

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-97-125**

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 #3];
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Keith Addison.**

HEARING DATE: **January 11, 2001**

ISSUE: **Whether benefits were properly denied for non-cooperation.**

RELEVANT SECTIONS: **Section 160(b) 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

Before discussing the merits of this appeal, we believe some comment is called for to explain the rather remarkable delay between the rendering of the decision by MPIC's Internal Review Officer on July 25th, 1997, and the hearing of [the Appellant's] appeal on January 11th, 2001. When the office of this Commission was first contacted by the Appellant on October 22nd, 1997, it was quickly apparent that her mother tongue is [text deleted] and that she might encounter some difficulty in retaining counsel and preparing for an appeal. The Commission offered to provide her with an interpreter; she assured the Commission that she could obtain that form of

assistance within her community, but might need an interpreter at the actual hearing of her appeal.

The file record discloses that [the Appellant] consulted one lawyer but decided to seek other advice since the first lawyer “did not know what to do”. On December 1st, 1997, she appeared to be represented by [Appellant’s representative #1], who had prepared a Notice of Appeal for her. By December 19th, 1997, the Commission had obtained MPIC’s complete file, had extracted from it all 57 documents relevant to [the Appellant’s] appeal, had prepared an Index and had forwarded copies of that material and Index to [Appellant’s representative #1] and to counsel for MPIC. A hearing date was then set for March 4th, 1998, after consultation with both counsel.

On March 3rd, 1998, the Commission was asked to adjourn the hearing date, since the parties seemed to be making some progress towards the provision of proper information by the Appellant. A new hearing date was then set for June 5th, 1998.

On May 22nd, 1998, [Appellant’s representative #1] indicated that he had just been told by his client of a medical examination she had undergone in August of 1997 and that a further medical report was therefore required. Following further discussions between the Commission and counsel for both parties, a further adjournment was granted, *sine die*.

Having heard nothing from [Appellant’s representative #1], the Commission wrote to him on January 29th, 1999, to indicate that, failing further word from him by February 12th, the Commission would assume that the appeal had been withdrawn. After further discussion over the ensuing weeks, a new hearing date was set for March 18th, 1999, and agreed to by [Appellant’s representative #1] and counsel for MPIC.

On March 5th, 1999, [the Appellant] telephoned the Commission to advise that she had now replaced [Appellant's representative #1] with [Appellant's representative #2] as her counsel, but that the latter was away on vacation until some time after March 18th. The Commission again granted the Appellant an adjournment.

On July 15th, 1999, [the Appellant] advised the Commission that she had "fired" [Appellant's representative #2], since she was unable to accept the terms of his retainer. The Commission agreed to leave the matter in abeyance until late September. We then wrote to the Appellant on September 29th, to tell her that if we did not hear from her by November 15th, 1999, we would assume that she did not wish to proceed. On November 12th, 1999, we received a letter from [Appellant's representative #3], [the Appellant's] ultimate counsel, to indicate that he had been retained and sought some medical release forms, which were sent to him. On December 18th [Appellant's representative #3] advised the Commission that he had met with his client on December 11th, she had brought her file to him but had taken it away with her again for further study. Since [Appellant's representative #3] was about to leave on vacation, we agreed to leave the matter in abeyance for three months.

On March 3rd, 2000, [Appellant's representative #3] advised the Commission that he had not spoken with his client since December 23rd when she had signed a medical release form. On March 20th, 2000, the Commission wrote to [Appellant's representative #3] to suggest that this matter be adjourned until he could indicate that his client was ready to proceed. On October 16th, 2000, we returned MPIC's file to that Corporation, advising [Appellant's representative #3] accordingly. On November 1st, [Appellant's representative #3] advised us that his client now wished to revive her appeal, whereupon we requisitioned the file again from MPIC and set a new

hearing date for December 22nd, 2000; that was adjourned to January 11th, 2001, at the request of counsel. It should be noted that, on each occasion when a hearing date was set, the Commission also contacted the [text deleted] for an interpreter to be present.

Merits of the Appeal

[The Appellant] sustained injuries in a motor vehicle accident on August 21st, 1996. While the extent and duration of her injuries have been questioned, the only issue before this Commission is whether MPIC, upon the basis of the wording of Section 160(b) of the MPIC Act, was justified in denying benefits to which the Appellant might otherwise have been entitled.

Section 160 of the Act reads, in part, as follows:

- 160 The Corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person.....
- (b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the Corporation in writing;...

There are other grounds set out in Section 160 upon which the Corporation may refuse, reduce or suspend benefits, but none of them seems relevant here.

MPIC's refusal of benefits to [the Appellant] rests upon three allegations of refusal to provide information. They are simply stated and simply dealt with.

Income Tax Information

[The Appellant] is a dental technician. She pursued that occupation in her home country of [text deleted] and, since coming to Canada [text deleted], opened her own dental laboratory [text deleted]. Her business is incorporated under the name [text deleted]; she is its sole shareholder and director. Since she was claiming loss of personal income, and also sought reimbursement

for the money that her corporation had allegedly expended in hiring a replacement for her in the person of her daughter, MPIC asked her to provide copies of her personal income tax returns and of the corporate income tax returns for the years immediately prior to her accident. She never did produce copies of her personal tax returns, which MPIC therefore obtained directly from Revenue Canada (as it then was) some time after January 27th, 1997.

There is an obvious difference of recollection between [the Appellant] and MPIC's personnel with respect to the corporate tax records. [The Appellant] testified that she personally handed the tax records to her adjuster on October 30th, 1996, in the presence of [text deleted] and the latter's supervisor, [text deleted]. On the other hand, in a file that is otherwise meticulously documented - even containing memoranda that do not reflect favourably upon MPIC - any mention of such a meeting on October 30th is conspicuously absent. [The Appellant's] case manager at MPIC wrote to her on December 10th, 1996, spoke with her by telephone on or about December 18th, telephoned the Appellant's accountant on January 9th, 1997, spoke with the Appellant again at length on January 13th and wrote to her on that same date, asking for the production of detailed income tax information and financial statements for the Corporation. It must be said that none of those letters from MPIC to the Appellant speaks, specifically, of corporate records but it is clear from the entire context, and the backdrop against which those letters were sent and the telephone discussions were held, that MPIC was seeking both [the Appellant's] personal tax returns and her corporate data. It is equally clear that, for reasons never fully explained to this Commission, [the Appellant] continued to withhold her corporate income tax information from MPIC, despite the fact that she was, concurrently, asking MPIC to reimburse her corporation for monies it had expended in hiring her daughter to do the work that she was allegedly unable to do herself. We find, as a fact, that [the Appellant] did, without valid reason, refuse or neglect to provide MPIC with information that it had requested in writing.

The Appellant's Daughter

MPIC, both orally and in writing, requested on a number of occasions that they be permitted to meet with the Appellant's daughter, in order to discuss with her the nature of the work she was allegedly doing for her mother's corporation and, in particular, the hours and locations at which any such work was performed. Just as consistently, the Appellant (and her daughter, with the knowledge and encouragement of the Appellant) found excuses why such a meeting could not take place. The case manager offered to meet with the Appellant's daughter at her home or at the premises of [text deleted], but access was, and remains to this day, refused. The only reason advanced for that refusal is that the Appellant's daughter, [text deleted], was "too busy". It is, perhaps, noteworthy that [the Appellant] initially told her case manager that she had hired someone at \$2,000 per month, but did not disclose that the "someone" in question was her own daughter. [Appellant's daughter's] non-availability has prevailed from late November or early December of 1996 to the present time. It defies credibility that she could possibly have been too busy, from early December of 1996 to July 4th, 1997, to meet with MPIC's claims personnel with a view to furthering the claim of her own mother who was also her employer. We are obliged to conclude that the real reason for that refusal was a fear, on the part of the Appellant, that her daughter's evidence would conflict with written reports from private investigators who had carried out surveillance of the Appellant's premises, or that her daughter's evidence, if truthful, would conflict with what the Appellant herself had told the insurer. Whatever the reason, we can find no validity for it; we find that the information legitimately sought by MPIC, and requested in writing, was refused by the Appellant and, upon the Appellant's obvious directions, by [Appellant's daughter].

List of Customers

Another reason advanced by MPIC for refusing benefits to [the Appellant] was that she had been asked to produce a list of the names of the dentists who were the customers or clients of her corporation. While it is clear that this information was indeed requested, it was not requested by the insurer in writing. Since a written request is a prerequisite to any denial of benefits under Section 160(b) of the MPIC Act, we cannot find that this refusal was a legitimate reason for that denial.

General Comments

[Appellant's representative #3], counsel for [the Appellant], makes the point that the Appellant's case manager, when writing on February 17th, 1997, to deny her compensation for her injuries, said that he was doing so because she "again refused to cooperate" with MPIC's investigation. He correctly points out that failure to cooperate is not, by the wording of Section 160 of the statute, a ground for denial of benefits. While the latter point is quite valid, we do note that the February 17th letter also says that the Appellant had "refused to provide us with information, as we have requested in our previous telephone discussions and letters of December 10th, 1996, and January 13th, 1997".

We are constrained to add that much of [the Appellant's] evidence lacked plausibility. We are not able to find that MPIC's case manager and Internal Review Officer were wrong in denying her benefits pursuant to the provisions of Section 160(b) of the Act, and her appeal is therefore dismissed.

Dated at Winnipeg this 15th day of January, 2001.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.