

AUTOMOBILE INJURY COMPENSATION COMMISSION

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-44**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Dean Scaletta;
Appellant represented himself

HEARING DATE: September 12th, 1997

ISSUE(S): Re-instatement of Income Replacement Indemnity ('IRI'),
physiotherapy and medication benefits

RELEVANT SECTIONS: Section 81 and 138 of the MPIC Act ('the Act'),

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

REASONS FOR DECISION

THE FACTS:

The Appellant was involved in an automobile accident on January 10th, 1996 and suffered injuries to his neck, left shoulder, knee, hip and lower back. The injuries of concern for the

purposes of this appeal are those to his lower back and hip area. A CT Scan conducted on July 25th, 1996 on his lower back revealed "a small central disc protrusion, large central and left posterior lateral L5-S1 disc protrusion". The question before us is did the automobile accident cause the herniated disc or did it occur from other causes? MPIC's position is that the disc herniation is not related to the motor vehicle accident and therefore they are not liable to the Appellant for any benefits under the Act.

The Appellant's evidence is that immediately after the accident he experienced low back pain and pain in his left hip joint area and down into his outer thigh. Within a few days the pain in his leg was radiating down his leg to his foot. He described the pain in the leg was like having a bolt of lightning shooting down his left leg from his buttock to his ankle. The pain intensified over several months to the point that he lost the strength in his leg and, when he walked, he could not control his foot and it would "flop" when he walked. The pain in his left leg continued to intensify and despite taking stronger and stronger pain killers he got to the point where he could no longer work. He was forced to stop his job as a salesperson with [text deleted] on June 6th, 1996. He returned to work on October 20th 1996 but had to stop on January 6th 1997. In March 1997 he had a surgical procedure to repair his herniated disc. He returned to work on June 1st but not on a full-time basis and as of the date of this hearing he was only working four days a week.

The day after the accident the Appellant consulted his chiropractor, [text deleted], and she reports amongst other findings that he had "left hip left sciatic leg pain to foot was aggravated by

the force of the impact" and she makes a number of recommendations for his treatment. Several weeks later he consulted another chiropractor, [text deleted], and he diagnosed the Appellant as suffering from a Whiplash Associated Disorder Type 3b disorder. He also diagnosed the Appellant as suffering from pain in his left leg and left sciatic joint. When the chiropractic treatments didn't help him, the Appellant consulted [Appellant's doctor] who, after his examination, felt he was suffering from a lower disc problem and scheduled him for the above mentioned CT Scan. [Appellant's doctor's] opinion was that the disc protrusion problem arose as a result of the motor vehicle accident.

The Appellant attended at the [rehab clinic] and they diagnosed him as suffering from a mechanical leg dominant pain which appears to be discogenic in nature.

The Appellant advises that he had been treated by [Appellant's chiropractor #1] sometime prior to the auto accident for sciatic leg cramps and they had become very minor before the accident. They were not of a nature that caused him any disability and was able to lead a normal and active life both at work and at home.

THE LAW:

Was MPIC correct in its determination that the Appellant's disc herniation was not a result of the automobile accident?

In other cases involving disc herniation we have been informed by the medical experts and staff doctors, especially from MPIC, the symptoms of a ruptured or herniated disc usual occurs within a short time of the accident (i.e.) from a few days to two weeks. The tell-tale sign of a disc herniation is pain radiating down the leg from the buttock to the foot. In this case the Appellant described the symptoms immediately after the accident and was diagnosed as having this problem the next day by his chiropractor and again in March of 1996. It wasn't until he had a CT Scan that the disc protrusion was confirmed. We are of the opinion, given all of the evidence, that the disc protrusion was caused by the automobile accident. One could say that this case seems to fit the textbook definition that we have been given about the symptoms describing a disc protrusion in the lower (sciatic) area of the back.

The Appellant's benefits that were terminated by letter on January 10th and February 20th, 1997 are hereby reinstated. It is not clear from the file records and the evidence whether or not the Appellant received his IRI and other medical benefits during the period he was off work, from June 6th till October 20th, 1996, and if he did not receive any then he is entitled to reimbursement for this period as well.

The amount of IRI and costs of medical treatment were not discussed at the hearing and we will leave it up to the parties to work out these sums and what services should be paid for and/or be continued. In the event there is any dispute then we remained seized of this matter and it should come back to us for resolution.

DISPOSITION:

The appeal is allowed and the decisions of the Review Officer dated April 14th and June 4th, 1997 are rescinded.

Dated at Winnipeg this 9th day of October 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED