



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-103

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Ms. Wendy Sol

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: March 22, 2004

ISSUE(S): Entitlement to permanent impairment benefits for damage to ulnar nerve of the right limb.

RELEVANT SECTIONS: Sections 126, 127, 129(1) and 130 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Manitoba Regulation 41/94, Subdivision 4, Section 14(b), Table 4 – Subsection 2 Upper Limbs - Ulnar

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] was involved in a motor vehicle accident on December 26, 1996. As a result of this accident she suffered a supracondylar fracture to her right elbow and she was required to have surgery on several occasions in respect of her right elbow.

MPIC did provide a permanent impairment award to the Appellant in respect of a surgical scar to the Appellant's right elbow, decreased ranges of motion of her right elbow and decreased ranges of motion to her right wrist. However, the case manager, in a decision dated January 14, 2003,

advised the Appellant that there was no medical evidence to establish that as a result of the motor vehicle accident the Appellant was entitled to a permanent impairment award for damage to the ulnar nerve of her right limb.

Internal Review Officer's Decision

The Appellant made application to have the case manager's decision reviewed by an Internal Review Officer and the hearing took place on April 1, 2003. The Internal Review Officer issued a decision to the Appellant on June 10, 2003 wherein the Internal Review Officer rejected the Application for Review and confirmed the case manager's decision. The Internal Review Officer stated in her decision that:

1. [Text deleted], a member of MPIC's Health Care Services Team, in her report to MPIC dated December 30, 2002 stated that the Appellant's orthopaedic surgeon, [text deleted], in his report dated November 12, 2002, indicated that a Nerve Conduction Study in respect of the Appellant's ulnar nerve indicated that no ulnar nerve lesion was evident.
2. [MPIC's doctor] concluded that there is no evidence of ulnar neuropathy based on nerve conduction studies nor is a causal link established between the emergence of perceived paresthesia involving the ulnar nerve and your motor vehicle accident of December 26, 1996.
3. Section 127 of the Act provides a lump sum indemnity for a person who suffers a permanent physical or mental impairment because of a motor vehicle accident. Since the medical information on the Appellant's file did not support a finding that the perceived paresthesia involving the ulnar nerve is related to the Appellant's motor vehicle accident of December 26, 1996, the Internal Review Officer confirmed the case manager's decision regarding the Appellant's entitlement to a Permanent Impairment benefit.

Appeal

The Appellant filed a Notice of Appeal with the Commission in respect of the Internal Review Officer's decision. The appeal hearing took place March 22, 2004. The relevant provisions of the MPIC Act relating to the appeal are as follows:

Meaning of "permanent impairment"

126 In this Division, "permanent impairment" includes a permanent anatomicophysiological deficit and a permanent disfigurement.

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

Evaluation of permanent impairment under schedule

129(1) The corporation shall evaluate a permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

Computation of lump sum indemnity

130 The lump sum indemnity payable under this Division for a permanent impairment is an amount equal to the product obtained by multiplying the maximum amount applicable under section 127 on the day of the accident by the percentage determined for the permanent impairment.

[Appellant's doctor #1], in a letter dated October 15, 2003, indicated an EMG test had been conducted in respect of the Appellant (01/05/98) which indicated that the Appellant was suffering from an ulnar neuropathy or entrapment at the ulnar groove on the injured right elbow.

At the appeal hearing the Appellant testified as to the difficulty she was having in respect of her right elbow. After hearing submissions from both the Appellant and MPIC's legal counsel, the Commission decided to obtain a further medical report from [Appellant's doctor #1] in respect of the existence of an ulnar neuropathy and adjourned the appeal hearing pending receipt of a report from [Appellant's doctor #1].

On April 14, 2004 the Commission wrote to [Appellant's doctor #1] and provided him with all of

the relevant medical reports that were filed at the appeal hearing and requested [Appellant's doctor #1] to comment on what appeared to be a conflict of medical opinions between the report of [Appellant's neurologist], who had conducted the Nerve Conduction Studies, the medical reports of [MPIC's doctor] and [Appellant's orthopaedic surgeon] who stated that the Appellant did not suffer from an ulnar neuropathy, and [Appellant's doctor #1's] comments on page 2 of his report dated October 15, 2003 wherein he indicated that the Appellant was suffering from an ulnar neuropathy or entrapment at the ulnar groove on the injured right elbow. [Appellant's doctor #1] was requested to review all of the medical reports and to advise whether in his professional opinion the Appellant's ulnar neuropathy which he observed qualified for an award pursuant to the relevant provisions of the MPIC Act and Manitoba Regulation 41/94.

In response, [Appellant's doctor #1] provided a medical report to the Commission dated May 10, 2004, a copy of which was provided to Mr. Scaletta and the Appellant. The Commission requested that they provide whatever comments they wished to said report. [Appellant's doctor #1], in his letter to the Commission dated May 10, 2004, indicated that the Appellant did have ulnar nerve entrapment symptoms which were documented in an EMG test dated May 1, 1998 by [Appellant's doctor #2]. [Appellant's doctor #1] further noted than an EMG was performed on September 9, 2003 by [Appellant's neurologist], who concluded:

. . . "there is no definite electrophysiologic evidence of an ulnar nerve lesion".

[Appellant's doctor #1] further stated in his letter:

It is well known that ulnar nerve focal neuropathy sometimes subsides, which has happened in this case. This is based upon the last EMG report dated September 9, 2003.

In the case of this patient, the only impairment of the injured right elbow function from the healed, comminuted supracondylar fracture is from post traumatic osteoarthritis of the elbow. However this patient has similar osteoarthritis of the non injured left elbow as well, but to a lesser extent. Besides the operative scar any impairment from the injured right elbow is due to osteoarthritis and soft tissue contracture. This is definitely related to

the injury sustained during the car accident. This is permanent (sic) and is most likely a progressive condition.

In response to [Appellant's doctor #1's] letter dated May 10, 2004 MPIC's legal counsel wrote to the Commission on May 20, 2004 and stated:

If am reading the May 10, 2004 report from [Appellant's doctor #1] correctly, he is saying that [the Appellant] did have an ulnar nerve entrapment in 1998 and 1999, but she no longer has it.

If this is the case, then our position is that the condition is not "permanent" and that [the Appellant] is not, therefore, entitled to a "Permanent Impairment" benefit in relation to it.

While the last paragraph of the report is not entirely clear, [Appellant's doctor #1] seems to be saying that the rateable – and accident-related – permanent impairments affecting the right elbow are limited to the scarring and the reduced ranges of motion (with the latter being attributable to a combination of the osteoarthritis and the soft tissue contracture).

Since [the Appellant] has now been fully compensated for the scarring and the reduced ranges of motion (the additional amounts set out in my letter to her dated March 22, 2004 were paid on April 13, 2004), our position is that she has received all of the Permanent Impairment benefits to which she is entitled.

Concurrently, the Commission received a letter from the Appellant wherein she described her medical condition as a result of the motor vehicle accident and the difficulty she is having in respect of the problems with her right elbow. As a result, the Appellant requested that the Commission award her a permanent impairment award in respect of her right elbow.

The Commission, after a careful review of the Appellant's testimony and the submissions made by both the Appellant and legal counsel for MPIC agrees with the position asserted by MPIC's legal counsel. The Commission is satisfied that the Appellant has failed to establish, on the balance of probabilities, that the ulnar nerve entrapment which was observed by [Appellant's doctor #1] in 1998 and 1999 was of a permanent nature. The Commission also finds, on a balance of probabilities, that the Appellant's ulnar nerve entrapment in respect of her right elbow

did not exist when the EMG was performed by [Appellant's neurologist] and that [Appellant's orthopaedic surgeon] was correct in concluding that there was no evidence of an ulnar neuropathy based on [Appellant's neurologist's] Nerve Conduction Studies.

The Commission concludes that the Appellant's medical condition in respect of an ulnar nerve entrapment in respect of her right elbow in 1998 and 1999 was not of a permanent nature and, as a result, the Appellant is not entitled to a permanent impairment award in respect thereof. The Commission determined that MPIC correctly interpreted Section 126, 127, 129(1) and 130 of the MPIC Act and Manitoba Regulation 41/94, Subdivision 4, Section 14(b), Table 4 – Subsection 2 Upper Limbs – Ulnar, in rejecting a permanent impairment award to the Appellant in respect of a possible ulnar neuropathy.

The Commission also finds that the Appellant has failed to establish, on a balance of probabilities, that there was a causal link between the emergence of a perceived paresthesia involving the ulnar nerve and her motor vehicle accident of December 26, 1996.

The Commission, for the reasons set out herein, confirms the decision of the Internal Review Officer dated June 10, 2003 and dismisses the Appellant's appeal.

Dated at Winnipeg this 5th day of August, 2004.

MEL MYERS, Q.C.

YVONNE TAVARES

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