections 127 and 129 of *The Manitoba Public Insurance Corporation Act* (the 'MPIC Act') and Section 2 and Schedule A 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**

The Appellant was involved in a motor vehicle accident on August 9, 2003. As a result of the injuries which he suffered in that accident, the Appellant sustained permanent physical impairments which, pursuant to Section 127 of the MPIC Act, entitle him to a lump sum indemnity in accordance with the Regulations to the MPIC Act. The Appellant is appealing the Internal Review decision, dated October 6, 2005 with regards to the permanent impairment benefits as determined by MPIC.

Section 127 of the MPIC Act provides that:

**Lump sum indemnity for permanent impairment**

**127** Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

The regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

The Internal Review decision, dated October 6, 2005, confirmed the case manager's decision of December 21, 2004, which had determined a total permanent impairment benefit of sixteen (16%) percent. This impairment benefit had been calculated as follows:

<b>INJURY/IMPAIRMENT</b>	<b>Percentage</b>
Right ankle scar	8% max
Avulsion fracture of right ankle	1%
Loss of range of motion of ankle, inversion-eversion	2%
Forehead scar	5%
Trunk scar	0%
<b>TOTAL</b>	<b>16%</b>

At the appeal hearing, the Appellant raised concerns with respect to his entitlement to permanent impairment benefits for the following:

1. fracture of right ankle;
2. loss of range of motion of ankle, dorsiflexion; and
3. right posterior trunk scar.

**1. Fracture of right ankle**

The Appellant submits that he should be entitled to an award of three (3%) percent instead of one (1%) percent for the fracture to his right ankle. He argues that he has a permanent limp as a

result of his ankle fracture, which will not get better, and the award of one (1%) percent is insufficient to compensate for that impairment.

Division 1, Subdivision 2, Section 4.3(b) provides an impairment rating of one (1%) percent for an avulsion fracture of the ankle. The Commission has no discretion to change the impairment award set out in the Schedule of Permanent Impairments, and therefore the impairment benefit of one (1%) percent is confirmed.

## **2. Loss of range of motion of ankle, dorsiflexion**

The Internal Review Officer in her decision of October 6, 2005 noted the following with respect to the Appellant's claim for a permanent impairment benefit in respect of loss of range of motion of the right ankle, dorsiflexion:

In support of your Application for Review, you provided a report from Dr. Baria dated August 17, 2005. Dr. Baria reviewed the decision letter and noted that your range of movement of right ankle dorsiflexion is mentioned to be 10 degrees which would allow an Impairment rating of 3%.

Dr. Baria also noted that there is no mention of the possibility of osteoarthritis occurring following the injury. Dr. Baria wrote that you have definite signs of degenerative changes and osteoarthritis with symptoms with changes in weather. Dr. Baria concluded that with the progression of osteoarthritis, you will have further limited range of motion in your ankle.

Dr. Cosman reviewed Dr. Baria's report and provided a report dated September 29, 2005. Dr. Cosman wrote that you underwent a Physiotherapy Impairment Assessment on August 26, 2004 where active right ankle dorsiflexion range of motion with the knee flexed was reported at 20 degrees. Dr. Cosman wrote that an Assessment of a ratable impairment of ankle dorsiflexion range of motion is based on this value as it represents the best attainable active ankle dorsiflexion range of motion.

Dr. Cosman wrote that the presence of 20 degrees of active right ankle dorsiflexion range of motion indicates no ratable impairment as per Category 4.5 (b) (ii) (B) on page 329 of the Impairment Manual.

Dr. Cosman wrote that the possibility of future limitations in ankle range of motion related to post-traumatic osteoarthritis would require an updated range of motion assessment no sooner than 2 years after the assessment of August 26, 2004.

At the appeal hearing the Appellant advised that he was aware that he would require an updated range of motion assessment in order to determine whether or not the range of movement of the right ankle dorsiflexion had reduced since the assessment of August 26, 2004. The Appellant did not provide an updated range of motion assessment at the appeal hearing. Accordingly, the Commission confirms the Internal Review decision of October 6, 2005 with respect to the range of movement of the right ankle dorsiflexion. In the future, should the Appellant obtain an updated assessment of his right ankle range of motion dorsiflexion which indicates further limitations in the ankle range of motion, he may present that information to his case manager for consideration of a permanent impairment benefit at that time.

### **3. Right Posterior Trunk Scar**

The case manager in her decision dated December 21, 2004, did not award the Appellant an impairment benefit for scarring to the right posterior trunk (this decision was confirmed by the Internal Review decision of October 6, 2005). At the appeal hearing, the Appellant submitted that the Health Care Services Review dated November 26, 2004 indicated that an impairment benefit of one (1%) percent (based on a rating of 0.2% for the scar, rounded up to 1%) was applicable. The Appellant therefore submits that he should be entitled to an additional impairment benefit of one (1%) percent, in accordance with the Health Care Services Review dated November 26, 2004.

At the appeal hearing, counsel for MPIC submitted that the Health Care Services Review dated November 26, 2004 contained an error where Dr. Cosman rounded up the .2% award for the trunk scar to one (1%) percent and came up with a total permanent impairment benefit of seventeen (17%) percent. Counsel for MPIC submitted that the .2% awarded for the scar at the

right posterior trunk should have been rounded down to zero (0), not rounded up to one (1%) percent. Counsel for MPIC advised that it was MPIC's administrative policy to round off impairment ratings, in cases such as this, for ease of calculation.

In accordance with the Schedule of Permanent Impairments, the Appellant is entitled to an impairment benefit of 0.2% for scarring at the right posterior trunk. According to the impairment assessment conducted by Mobile Therapy Services, the Appellant sustained a scar to his right posterior trunk with a surface area of 0.4cm<sup>2</sup>. Pursuant to Table 13.3 of Division 13, for a scar at the right posterior trunk, with a surface area of 0.4cm<sup>2</sup>, the impairment rating of .5% per cm<sup>2</sup> equals 0.2%. The case manager should not have reduced the impairment benefit for the Appellant's scarring of his right posterior trunk. The impairment benefit is clearly set out in the regulations and MPIC is not entitled to reduce a statutory benefit pursuant to an internal administrative policy of convenience or otherwise. Indeed, MPIC's case manager has an obligation, pursuant to s. 150 of the MPIC Act, to ensure that claimants are informed of and receive the compensation to which they are entitled.

Accordingly, the Commission finds that the Appellant is entitled to a permanent impairment benefit of 0.2% in accordance with Table 13.3 of Division 13 for the scar at the right posterior trunk. The Appellant shall be entitled to interest on this sum from the date of the motor vehicle accident, to the date of payment.

Dated at Winnipeg this 17<sup>th</sup> day of April, 2007.

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**YVONNE TAVARES**