

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-00-83**

**PANEL:**

**Mr. J. F. Reeh Taylor, Q.C., Chairman**  
**Ms. Yvonne Tavares**  
**Mr. Colon C. Settle, Q.C.**

**APPEARANCES:**

**The Appellant, [text deleted], was represented by  
[Appellant's representative];  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Keith Addison.**

**HEARING DATE:**

**November 30<sup>th</sup>, 2000**

**ISSUE:**

**Calculation of permanent impairment award.**

**RELEVANT SECTIONS:**

**Sections 126, 127, 129(1) and 130 of the MPIC Act and  
Section 4 of Schedule A to Manitoba Regulation No. 41/94.**

**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 only issue properly before this Commission is whether the calculation of an award for permanent impairment to [the Appellant's] right shoulder, made by MPIC's adjuster, was correct. The dispute arises from the fact that there were, in all, four different sets of measurements performed, by four different experts, with respect to the ranges of motion of [the Appellant's] right shoulder. Those measurements were taken by [text deleted], orthopedic surgeon, [text deleted], occupational therapist, [text deleted], physiotherapist, and [text deleted], also a physiotherapist.

The differences between the various sets of measurement are only significant in one or two areas.

Without, in any way, expressing criticism of any of the three therapists, we adopt the opinion of [Appellant's orthopedic surgeon] in each of the three ranges of motion disputed by the Appellant. Each limitation of range of motion is to be calculated as a percentage of the maximum permanent impairment award which, by the date of [the Appellant's] accident, was \$108,664. We find that the total impairment award for his shoulder injury should be 15.6%, calculated as follows:

<b>Relevant Sub-section</b>	<b>Nature of Impairment</b>	<b>Range of Motion</b>	<b>Calculation</b>	<b>Percentage</b>
4(c)(i)	Partial loss of abduction	30°	(1-30/180) x 6	4.99
4(c)(ii)	Partial loss of front elevation or flexion	40°	(1-40/180) x 3	2.33
4(c)(iii)	Partial loss of external rotation	10°	(1-10/90) x 2	1.78
4(c)(iv)	Partial loss of internal rotation		Maximum	1.00
4(c)(v)	Partial loss of adduction or extension		Maximum	0.5
4(d)	Loss of head of humerus		Maximum	5.0
<b>Total Impairment Award for Shoulder Injury</b>				<b>15.6%</b>

In the course of the hearing, counsel for [the Appellant] raised four other issues: a claim for permanent impairment to [the Appellant's] wrist; a claim for permanent impairment in the form of paresthesia involving [the Appellant's] right deltoid region (a Class II sensory impairment); a claim that [the Appellant's] permanent impairment awards should be increased by an enhancement factor of 0.25, under Section 2 of Manitoba Regulation No. 41/94; and a further claim that Table 17 in Regulation 41/94 should be applied, by reason of a change in form and symmetry resulting from the injury to [the Appellant's] right shoulder.

We make no comment upon the merits of any of these four, additional claims. None of them has been the subject of a decision by [the Appellant's] adjuster at MPIC, nor by an Internal Review Officer. It is therefore outside the mandate of this Commission to deal with them and, if [the

Appellant] and his counsel wish to pursue them, they should be referred back to the adjuster.

Dated at Winnipeg this 1<sup>st</sup> day of December, 2000.

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**J. F. REEH TAYLOR, Q.C.**

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**YVONNE TAVARES**

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**COLON C. SETTLE, Q.C.**