

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-89**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan G. McKelvey
the Appellant, [text deleted], was represented by [Appellant's
representatives]

HEARING DATE: February 9th, 1998

ISSUE(S): Whether Appellant precluded from continuing university
studies by reason of a MVA and, therefore, entitled to an
indemnity.

RELEVANT SECTIONS: Section 88 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 Appellant is seeking \$18, 900.00 from MPIC on the basis that he was the
victim of an accident whose sequelae caused him to miss three school terms, namely from January
to April 1996, September to December 1996 and January to April 1997.

To qualify for remuneration for lost school time, the Appellant must fall within the

scope of Section 88 of the Act, which reads, in part, as follows:

88(1) A student is entitled to an indemnity for the time that he or she is unable because of the accident to begin or to continue his or her current studies, and the entitlement ceases on the day that is scheduled, at the time of the accident, for the completion of the current studies.

88(2) The indemnity referred to in subsection (1) is.....

(b) \$6,300.00 for each term not completed at the post-secondary level, to a maximum of \$12,600.00 per year.

On October 24th, 1995 the Appellant was injured in an automobile-pedestrian accident. At approximately 2:30 P.M. he was alone in the crosswalk located at the intersection of [text deleted] and [text deleted]. He pushed the crosswalk button and proceeded to cross; a school bus had stopped in the curb lane to let him pass. When he got past the bus he noticed a car coming from his left, but was unable to stop himself and ran into the side of that vehicle. We shall address some of the details of the accident later in these Reasons.

At the time of the accident the Appellant was attending the University [text deleted], was divorced, and his former wife had custody of their two children. Prior to entering University he had been a member of the Canadian Armed Forces for 13 years, first as a radar electronics technician, then as a flight mechanic and, more latterly, as a technical librarian at the Base library. When the military downsized he took an early retirement and enrolled in a program of science courses at the University [text deleted] with the hope of becoming a [text deleted].. Though mechanically inclined and having worked in a technical field, he found the transition to

university life and the science program upon which he had embarked very difficult. During the fall term of 1994, having decided that the sciences were not for him, after all, he withdrew from all of his science programs and in the fall of 1995 he entered an Arts program with [text deleted] as his major. Two months later he was involved in the motor vehicle accident.

What happened to [the Appellant] in the course of his collision with the car is not clear, as we have been provided with four different versions of the accident, three by [the Appellant] and one by the driver of the car.

First: In a signed statement made to MPIC dated February 2nd, 1996, [the Appellant] states:

"...I noticed a blur in front of me. I raised my arms and couldn't stop. My wrists hit the rain gutters on the passenger door of the car. I don't recall hitting my head on the car. I saw flashes of light. I was thrown back and then fell forward with my arms above my head and my head hit the cement. The initial impact was taken by my chest and arms. Was knocked unconscious. I got up onto my hands and knees after waking. I could only see gray."

Second: In a affidavit filed for his internal review hearing and dated December 2nd, 1996, [the Appellant] attests:

"10. I rebounded from the force of the blow and was thrown up into the air. While falling, the car cleared beneath me. The full force of my body hitting the ground impacted against my head. Because my arms were raised to avoid the car I was not able to brace for any portion of the impact. *

11. I was knocked unconscious for an unknown period of time and the attached medical reports confirm I was unconscious for at least 45 seconds. When I regained consciousness, several bystanders were hovering over me."

(*It has to be said that none of the medical or other evidence supports the rather bizarre proposition that [the Appellant] was thrown into the air to a height above that of the car into the side of which

which he had propelled himself. By the same token, the fact that the only visible signs of any impact upon his body consisted of a few abrasions to his right wrist and left hand tends to challenge the credibility of his assertion that the full force of his body hitting the ground ‘impacted upon his head’.)

Third: At the hearing of this appeal, [the Appellant] described being hit by the car and being flung into the air about seven feet above ground with his body becoming parallel to the ground. He testified that the car had passed underneath him while he was thus suspended in the air, and that he had then fallen to the ground and been knocked unconscious.

(That, also, is an assertion that, to put it as gently as we can, is not easy to visualize and does not seem to be borne out by the medical or other evidence, nor even by the activities of the Appellant immediately thereafter.)

Fourth: The driver of the car is reported by the adjuster for MPIC to have stated:

"[The Appellant] walked into the side of the vehicle. He had no physical injuries she could see. Boy friend [text deleted] in car. They gave [the Appellant] a ride to where he was going. He never lost consciousness. He did fall to the ground - other people came on the scene. His talking was okay, not disoriented or any other problems. He said one wrist was sore - no blood or lacerations".

[the Appellant] was dropped at his lawyer’s office at [text deleted]. by the driver, as this is where he was heading when he was involved in the accident. Towards the end of that meeting, the Appellant testified, he began to feel ‘light headed and woozey’, so his lawyer had him taken to the [text deleted] Clinic. There the Appellant was examined by [Appellant’s doctor #1], to whom the Appellant described himself as dizzy, with a headache, disoriented and having general aches and pains. [Appellant’s doctor #1] reports on February 13th 1996:

"On examination of the head and neck there was no nystagmus, fundi normal, ears normal. The eye exam revealed the pupils were equal and reactive to light. The neck showed good mobility. The cranial nerves were normal. Chest examination revealed no wounds or

ecchymosis. Examination of the heart revealed normal 1st and 2nd heart sounds and sinus rhythm. Lungs revealed good air entry. There were no wounds or ecchymosis of the abdomen, no abdominal pain and no guarding. Examination of the extremities revealed an abrasion on the right wrist and left hand. Mobility, sensitivity, and strength of limbs was normal.

My diagnosis was anxiety, muscular strain and abrasions in a pedestrian hit by a car.

[The Appellant] was advised to rest from October 24th to 27th inclusively and return for follow up if new symptoms or signs occurred. He was told to take analgesics for the pain. The patient did not return to our clinic."

When we review this medical report it does not square with injuries the Appellant would have suffered had he been thrown seven feet into the air, being parallel to the ground and then falling to the pavement. One would expect to see more injuries than [Appellant's doctor #1] reported. Why were they not there? We believe the answer lies in a report prepared by [Appellant's psychologist], on April 6, 1994. [The Appellant] could not make up his mind as to what career direction he should take once he left the Armed Forces and he consulted [Appellant's psychologist] to help him make the right choice. [Appellant's psychologist] reports that "He suffered a major depressive episode which began about two years ago, and this may also have been contributing to his difficulty making decisions." After an extensive examination and testing of [the Appellant] he reports:

"When stressed, he can miss relevant details or distort their meaning and respond to the distortion rather than the detail itself but it appeared throughout the assessment process that this only occurred as a function of anxiety, and does not appear to represent a

neuropsychologically based attentional problem."

We believe the first version of the accident that [the Appellant] gave probably reflects a more accurate description of the accident and the recounting of the accident many times over the past 2½ years has led [the Appellant] to embellish the story.

[The Appellant] had registered in the Fall of 1995 for three half courses and two full courses at the University [text deleted]. He testified that, just after Remembrance Day in 1995, he began to experience severe headaches that prevented him from pursuing his program of studies and many of the normal demands of his daily life. He consulted his family doctor, [Appellant's doctor #2], on November 17th, 1995, and reported to her that he was suffering from headaches and inability to sleep or concentrate. She prescribed Tylenol 3's, ordered a CT Scan, recommended chiropractic manipulation and massage therapy, and arranged for a neurological consultation with [Appellant's neurologist #1].

After seeing [Appellant's doctor #2] [the Appellant] dropped two of his half courses at the University on November 29th, 1995. He took heavy doses of the Tylenol 3's until the end of February, 1996 by which time, he testified, he had made substantial improvements and could control his headaches with non-prescription Tylenol.

[The Appellant] consulted [text deleted], a chiropractor, on December 14th, 1995. [Appellant's chiropractor #1] reports "... ([the Appellant]) had seen his medical Doctor who did not feel that his condition was from the accident entirely (this was only my opinion)" and goes on to say "X-rays reveal upper cervical subluxation. Ranges of motion were normal. I felt,

although there was strain to cervical spine - this patient also has had a "sleep disorder" and is under psychiatric care for this and stress (marriage). It was my opinion that chiropractic care at this time would not produce effective results".

[The Appellant] then consulted another chiropractor, [text deleted], on December 29th, 1995 and received treatment from him at the expense of MPIC until early May of 1997 when, by apparent agreement between [Appellant's chiropractor #2] and MPIC's chiropractic consultant, [text deleted], the Appellant was deemed to have recovered from the physical effects of his accident and was to be discharged from [Appellant's chiropractor #2's] care. This was in accord with the views of [Appellant's neurologist #2], a neurologist with the [text deleted] Clinic to whom [Appellant's doctor #2] had referred the Appellant and who, in April of 1996, had expressed the view that the chiropractic treatments had been responsible for the back pains of which the Appellant was now complaining. [Appellant's chiropractor #2's] report, dated January 22nd, 1996 noted that "patient has had CT Scan which showed no brain damage or pathology".

[The Appellant] had reported the accident to MPIC on December 21st 1995. On February 2nd, 1996 he completed MPIC's Application for Compensation form and, in the section dealing with "description of injuries", he reports that he had "cuts on each wrist, headaches, vomiting, dizziness about three weeks later".

On February 15th, 1996 [the Appellant] was examined by [Appellant's neurologist #1], another neurologist, at the request of [Appellant's doctor #2]. [Appellant's neurologist #1] reports on February 23rd, 1996 that the patient appears normal and was improving, that some of

what he is experiencing may relate to whiplash but "there was may be a stress component as well". He also makes the following observation "He ([the Appellant]) says the headaches are worse with any type of stress, be it concentrating in school or emotional stress. He is on Lectopam and Imovane for anxiety and insomnia. There may be a depressive component as well" .

[Appellant's doctor #2] reports to MPIC on February 28th, 1996 and advises that she saw the Appellant on November 17th, 1995 because of persistent and severe headaches which prevented him from going about his day-to-day activities. She reports "he has been seeing a chiropractor and a massage therapist who has been helping relax the muscles in the back of his neck and upper back. His headaches have improved somewhat, but do seem to increase when there is any amount of stress in his life. The appetite, nausea and vomiting all respond to the level of stress as well."

The Appellant testified that things began to get better for him in late February 1996 and that the symptoms he had been experiencing were much reduced. He was able to study and concentrate and ultimately completed two and a half courses, receiving quite good grades, namely: [text deleted].

[Appellant's neurologist #2], a neurologist with the [text deleted] Clinic, examined the Appellant at [Appellant's doctor #2's] request and reported on April 9th, 1996 that [the Appellant] was basically normal, that he should reduce the number of Tylenol 3's he was taking and stop taking chiropractic treatments. The Appellant says he felt great during the summer of 1996 but that he didn't feel up to working; however he managed to spend time with his children.

He was planning his Fall studies at the university and was quite excited about getting back to school. He enrolled at the University [text deleted] in September, 1996 and registered for a full load of courses - four half courses for the Fall term and another two half courses scheduled to start in January of 1997. His evidence was, however, that after a few weeks he began to experience headaches and sensitivity to light and, by October of 1996 was beginning to experience the same symptoms that he had had almost a year earlier.

[Appellant's doctor #2] referred [the Appellant] to yet another neurologist, [text deleted], who, after examining the Appellant on November 13th, 1996, reported that [the Appellant] had presented with complaints of severe generalized headaches which had responded well to Amitriptyline, but that the drug had produced some unwelcome side effects. The Appellant had reported to [Appellant's neurologist #3] that he was anorexic, although [Appellant's neurologist #3] notes that "He doesn't seem to be suffering from an impairment of energy supplies". [Appellant's neurologist #3] adds that "His neurological review is otherwise unremarkable. He does not appear to have any chronic medical problems". Other than suggesting a possible change in [the Appellant's] medication, he concludes that the Appellant is normal; he does not make any specific recommendations or findings. This does not square with the evidence given by the Appellant at the hearing of his appeal. He testified that he had described his symptoms/problems to [Appellant's neurologist #3] who advised him to take four months off school in order to rest and fully recover from the accident. [the Appellant] further testified that it was upon the basis of that recommendation from [Appellant's neurologist #3] that he withdrew from all of his then current courses and dropped the courses he had planned to take in the winter term.

The evidence contained in a Student History Report provided by the University [text deleted] does not support [the Appellant's] evidence. This record shows that he withdrew from one course on October 11th, 1996 and one on October 22nd, 1996, long before he saw [Appellant's neurologist #3] on November 13th. He did withdraw from one full-time course on November 13th and dropped two courses he was going to take in the winter session on the same day. He withdrew from his last course on November 28th, two weeks after he saw [Appellant's neurologist #3]. We might add that, because there was initially some confusion respecting the foregoing dates, due to a malfunction of the University's computer, we have made a point of double-checking the dates of [the Appellant's] withdrawals from his courses and are satisfied that those that appear above are correct.

There is nothing in [Appellant's neurologist #3's] report of November 14th to suggest that the Appellant had been given any such drastic advice. If the Appellant was experiencing the problems he describes and had been advised to drop out of university, it is hardly conceivable that this information would not have been reflected in [Appellant's neurologist #3's] report. There is an obvious conflict here, making it difficult for us to accept [the Appellant's] version of events. While there is no doubt that he withdrew from university, that decision was not based on advice of [Appellant's neurologist #3] but for reasons which, while not spelled out categorically for us, almost certainly had their origins in forms of stress unrelated to his collision with a motor vehicle.

In 1992 [text deleted] had separated from her husband, petitioning for divorce and custody of their children. Her petition was filed in the Court of Queen's Bench on [text deleted].

We were provided with an index of the relevant court proceedings; it shows 113 entries from [text deleted]. When one reviews that index and some of the documents reflected in it, one can only conclude that this domestic dispute was a particularly hostile and bitter one.

We were also provided with the medical history of the Appellant for the last five years of his time in the Canadian Armed Forces. His Air Force records bear out [the Appellant's] own testimony that, in 1993, he was under stress because of his domestic problems and that by the start of the Summer in 1993 he was suffering headaches, had lost his ability to concentrate, and suffered from insomnia and loss of appetite. He was finally hospitalized for one week because he was clinically depressed and at one stage had contemplated suicide. All of this occurred while, and almost undoubtedly because, he was experiencing extremely stressful times with domestic court battles.

An analysis of the court docket, on the one hand, and the surges of physical and psychological symptoms experienced by [the Appellant], on the other, reveals a series of coincidences that are inescapable; as each new step in the court proceedings drew near, so did the Appellant's obvious discomfort, lack of concentration and insomnia peak. By way of example only, from [text deleted] through [text deleted], - the very period during which, [the Appellant] testified, he had been experiencing a major recurrence of his headaches, loss of appetite and of weight, inability to concentrate and lack of sleep, - we find no less than 26 items of court activity. The symptoms that he was experiencing during that period were, for all practical purposes, identical to those of which he had been complaining since the Summer of 1993. On February 22nd, 1996, the Court gave a decision in favour of [the Appellant], reducing his support

payments; from that point on, it was the Appellant's own evidence that his condition improved materially and he was able to finish the academic year with marks that were better than average.

In summary, while we accept the fact that the Appellant suffered some injuries as a result of his collision with an automobile and may, perhaps, have even sustained injury sufficiently serious to be categorized as a Grade 2 Whiplash Associated Disorder, we are not persuaded upon a reasonable balance of probabilities that, as a result of that collision, he became unable to continue or commence any of the courses of study for which he had registered. We find that most, if not all, of the symptoms that he describes were caused, not by his collision with the car, but by stress from the cumulative effects of his marital strife and of his return to the intellectual demands of university life.

The silver lining to that cloud may be found in the Appellant's advice to this Commission that he returned to university for the fall term of September 1997 and that he is doing quite well. He appears, therefore, to have put his battles with his former wife behind him and finally to have adapted well to the stresses of his courses.

However, his withdrawal from two of the half courses for which he had registered in the Fall of 1995 - leaving him to complete the remaining two full courses and one half course - and his subsequent cancellation of all of the courses for which he had registered for the academic year 1996/7, cannot be laid at the door of his accident. Those decisions, while not necessarily errors of judgment, had their roots elsewhere.

DISPOSITION:

For the reasons stated above we must dismiss [the Appellant's] appeal and confirm the decision of the acting review officer dated July 25th, 1997.

Dated at Winnipeg this 19th day of February, 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX