

AUTOMOBILE INJURY COMPENSATION COMMISSION

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-25**

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

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Ms Joan McKelvey;
Appellant represented by [Appellant's representative]

HEARING DATE: June 16 & August 7, 1998

ISSUE(S): Re-instatement of IRI and payment for chiropractic
treatments:

RELEVANT SECTIONS: Section 110(1) & 136(1) 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:

On June 4th, 1996, the Appellant was a passenger in an automobile driven by her husband. It was stopped for a red light when the vehicle behind theirs was rear-ended and pushed into their car. There was no damage done to the Appellant's vehicle except for a minor scratch to the bumper. In saying that, we recognize that the quantum of damage to a victim's vehicle is not necessarily a

reliable gauge of the damage sustained by the victim. [the Appellant] was wearing a 3-point shoulder harness and lap system and the neck restraints for her seat were in the proper position. With the impact, she was jolted back, hitting the neck restraint with the back of her head; she was not aware of any forward contact with the vehicle. At the hearing she testified that her hands were not on the dash at the time of the accident nor did they hit the dash, door nor any other part of the vehicle. In the Application for Compensation form, completed by the Appellant for MPIC on June 12th, 1996, she indicated she had sustained injuries to her lower back and neck, and that her right arm went numb. At the time of the accident she was on maternity leave from her employer, [text deleted], until July 8th 1996; she described her duties there as involving sales, stocking and data entry.

[The Appellant] had been seeing her chiropractor, [text deleted], as a result of motor vehicle accidents in which she had been involved on August 8th, 1991, and on November 5th, 1992, and it therefore becomes important to review her medical history as it relates to her arms, wrists and hands arising out of those prior accidents.

After the August 8th, 1991 accident her family doctor, [text deleted], referred her to [text deleted], an orthopaedic surgeon, who examined her on March 31st, 1992 and reported that "She also had a history of some vague increasing weakness of her arms but this could not be confirmed on objective examination." He recommended that she discontinue all chiropractic treatment, that her family doctor should prescribe anti-inflammatory medication and she should receive physiotherapy for her neck.

She was also referred to [independent chiropractor #1] by MPIC for an independent chiropractor examination on April 19, 1992. She advised [independent chiropractor #1] that as a result of her August, 1991, accident her head went forward and then backwards, striking the widow behind her. She told [independent chiropractor #1] that she developed severe headaches, neck pain and had difficulty raising her arms. She also advised him that both of her hands began to go numb around Christmas time of 1991. [Independent chiropractor #1] diagnosed her as having sustained moderate sprain-strain injuries with subluxations in the cervical and upper thoracic regions of her spine. He observed “In my opinion reactions and complaints relative to the cervical region at the time of this examination were strongly suggestive of symptom magnification and a functional overlay.” He further expressed the opinion that her frequency of chiropractic treatment should be reduced to once a week and she should start an exercise program for her upper body. In the final paragraph of his report he states “when, or indeed whether or not, she returns to full time employment will depend on how badly she wants to.”

Apparently the issue of the numbness and tingling in her arms and hands had not been resolved and [Appellant’s doctor] referred the Appellant to [Appellant’s neurologist #1] at the Manitoba Clinic and he examined her on May 6, 1992. She told [Appellant’s neurologist #1] that following her accident of August 1991, some time in October or November of that year, after some improvements, she had noticed weakness in both arms and hands. [Appellant’s neurologist #1] concluded that in spite of her weakness he did not feel there was anything subjective to suggest that she had any significant spinal cord or peripheral nerve compression. He was inclined to regard her symptoms and signs as relating to a pronounced and protracted myofascial pain syndrome.

In May 1992 [independent chiropractor #1] was asked by MPIC “How long do you feel it would be before she is able to return to full time employment”. He refers the corporation to his earlier opinion in his report of May 19, 1992 and goes on to state “I felt she was fit to return to full-time employment at the time of this examination but there was some question in my mind as to her motivation. If she is well motivated she should at least be trying to return to work. If she is not well motivated she will not try.”

On March 5th 1993 MPIC arranged another independent chiropractic examination of [the Appellant] with [independent chiropractor #2]. In his lengthy report he notes that, arising out of her August 8th, 1991 accident and amongst many other problems, she had advised him that she had an aching sensation in her arm on the left side and she had tingling in both her left and right hands. In response to his questions about what happened to her in the November 5th, 1992, accident she reports that she had discomfort in her left elbow. She had her hand on the steering wheel at the time of the impact and the impact apparently traumatized her left elbow. At the time of [independent chiropractor #2's] examination she reported that she was still experiencing discomfort in her left elbow and that occasionally she would feel numbness extending down into her left hand. She indicated this may occur once or twice a day and last up to two hours.

In his report [independent chiropractor #2] makes the observation that he believes [the Appellant] is magnifying the various responses of the discomfort she is experiencing. In his view she is treatment dependent and is receiving an excessive amount of manual therapy in the form of chiropractic treatment three times a week and, at the same time, physiotherapy twice a week. He goes on to state that he believes this mode of treatment only gives further support to the symptoms

she states she is experiencing. He believes these treatments should be reduced or eliminated. He recommends that she be given an exercise program as the only way to resolve her ongoing muscular discomfort. In his concluding remarks [independent chiropractor #2] states:

“ In my opinion [the Appellant] is exaggerating many of her responses and this makes it difficult to determine whether her ongoing symptoms indeed do relate to the accident in question”.

The next report on [the Appellant] is from her treating chiropractor, [Appellant's chiropractor #1], and it is dated March 25th 1993. It deals with her problems and his treatment regimen for her two accidents of August 8th, 1991, and November 5, 1992. This rather lengthy report makes only a minor reference to a pain in the Appellant's upper right arm arising out of the August 8th accident and pain in the upper right arm and left elbow joint after the second accident but there is no mention of any pain, tingling or numbness in either of her wrists and hands.

On April 20th 1993 [the Appellant] saw [independent chiropractor #3] for an other independent chiropractic examination that was arranged at the request of her solicitor. In [independent chiropractor #3's] report the only reference to any problems in [the Appellant's] upper extremities is pain which affects her left arm and elbow and numbness and pins and needles sensations in her left forearm and hand.

[The Appellant] continued to seek treatment from [Appellant's chiropractor #1] after her second accident in 1992 and was still seeing him on a regular basis of about twice a month up to the time of her latest accident on June 4th, 1996.

ISSUE:

Was MPIC correct in terminating [the Appellant] IRI benefits on July 14th, 1996 and in ceasing to pay for further chiropractic treatments on October 13th, 1996?

[The Appellant's] position is that the accident caused her to have medical problems with both wrists and hands that prevented them from functioning normally and that those problems prevented her from returning to her normal job until long after her benefits under the Act were terminated. In fact, she lost her job when she was not able to return to [text deleted] in October of 1996. Her former employer was unable or unwilling to accommodate any graduated return to work; if she was, or believed herself to be, unable to perform the lifting and stacking requirements of the job, there was no place for her, she was apparently told. Therefore she is looking to MPIC to provide her with additional IRI for the lost period of work and payment of her chiropractic treatments until she was discharged by [Appellant's chiropractor #1].

[The Appellant] consulted [Appellant's chiropractor #1] just after the accident on June 4th, 1996 and he later reports that she advised him that she developing neck pain, upper and mid back pain, low back pain, headaches, nausea, fatigue as well as intermittent numbness into her right hand (thumb, index, and middle finger). In his report, dated September 10th, 1996 [Appellant's chiropractor #1] advises that "The numbness of [the Appellant's] right hand is also improved. Originally following her trauma daily episodes of numbness were noted into the right hand. At this time 1-2 bi-weekly episodes of numbness still noted. However the severity and the duration of the numbness has improved". He goes on to say the Appellant was totally disabled until September 3rd, 1996 and that she might be able to do light work at her place of employment.

After [the Appellant] filed her compensation claim with MPIC, her adjuster arranged for an independent chiropractic examination with [independent chiropractor #4] on July 4th, 1996, one month after the accident. In his report dated July 10th, 1996, [independent chiropractor #4] advises that [the Appellant] described her job at [text deleted] as being a sales clerk/stock person. The job entailed selling and providing information on books, computer work, sitting or standing for long periods of time, unpacking and moving boxes which can weight 20 to 50 lbs. The commission checked with the Appellant's former supervisor at her job, who confirmed the job description given by [the Appellant] to [independent chiropractor #4] and that she had been doing this work up to the time she took maternity leave.

She also told [independent chiropractor #4] about her neck and back problems that she suffered in the accident and that her right and left hand would go numb, especially the second, third and fourth fingers with the numbness primarily present in the right hand. This would occur a few times each day and especially in the morning or at night. In response to question from [independent chiropractor #4], [the Appellant] is reported to have said that she could not remember if she had this problem prior to the accident. When queried about her plans for returning to work she said she was not planning on returning at the end of her maternity leave on July 8th, 1996. It must be said, in fairness to [the Appellant], that it is unclear whether that statement of intent was motivated by a belief on [the Appellant's] part that she was unable to return to the job because of her complaints, or whether she was signifying a perfectly natural desire to remain at home with her new baby.

[Independent chiropractor #4] conducted an extensive examination and he concluded, amongst a number of things, that [the Appellant's] right and left upper limb symptoms are not nerve related but relate to what appears to be mild carpal tunnel syndrome. He goes on to report that her present problems are of a local, mechanical nature with no evidence of any direct nerve root signs and that she is very pain focussed and, he suspected, somewhat over-protective.

