

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-61**

PANEL: Yvonne Tavares, Chairperson
Colon Settle, Q.C.
Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf accompanied by his brother-in-law, [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison.

HEARING DATE: March 9th, 2001

ISSUE(S): Whether Appellant entitled to income replacement indemnity benefits.

RELEVANT SECTIONS: Section 85(1) 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], was involved in a motor vehicle accident ("MVA") on September 14th, 1995, when his vehicle was rear-ended while stopped. [The Appellant] subsequently applied to MPIC for income replacement indemnity ("IRI") benefits. In a decision dated September 25th, 1997, [text deleted], Claims Examiner, denied [the Appellant's] claim for IRI. This decision was based upon a review of the medical

information on [the Appellant's] file by MPIC's Medical Consultant, [text deleted]. [MPIC's Claims Examiner] wrote that, "Based on the medical information available, we are unable to determine any causal relationship between your injuries and the motor vehicle accident of September 14th, 1995".

[The Appellant] sought an internal review from that decision. The Internal Review Decision of January 28th, 2000, upheld the Claim's decision on the basis that, "The evidence falls very short of establishing a causal connection to the motor vehicle accident in question". It is from this decision that [the Appellant] now appeals.

[The Appellant] has had an unfortunate history of injuries resulting from motor vehicle accidents. Prior to the accident of September 14th, 1995, the Appellant had sustained injuries in two previous accidents - December 14th, 1990, and October 15th, 1993. The accident of December 14th, 1990, occurred when [the Appellant] was struck as a pedestrian. He attended upon [Appellant's doctor] for injuries to his neck and lower back. According to a Doctor's Report of January 3rd, 1991, x-rays were taken, physiotherapy was prescribed, medication was prescribed and [the Appellant] was advised not to do any lifting or bending due to severe pain in his neck and lower back. [Appellant's doctor] anticipated that [the Appellant] would have a permanent impairment by way of cervical spine weakness.

On October 15th, 1993, [the Appellant's] vehicle was rear-ended and as a result of injuries to his neck and back, he was taken to the [hospital]. [The Appellant] attended

upon various medical practitioners for treatment for the injuries arising out that accident. According to a Doctor's Progress Report completed by [Appellant's doctor] on May 24th, 1994, [the Appellant] was totally disabled from his occupation between October 15th, 1993 and June 24th, 1994. In that Report, [Appellant's doctor] again expressed his view that the Appellant's neck and low back were permanently weakened by the latest MVA. In a Doctor's Report form completed on October 7th, 1994, [Appellant's doctor] indicated that the Appellant continued to have a problem with bending and that he was unable to lift more than ten pounds. A rehabilitation program was arranged for [the Appellant] at [rehab clinic]. However, it appears that as a result of his ongoing physical problems, and other medical problems, the [rehab clinic] program was terminated effective April 29th, 1995. It appears that [the Appellant's] claim arising out of that accident of October 15th, 1993, was settled shortly thereafter.

The medical information contained in the file before the Commission indicated that [the Appellant] had been assessed in June, July and August of 1995, prior to his accident of September 14th, 1995, for problems involving his back. These pre-existing injuries had resulted in a CT scan being undertaken on August 16th, 1995. The report of the CT scan concluded that there was no spinal stenosis or significant facet joint disease.

In his testimony before this Commission, the Appellant claimed that he attended upon [Appellant's doctor] the day immediately after his MVA complaining of pain to his neck, back and arms. A review of [Appellant's doctor's] clinical notes and Manitoba Health records however indicates that his first visit after the accident to [Appellant's doctor] was

not until September 27th, 1995. It was during that visit that the Appellant advised [Appellant's doctor] that his car had been rear-ended while he was stopped. On that day his complaints included pains in the neck and lower back and headaches. [Appellant's doctor] diagnosed a strain to neck and back and post-traumatic headaches.

The Initial Health Care Report completed as a result of the MVA at issue was not provided by [Appellant's doctor] until May 6th, 1996. It appears that as a result of a misunderstanding on [the Appellant's] part, he had not filed an Application for Compensation with MPIC until some time in April 1996. In his meeting with the Adjuster on April 23rd, 1996, [the Appellant] indicated that he wanted compensation from the date of the MVA until the end of December 1995, during which time he was unable to work as a result of the injuries from the accident. He advised the Adjuster that he was not employed prior to the accident and was looking for work at the time of the accident, although had not been promised any job. During that meeting with the Adjuster, he indicated that he had been employed on a part-time basis since January of 1996 earning approximately \$300.00 per month.

Referring to [Appellant's doctor's] Initial Health Care Report dated May 6th, 1996, it indicates that upon examination on that date, that the Appellant had symptoms in his neck, lower back and headaches. With respect to the Appellant's work capacity, [Appellant's doctor] indicated that he was unable to work any job for three months and that as a result of pain in his lower back, neck and headaches, he was not able to lift more than ten kilograms and not able to carry out recurrent bending. In a further Health Care

Provider Progress Report dated June 18th, 1996, [Appellant's doctor] confirmed that the Appellant's symptoms were ongoing with some additional ones noted thereon. He further confirmed that the Appellant was unable to work at any job and that a referral had been made to physiotherapy and to a neurologist.

