

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-135**

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;
the Appellant, [text deleted], appeared on his own behalf

HEARING DATE: July 26th, 1999

ISSUE: (a) termination of income replacement indemnity ('IRI')
- whether justified;
(b) whether psychological difficulties were due to brain
damage caused by motor vehicle accident.

RELEVANT SECTIONS: Section 110(1)(a) of the MPIC 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, [text deleted], sustained injuries on May 21st, 1994 when, riding his bicycle at about 5 o'clock A.M., he was hit by a motor vehicle. He appears to have landed on his head, although it is possible that the weight of his fall was partly taken by the Appellant's hand which sustained laceration requiring sutures and the skull itself does not seem to have been damaged. The operating surgeon reports that most of the Appellant's skull was exposed by the descaling

wound which, after debridement and cauterization of several active, bleeding arteries on the scalp laceration edges, was closed with Dexon and nylon sutures. The Appellant also sustained a torn syndesmosis (i.e. a form of fibrous joint), resulting in the displacement of his ankle bone, compression fractures of the L3 and L1 vertebra, lacerations of his hand and numerous abrasions. The ankle fracture required the insertion of a 9 hole 1/3 tubular plate, 2 Steinman pins and a number of screws; [the Appellant] had his ankle in a cast for some time following his injury.

Despite the injuries briefly noted above, little purpose will be served in a detailed analysis of the physical aspects of [the Appellant's] medical history following his accident. It is enough to say that [the Appellant], an unemployed labourer at the time of his accident, appears to have been fully recovered from the physical aspects of his injuries by November 30th, 1997, the date when MPIC decided to terminate his income replacement indemnity pursuant to Section 110(1)(c) of the MPIC Act. Indeed, there is ample evidence on file that [the Appellant] was physically capable of returning to the workforce, albeit with some limitations, by about mid-1996. Certainly, by April 19th, 1997 [text deleted], [the Appellant's] chiropractic caregiver, gave his opinion that the Appellant had reached about 80% of his pre-accident status and should be able to return to his previous job as a window manufacturer, performing duties where heavy lifting was not required. (The evidence of the Appellant himself was that his most recent forms of employment had not involved heavy lifting.) [Appellant's chiropractor] added that his one concern lay in the muscle deconditioning that had occurred due to [the Appellant's] prolonged period of disability.

On May 27th, 1997 [the Appellant] commenced a formal rehabilitation and stabilization program at the [text deleted] Clinic. The program was originally scheduled for six weeks but, because [the Appellant] seemed to find difficulty in focusing his attention and in meeting the prescribed schedule, the program was necessarily lengthened until late September of 1997 when he was discharged. The Clinic's final report indicates that [the Appellant] had improved greatly, had successfully completed the rehabilitation/stabilization course work and would be able to return to his previous vocation at a regular work intensity. He had improved in strength, flexibility and functional endurance.

On November 21st, 1997, [the Appellant's] adjuster at MPIC wrote to him to tell him that:

- (a) he was entitled to permanent impairment benefits for the scarring to his right ankle, wrist and left thigh, and for the compression fractures of his vertebrae, in the total sum of \$20,775.00;
- (b) that his income replacement indemnity would be terminated as of November 30th, 1997, because he was, in the insurer's view, able to hold the employment that had been determined for him under Section 106 of the Act, namely as a light assembler in a window factory.

[The Appellant] originally took issue with the calculation of his permanent impairment awards, but subsequent withdrew that objection once MPIC had agreed to pay him an additional \$5,000.00 for the scarring to his scalp. [The Appellant] also agreed, and confirmed at the hearing of his appeal, that he probably is physically able to return to his former employment, and had been restored to that condition by November 30th, 1997.

The basis of [the Appellant's] present appeal, and the difficulty confronting this Commission, lies in [the Appellant's] psychological and emotional state as he describes it. Without attempting to summarize [the Appellant's] evidence in fine detail, we note only some facets of his personality which, he says, only postdate his motor vehicle accident and were not present before it:

- (a) he hates people – that is to say, people in general, including total strangers; he knows they have done nothing toward him of an antagonistic nature, but feels a constant urge to do them harm although, fortunately, he has not yet given free rein to that impulse;
- (b) any kind of sound in digital format, as well as any sound in either high or low pitched frequencies cause seizures. Similarly, strobe lights and their equivalent, such as or including video games and natural lightning, also cause seizures. In the course of the seizures which, he estimates, last from 45 to 90 minutes, he feels "out of it". His accident comes back to him – he can feel a mouthful of blood and smell the dewy grass upon which, he says, he fell in the course of his accident. (We note, in passing, that [the Appellant] says he has absolutely no recollection of his accident and remembers only waking up in hospital after the event.);
- (c) before his accident he played and was the lead singer of his band; post-accident he has not found himself able to do this – he forgets lyrics, finds that he cannot play the guitar as he used to. A compensating factor is that, while he used to be into heavy metal or hard-edged music, he now finds himself composing music of a more serene kind – as he puts it "birds twittering, waters babbling over stones, that kind of thing";

- (d) he finds he gets confused very easily. To quote his Notice of Appeal: "One thought severs itself into thousands, therefore leaving the original thought to be forgotten";
- (e) he says he has become emotionally and physically disconnected from society, depressed and losing his will to live. Indeed, his evidence is liberally sprinkled with thoughts of suicide and the things that he would rather kill himself than do. "I would rather kill myself than take medication"; "I can't ride on a bus because I hate people and am afraid I might kill someone or myself if I get into that kind of crowd";
- (f) he believes he is being used as a specimen in an MPIC experiment;
- (h) at least two of his physicians had suggested some form of medication but, as [the Appellant] said, "I'm told not to take it - I don't know by whom - you tell me". In that same context, he testified that another physician had prescribed some anti-depressant medication for him, but that 2 ½ of those tablets had caused the worst reactions he had ever had, with visual hallucinations, sweating, crying and so on.

Fortunately, [the Appellant] has not converted any of his more violent thoughts into action.

Numerous other, abnormal reactions to the world around him on the part of [the Appellant] were reported in a memorandum prepared by MPIC's internal review officer on August 5th, 1998, immediately after his meeting with the Appellant. For example:

- (a) he expected to die when his permanent impairment funds ran out;
- (b) he cannot go on social assistance because he simply cannot be around the other applicants in the waiting room; he is not like them;

- (c) he sleeps from 9 o'clock A.M. to 6 o'clock P.M. because he cannot "operate" during the day when so many people are around;
- (d) he drives a little, but get road rage very easily and is afraid he is going to "lose it" and "hurt somebody";
- (e) when he regained consciousness in hospital after his accident, he wrote five pages of "incredible material" - knowledge that he brought back with him from the dead (because, according to his doctor, he did actually die and now exists in several parallel dimensions) - but the hospital staff stole those papers because they contained information which other humans are not supposed to know;
- (f) he knows that he has been "implanted" with a "program", but he does not know how or why. "They" leave shiny coins on the sidewalk to attract his attention so that he will pick them up. They started with pennies but have worked up to quarters. The coins have tracking devices in them so that they can trace his whereabouts. When he sees the coins, he wants to stop and pick them up, but the program commands him to keep walking.

[The Appellant] attributes all of the foregoing symptoms to his motor vehicle accident. He says that, prior to his accident, he was strong, active, full of life, outgoing and able to get along well with others. He had held the following jobs:

from July 1st to September 1st, 1989 - labourer for [text deleted] in roadwork;

from October 1st, 1989 to August 31st, 1990 - carpenter's assistant with [text deleted];

from September 1st, 1990 to October 31st, 1991 - labourer/painter for [text deleted];

from November 1st, 1991 to October 31st, 1993 – labourer/assembler for [text deleted] in window manufacturing;

from November 1st to December 17th, 1993 - labourer for [text deleted] in meat packing.

The difficulty faced by this Commission is that we only have the evidence of [the Appellant] himself from which to attribute his declared psychological problems to his motor vehicle accident; none of his caregivers is prepared to go that far. Indeed, there are some indications that his psychological condition has its origins well before the time of his accident. For example, a former employer says that, while [the Appellant] was an intelligent young man who, when he applied himself, was a good worker, he kept very much to himself while at work, not wanting to be around other workers, and "often had this dazed look about him". He was also given to arriving for work several hours late without having contacted his supervisor. The nurse/medical consultant involved in coordinating his rehabilitation expressed some doubts whether [the Appellant] had sustained any brain damage and felt that "he was likely like this before" his accident. The principal of the school where [the Appellant] had been a student noted that one of his clearest recollections about the Appellant was an article that had appeared in [text deleted] in or about 1993, describing the Appellant's interest in demonic, satanic music. [Text deleted], a family physician who had seen [the Appellant] on several occasions from January 27th, 1995 and thereafter, comments that

He had definite depressive symptoms and some of this was post-traumatic stress. Over the next eleven months it became evident that many other factors were contributing with a definite sense that these were present before the accident. At this time post-traumatic depression is not a reason for the delay in rehabilitation.

.....[the Appellant] does not have any cardiac reason to limit his work capability.

.....The only limiting factor related to the accident causing limitation in type of employment is lumbar vertebrae compression as described.....Functionally, aside from the labour employment recommendations I have made he can be actively rehabilitated into job placement.

[The Appellant] has had extensive therapy from [text deleted], a neuropsychologist and specialist in rehabilitation psychology. Those sessions included something in excess of 44 consultations and, as well, discussions by [Appellant's neuropsychologist] with [text deleted], a psychiatrist to whom the Appellant had been referred for consideration of psychotropic medication. We have had the benefit of a number of detailed reports prepared by [Appellant's neuropsychologist] and, as well, a letter addressed to this Commission in response to a specific inquiry whether, on a reasonable balance of probabilities, the personality change that [the Appellant] says he has undergone since his motor vehicle accident had its root cause in the trauma of that accident. [Appellant's neuropsychologist] agrees with the observation that [the Appellant's] difficulties in sustaining employment or self-employment appear to relate largely to his psyche or his personality but neither [Appellant's neuropsychologist] nor any other caregiver whose views have been made known to us is prepared to attribute those problems to the accident. The farthest that [Appellant's neuropsychologist] is prepared to go is to say that

I believe that the behavioural manifestations of [the Appellant] are not likely related to a discreet brain injury, but likely reflect a number of causes, with the "turning point" occurring with this individual's motor vehicle accident...However, the foregoing rests, in part, upon the presumption that a significant change had occurred in this individual's general presentation subsequently, which I believe would be further clarified by speaking with individuals who have known [the Appellant] pre- and post-injury.

There is little objective evidence before us of [the Appellant's] psychological condition before his accident - nothing to which we can look as a matrix against which to gauge the changes, if any, that might have occurred as a result of his accident.

There being none of [the Appellant's] caregivers who feels able to support, with a professional opinion, the proposition that the Appellant's current psychological state was brought about by his motor vehicle accident, we are obliged to find that, on a balance of probabilities, his condition pre-dated that accident and was not caused by it.

We note that a personal injury file of this kind is never considered to have been permanently closed. Should further evidence, persuasively supportive of [the Appellant's] position, be forthcoming at some future date, then that, of course, is something that the insurer will have to consider. Meanwhile, on the basis of the evidence adduced before us, we must dismiss [the Appellant's] appeal.

Dated at Winnipeg this 31st day of August, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED