

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.R.
AICAC File No.: AC-07-64**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Les Marks
Ms Linda Newton

APPEARANCES: The Appellant, D.R., was represented by Ms Nicole Napoleone of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: June 3, 2009

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits and funding for further therapeutic interventions.

RELEVANT SECTIONS: Sections 81(1) and 136(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

The Appellant, D.R., is appealing the Internal Review Decision dated May 31, 2007 with respect to his entitlement to income replacement indemnity ("IRI") benefits and funding for further therapeutic interventions as a result of an accident which occurred on March 5, 2006.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On March 5, 2006, the Appellant was involved in a motor vehicle accident near the [text deleted] Bridge. The Appellant was northbound on [text deleted] Street, on his way home from driving around, when a southbound vehicle on the [text deleted] Bridge slid into his lane, which caused him to swerve to the right toward a snow bank. The Appellant indicated that the other vehicle slid into the back driver's side of his vehicle while he was stopped in the snow bank. The Appellant attempted to take down the other vehicle's information, but the driver of the other vehicle left the scene and he was unable to record his information.
2. At the time of the accident, the Appellant was 42 years of age and working as a flyer inserter for the [text deleted].
3. In his Application for Compensation, the Appellant reported that he sustained injuries to his lower back (on the left side) and pain/pulling into his left leg.
4. The Appellant reported that he had never sustained a similar injury and did not have a pre-existing physical or other condition affected by the accident of March 5, 2006.
5. During a meeting with the case manager on May 11, 2006, the Appellant indicated that he did not have any pre-existing back problems just prior to the accident. However, later in that same conversation, the Appellant advised that he was taking about 8 Tylenol 3's per day for his back in the year prior to the accident.
6. The Appellant also indicated that he sustained an upper back injury two or more years prior to the accident of March 5, 2006 for which he received WCB benefits.
7. Due to the motor vehicle accident of March 5, 2006, the Appellant reported missing sporadic days of work at the [text deleted]. He reported that his duties involved lifting 40 – 50 pound boxes.
8. The case manager spoke with the Appellant's supervisor, who indicated that he did not notice any difficulties with the Appellant's performance in the first two weeks of work

after the accident. The supervisor indicated that the Appellant had a WCB claim in 2005 and indicated that the lifting involved for a flyer inserter was about 10 to 15 pounds. The case manager also had a telephone conversation with the Payroll Office on April 18, 2006, which confirmed that the Appellant had not missed any work during the first two weeks after the motor vehicle accident.

9. The Appellant saw his doctor, Dr. Mayba, regarding the accident on March 16, 2006. On physical examination, Dr. Mayba noted that the Appellant was able to walk in a normal fashion and able to dress and undress himself in a normal manner.
10. Dr. Mayba provided a medical report dated June 2, 2006 indicating that the Appellant had a history of medical conditions, including chronic pain in his lower back and long-standing discomfort in his left leg/ankle/foot region. Dr. Mayba also indicated that the Appellant had been having difficulty walking because of the weakness in his left leg for several years intermittently. Dr. Mayba advised that the Appellant had a left drop-foot and had been prescribed a left drop-foot plastic splint before the accident.
11. Dr. MacKay of the MPIC Health Care Services team reviewed all of the medical information on the Appellant's file and provided an Interdepartmental memorandum dated June 16, 2006. Dr. MacKay indicated that in his opinion the Appellant did not develop a medical condition as a result of the accident in question that in turn resulted in a physical impairment of function that would have precluded the Appellant from performing his pre-accident occupational duties. Dr. MacKay further indicated that it was not medically probable that the Appellant was subjected to a level of trauma that in turn would have adversely affected any pre-existing condition to the extent that the Appellant developed nerve root compression and/or irritation. Dr. MacKay also indicated that in his opinion the Appellant did not develop a medical condition as a result

of the accident for which supervised treatment interventions would be viewed as a medical requirement.

12. In a decision dated July 7, 2006, MPIC's case manager found that the Appellant's inability to work was not as a result of the motor vehicle accident of March 5, 2006 and therefore the Appellant was not entitled to receive IRI benefits. The case manager also found that he Appellant did not develop a medical condition as a result of the motor vehicle accident of March 5, 2006, for which further supervised treatment interventions would be viewed as a medical requirement and therefore the Appellant was not entitled to funding for any further therapeutic treatment interventions.
13. The Appellant sought an Internal Review of that decision. In a decision dated May 31, 2007, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer found that the medical information and circumstances pertaining to the accident did not present sufficient information to support a causal relationship between the Appellant's signs/symptoms and the motor vehicle accident. The Internal Review Officer also found that the injuries caused by the accident did not render the Appellant substantially unable to perform his essential duties of work and therefore he was not entitled to IRI benefits.

The Appellant has now appealed that decision to this Commission. The issues which require determination on this appeal are whether the Appellant is entitled to IRI benefits and further funding for therapeutic interventions as a result of the March 5, 2006 accident.

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that there is a causal relationship between the Appellant's condition and the motor vehicle accident of March 5, 2006. The

Claimant Advisor contends that the Appellant's condition was exacerbated by the motor vehicle accident. The Claimant Adviser argues that MPIC disregarded the Appellant's complaints and mismanaged his case. She notes that after the motor vehicle accident, the Appellant started missing work, was having problems sleeping due to the pain in his legs and he was forced to retire from his position with the [text deleted] because of his increasing symptoms. The Claimant Adviser argues that the evidence on the Appellant's file supports that the motor vehicle accident triggered his current complaints and symptoms, since he was relatively well before the motor vehicle accident and his problems commenced after the motor vehicle accident. She therefore maintains that his complaints are temporally related to the motor vehicle accident and there is a strong causal relationship between the Appellant's signs and symptoms and the motor vehicle accident of March 5, 2006.

As a result, the Claimant Adviser submits that the Appellant should receive IRI benefits since he was unable to hold his employment as a flyer inserter after the motor vehicle accident and that further physiotherapy treatments should be funded for the Appellant.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's inability to continue working as a flyer inserter for the [text deleted] was not as a result of the motor vehicle accident of March 5, 2006. Counsel for MPIC argues that the Appellant's testimony does not warrant any weight due to inconsistencies between his testimony and the documentary evidence recorded in the Appellant's file. Counsel for MPIC contends that the Appellant was not asymptomatic prior to the motor vehicle accident. He notes that the Appellant's consumption of Tylenol 3's on a daily basis had been ongoing and long-standing for some time. Counsel for MPIC also refers to Dr. Mayba's report of December 18, 2008 wherein Dr. Mayba noted that "in my opinion, physiotherapy

sessions would not be beneficial in facilitating his reintegration into the labour market as his other ongoing medical problems irrespective of his orthopaedic ailments would preclude him from being employed at the present time or the foreseeable future”.

Counsel for MPIC maintains that the Appellant’s pre-existing conditions are responsible for his inability to work and these conditions were not exacerbated by the motor vehicle accident of March 5, 2006. As a result, counsel for MPIC submits that the Appellant’s appeal should be dismissed and the Internal Review Decision dated May 31, 2007 confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary and oral evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that his inability to hold employment is attributable to the motor vehicle accident of March 5, 2006, or that further therapeutic interventions are medically required as a result of the accident of March 5, 2006.

The Commission finds that it is more likely than not that the Appellant’s pre-existing conditions account for his current signs and symptoms. We are also of the opinion that the Appellant’s pre-existing conditions (degenerative disc disease, lumbosacral spine with spinal stenosis at the L4-5 disc space level, left sided sciatica and left foot drop) were not exacerbated as a result of the March 5, 2006 accident. The evidence before the Commission indicates that the Appellant was able to continue with his work duties subsequent to the accident in question. He did not begin to report difficulties with left leg symptoms until late March 2006. He was assessed in the early part of April and diagnosed as having a possible L5 radiculopathy. However, the findings on this

assessment relating to left-sided sciatica and foot drop correspond to his condition in 2005 for which he was prescribed a left drop-foot plastic splint.

Additionally, we find that, on the balance of probabilities, the Appellant's low back condition was not asymptomatic prior to the accident of March 5, 2006. Rather, the evidence before the Commission establishes that the Appellant was using Tylenol 3 on a daily basis (at a rate of 8 tablets per day) to help minimize back pain. The Commission also finds that there were various inconsistencies in the Appellant's testimony and the documentary evidence on the Appellant's file:

- He reported to his case manager that he was unable to work a few days after the accident, which contradicts the employment records from the Appellant's employer which show that he was able to work his regular hours for the first two weeks after the accident.
- He reported to his case manager that he had no back problems prior to the accident. However, upon further questioning, he admitted to his case manager that he took approximately eight Tylenol 3's daily for his back.

Accordingly, upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that his ongoing signs and symptoms which prevented him from returning to work were related to the motor vehicle accident or that the motor vehicle accident caused any exacerbation of his pre-existing condition. Rather, we find that it is more likely that the Appellant's pre-existing conditions account for his inability to return to work. Additionally, as we are unable to relate the Appellant's current signs and symptoms to the motor vehicle accident, we find that there is no entitlement to funding for further therapeutic interventions.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated May 31, 2007 is confirmed.

Dated at Winnipeg this 22nd day of July, 2009.

YVONNE TAVARES

LES MARKS

LINDA NEWTON