[The Appellant's] file was referred by the Adjuster to MPIC's Medical Services Department for a consulting opinion. This resulted in the Inter-Departmental Memorandum of [MPIC's doctor] dated September 8th, 1997. Based upon the limited information in the file at that time, [MPIC's doctor] expressed the opinion that:

“It is therefore my opinion that [the Appellant] does not qualify for IRI benefits nor does he qualify for assistance for treatments of the symptoms involving his neck and back region since a causal relationship cannot be made based on the information I reviewed”.

During the Internal Review Officer's investigation into the Appellant's claim, he again referred the file and additional updated medical information to [MPIC's doctor] for a further opinion. [MPIC's doctor] was specifically asked to address the issue of whether the Appellant had developed any medical condition as a result of the motor vehicle accident of September 14, 1995 which would have resulted in an impairment of physical function to a level where the Appellant was unable to perform any occupational duties.

In his Inter-Departmental Memorandum of January 5, 2000, [MPIC's doctor] concludes that:

“The objective clinical findings identified by the various healthcare professionals who assessed [the Appellant] prior to and after the motor vehicle collision in question, indicates that [the Appellant's] physical condition was not adversely affected by the September 14, 1995 motor vehicle collision. One could assume that [the Appellant's] symptomatology was exacerbated as a result of the collision

but there is insufficient medical evidence to indicate that the possible exacerbation altered the natural course of his chronic pain condition. As with all exacerbations, resolution does take place but it is difficult to determine when this might have occurred in [the Appellant's] situation since the clinical findings identified by [Appellant's doctor] following the motor vehicle collision in question are in keeping with those he identified before the collision.

The medical evidence obtained from the documents reviewed does not identify change in [the Appellant's] clinical presentation following the September 14, 1995 motor vehicle collision. The medical evidence does suggest that prior to this collision, [the Appellant's] chronic pain condition had worsened prompting further investigations. It is therefore my opinion that [the Appellant's] ongoing complaints of pain are not causally related to the motor vehicle collision in question. It is also my opinion that the medical information obtained from the documents presently contained in [the Appellant's] file does not identify a medical condition arising from the September 14, 1995 motor vehicle collision that in turn adversely affected his pre-existing physical impairment and subsequent occupational disability.

Since [the Appellant] was a non-earner at the time of his MVA, his entitlement to IRI pursuant to the MPIC Act arises under Section 85(1), which provides that:

85(1) A non-earner is entitled to an income replacement indemnity for any time during the 180 days after an accident that the following occurs as a result of the accident:

- (a) he or she is unable to hold an employment that he or she would have held during that period if the accident had not occurred.

In order to qualify for benefits pursuant to Section 85(1), [the Appellant] must demonstrate that his inability to hold employment is as a direct result of the MVA, and that he would have had an employment during the first 180 days after the MVA.

Dealing with the issue of whether or not [the Appellant] would have had an employment during the first 180 days after the MVA, [the Appellant] did provide a letter dated May 10th, 1996, to MPIC from [text deleted]. The letter stated that:

"This is to confirm that [the Appellant] was guaranteed a job by [text deleted] as of September 18th, 1995. He was to work as a roofer/carpenter and his wage was to be \$10.50 per hour, at 40 hours per week minimum."

MPIC attempted to contact the prospective employer, but received no cooperation from this employer to confirm the offer of employment to the Appellant.

The Commission is not convinced, on a balance of probabilities, that this was a genuine offer of employment. The refusal by the prospective employer to answer any questions or cooperate in any way with MPIC's efforts to confirm such employment lead us to the conclusion that there was indeed no offer of employment.

Turning to the issue of causation, this Commission accepts [MPIC's doctor's] report and conclusions outlined in his Inter-departmental Memorandum of January 5th, 2000. It is very likely that [the Appellant's] pre-existing back condition was exacerbated by the MVA of September 14th, 1995, however, the Commission finds that any such exacerbation was cleared up by January 1996 when [the Appellant] commenced working. We are bolstered in our view by the fact that when [the Appellant] initially met with his Adjuster to complete his Application for Compensation in April 1996, he was simply seeking compensation for the period from the date of the accident to the end of December 1995. Therefore, since the period of disability lasted from September to December 1995, when [the Appellant] would not have held an employment, he would not be eligible for any income replacement indemnity benefits.

As a result, the Commission finds:

- (a) that the Appellant's appeal is dismissed; and
- (b) the decision of MPIC's Internal Review Officer, dated January 28, 2000, is hereby confirmed.

Dated at Winnipeg this 11th day of April, 2001.

YVONNE TAVARES

COLON SETTLE, Q.C.

WILSON MACLENNAN