[Independent chiropractor #4] made the following recommendations:

- “ 1. Of prime importance, she needs to be on a well structured exercise program (2 times per day) for all spinal areas.
2. She needs to go on a weight reduction program and increase her level of fitness,
3. If her suspected carpal tunnel and tendonitis symptoms do not remit, unrelated to the motor vehicle accident, she should see her medical physician for further investigation.
4. She should have her blood pressure rechecked.
5. Aside from intermittent care over the next two to three months, with the frequency of treatment decreasing as she improves, I do not believe that she is in need of any major ongoing active care.”

Based on these findings and after consulting with [independent chiropractor #4] on his last recommendation, MPIC advised the Appellant that it would only fund the following number of chiropractic treatments: three per week from July 22 to August 18th, two per week from August 19th to September 15 and one per week from September 16th to October 13th, 1996.

[Independent chiropractor #4]'s conclusions were supported in large measure by another chiropractor who treated [the Appellant], namely [Appellant's chiropractor #2]. Just after the auto

accident [the Appellant's] treating chiropractor, [Appellant's chiropractor #1], went on holiday and, as in previous years, [Appellant's chiropractor #2] undertook the treatment of his patients in his absence. In this case he provided [the Appellant] with six treatments from July 16th to July 26th 1996 and reports on April 23rd, 1997 that her chief complaints were neck, upper and lower back pain with exceptional pain in her shoulder blades; she had also complained of having had regular headaches since her 1996 accident. His evaluation did reveal significant mechanical dysfunction in many areas of her spine. He goes on to state that with respect to the patient's employment, it was his opinion that she was capable of working in a secretarial or clerical position. He felt that she might have some discomforts and irritations but it was more prudent to have this patient employed with some pain rather than not working. [The Appellant] had emphasized, in her evidence to this Commission, that a large part of her work consisted of unloading, recording and stacking incoming cartons of books, and going through the same process in reverse for outgoing stock. We therefore asked [independent chiropractor #4], in the course of his testimony, whether in his opinion [the Appellant] could do a job that was a little more physical than he had outlined in his report, involving lifting 50 or more pounds on a regular basis. He responded that he felt she should have returned to work and try to see if she could do the job. He felt that delayed in going back to work would have delayed her recovery. He also testified that he reported to [Appellant's chiropractor #1] upon the latter's return from his holidays that he disagreed with [Appellant's chiropractor #1's] return to work program. He felt strongly that [the Appellant] should return immediately, rather than staying off work until September 3rd and then only returning to light duties as had been recommended by [Appellant's chiropractor #1].

In a report dated June 5, 1998 prepared by [Appellant's chiropractor #2] for [the Appellant's] solicitor he acknowledged [the Appellant] had reported tingling in her fingers bilaterally when he saw her. He diagnosed her as having sustained a Grade II Moderate Whiplash Associated Disorder. He was asked the specific question whether or not he had noted any signs of neurological difficulties, such as paraesthesia, numbness or tingling. In reply he stated his examination did not reveal any radicular findings or signs nor did it reveal any significant neurological signs. He observed that he had not fully investigated the subjective complaints of bilateral hand numbness or tingling of which [the Appellant] had complained, as he felt these symptoms were related to her pregnancy.

In a final question, [Appellant's chiropractor #2] was asked, based on [the Appellant's] last visit, what length of treatment she would require. He answered by referring to a study entitled "The New Zealand Guideline Group" which identifies both Red and Yellow Flags as reasonable risk predictors for long term disability and work loss in acute low back patients. The Red Flags are physical risk factors and the Yellow Flags are the psychosocial factors which increase the risk of developing or perpetuating long term disability and work loss associated with low back pain. He provided a copy of the pertinent part of the report and then went on to state that "with the above considerations in mind I can identify the following risk factors which will delay her recovery:

1. Previous motor vehicle accident(s) with history of delayed recovery;
2. Deconditioned from pregnancy;
3. Belief that pain is harmful;
4. Belief that all pain must be abolished before attempting to return to work or normal activity;
5. There may also be a desire to spend more time at home with her new child."

[Appellant's chiropractor #2] concluded by stating:

“Specifically it is my opinion that the avoidance of pain and the delay in returning [the Appellant] to her activities of daily living (including her employment) will greatly contribute to her delayed recovery. I would predict that [the Appellant] will likely require twice the length of recommended treatment that Croft might have expected (over 12 months).” *(The reference to Croft is to a well-known text by Drs. Arthur Croft and S. Foreman on Whiplash Injury, and to a number of published articles on the same subject by Dr. Croft, a California-based chiropractor.)*

The Appellant's position is that she couldn't return to work on July 8th, 1996, because she did not have the normal use of her hands due to the numbness and tingling in her hands and wrists. The position being advanced to explain her inability to return to work was that she suffered either a double crush syndrome or carpal tunnel syndrome in her hands as a result of the accident.

The Appellant testified that the tingling sensation in her wrists persisted through the summer of 1996 and she consulted her family doctor, [text deleted], about this matter. [Appellant's doctor], in turn, referred her to [Appellant's neurologist #2] at the [hospital] for nerve conduction tests. His diagnosis was that she had a moderate bilateral carpal tunnel syndrome in her wrists. She was referred for physiotherapy at [hospital] but these treatments only made the problem worse. She was then sent to see an occupational therapist at [hospital], who provided her with braces for both of her wrists and hands which she wore until the fall of 1997. At one point she was advised to have surgery to relieve her pain and discomfort but she chose not to. When she finally removed her splints she did exercises with her wrists and hands; her condition improved to the point that she

felt she could go back to work by Christmas, 1997, but unfortunately her job was no longer available to her.

A Double Crush Syndrome is described in the literature provided by [the Appellant's] counsel as 'the coexistence of dual compression lesions (*damage*) along the course of a nerve, for example where there is a coexistence of cervical radiculopathy (*irritation of or pressure on the nerve roots in the neck*) and carpal tunnel syndrome. This syndrome (*or hypothesis as some refer to it*) has only recently started to appear in the medical literature and we are not in a position to either accept or reject it. We do know that the Appellant had a problem with her neck and a mild carpal tunnel syndrome but did this constitute a double crush syndrome?

[Appellant's chiropractor #1] reported that the Appellant had developed a radiculopathy (*a disease of the nerve root*) in her spine at the C5-6 vertebrae. The basis for this diagnosis was his application of a test known as the "Doorbell Test" which is a finger pressure test on the neck. There are a number of other tests that can and should be done to confirm the presence or existence of a radiculopathy but they were not conducted or performed by [Appellant's chiropractor #1]. The other doctors of chiropractic who testified said that the Doorbell Test is not an accurate test, may even give a false-positive sign, and should be confirmed by carrying out a number of standard tests recognized by their profession to confirm the presence or absence of the diagnosis of radiculopathy.

[Appellant's chiropractor #1] and [Appellant's chiropractor #2] after their examinations of [the Appellant] were of the opinion that she did not suffer any nerve root damage as a result of her car

accident. In the absence of any other evidence to support [Appellant's chiropractor #1's] finding of radiculopathy at C5-6 we are of the opinion that [the Appellant] did not have a nerve root problem in her neck and but that she did have a soft tissue injury for which she received treatment. In the absence of a nerve root irritation or disease we believe that one of the essential elements of a double crush syndrome is missing and therefore conclude that [The Appellant's] problems with her hands and wrists were not as a result of the double crush syndrome.

There is no doubt that [the Appellant] suffered from a mild form of carpal tunnel syndrome (CTS) in her wrists but was it as a result of the accident? CTS is a condition resulting from pressure on the median nerve as it traverses the carpal tunnel in the wrist. This condition is characterized by pain, tingling, burning, numbness in the skin of the palm, fingers and wrist. It can be caused by any number of factors among which are: repetitive work with the hands, obesity, recent history of pregnancy and child birth. It can be treated surgically, by exercise or by wearing braces or splints or a variety of all of these techniques.

[The Appellant] confirmed that her hands or wrists did not hit the dashboard or any other part of the car at the time of the accident. It would appear from the reports predating the June 4th, 1996 accident that she had tingling and numbness in her hands and wrists akin to the post-accident symptoms that she describes and which may have been CTS. There is no evidence before us that supports the proposition that an individual in a car accident that does not sustain trauma to the hands or wrists can develop CTS as a result of that accident. Therefore, based on the medical and chiropractic opinions provided to us we are of the view that the CTS developed by the Appellant was not caused by the motor vehicle accident of June 6th, 1996.

The last argument of the Appellant was that it was too soon for her to return to work when MPIC terminated her benefits. [Independent chiropractor #4] and [Appellant's chiropractor #2] both felt she should return to work by mid-July 1996 and that any delay would only postpone her recovery. We accept their professional opinions and are of the view that the Appellant should have returned to work or at least tried to do her old job at [text deleted] on July 8th, 1996, or within a few days thereafter. Given the Appellant's personal and medical history she may have believed she could not return to work then, but that is not the determining factor. MPIC must return the Appellant to her pre-accident status or as nearly as it can, and we are of the view that this had been accomplished by the time her IRI was terminated on July 14th 1996. We also find that her need for continuing chiropractic treatments had come to an end by the end of October of that year. For the above stated reasons we can not accept the reasoning advanced on behalf of the Appellant.

DISPOSITION:

For the foregoing reasons, MPIC's Acting Review Officer's decision of February 21st, 1997 is confirmed and the Appeal is dismissed.

Dated at Winnipeg this 14th day of September, 1998.

J.F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED