



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-93

PANEL: Ms. Laura Diamond, Chairperson
Dr. Patrick Doyle
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: December 6, 2004

ISSUE(S): Entitlement to Income Replacement Indemnity benefits
beyond February 17, 2002

RELEVANT SECTIONS: Section 81(1) of The Manitoba Public Insurance Corporation
Act ('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 on February 1, 2001. As a result of the injuries which the Appellant sustained in that accident, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act.

At the time of the accident, the Appellant was employed as an assistant caretaker in the [text deleted]. He also did some farming with his family. Following the accident, he received care from his physician, [Appellant's doctor], and physiotherapy treatments from [text deleted]. He

was unable to perform the duties of his employment and was off work and in receipt of Income Replacement Indemnity ('IRI') benefits. He suffered from whiplash injury with pain in the arm and shoulder as well as headaches and myofascial pain.

[Text deleted], an independent nurse case manager with [text deleted] was assigned to the Appellant's case. She proposed a graduated return to work plan for the Appellant, taking into consideration the lighter duties of his job and adding heavier duties as tolerated.

In a Progress Report dated July 12, 2001, [Appellant's independent nurse case manager] reported that the Appellant's return to work plan was progressing, although he continued to suffer from symptoms of neck pain and headaches. The return to work program and physiotherapy treatments were extended until mid-August 2001.

The Appellant continued to work under the return to work program, sometimes for eight hour periods and sometimes for four full days a week. He continued with physiotherapy and was prescribed amitriptyline.

The Appellant testified that during this period he continued to suffer from headaches. In approximately December of 2001 his physiotherapist began spray and stretch treatments. He indicated that on January 13, 2002 (following the fourth such treatment) he woke up with a good deal of pain in his right arm, and with his neck so stiff that he could not turn it to the right. At that point, [Appellant's doctor] advised that he remain off work. He was also referred to [Appellant's neurologist].

Following his examination of the Appellant, [Appellant's neurologist] diagnosed a pre-existent bilateral Carpal Tunnel Syndrome which in his view, from the Appellant's description, had existed prior to the accident. [Appellant's neurologist] stated, in a report dated January 28, 2002:

Factors delaying [the Appellant's] recovery, neck pain and symptoms in the hands due to bilateral carpal tunnel syndrome. I think that a lot of the symptoms in the hands and upper limbs, are probably related to the carpal tunnel syndrome than to any radicular problem. However, I think we should await the results of the CT scan and EMG.

The Appellant testified that [Appellant's neurologist] had seemed distracted during his examination, and was emphatic that he had never told [Appellant's neurologist] that he had any symptoms of carpal tunnel syndrome or any problems with his hands prior to the accident. He testified that in fact he had never missed a day of work or had any complaints about pain from carpal tunnel syndrome prior to the accident.

The Appellant underwent a CT scan, EMG and nerve conduction studies. The results, along with [Appellant's neurologist's] report were reviewed by [MPIC's doctor] of the MPIC Health Care Services Department in a Memorandum dated March 10, 2003. [MPIC's doctor] noted that the results of electrodiagnostic studies showed findings consistent with a focal median neuropathy at the right wrist (carpal tunnel syndrome) and possible right C7 radiculopathy. The cervical spine CT scan showed degenerative changes with mild to moderate narrowing of the exit foramen. [MPIC's doctor] presented the following opinion:

In summary, it is my opinion that the medical information reviewed indicates that [the Appellant] presented with a Whiplash Associated Disorder associated with neck pain, headaches and shoulder pain following the motor vehicle collision of February 1, 2001. Subsequently in January 2002, he presented with a right C7 radiculopathy secondary to C6-7 foraminal stenosis in the setting electro-physiologically confirmed carpal tunnel syndrome.

Unfortunately, I cannot relate the cervical radiculopathy or the carpal tunnel syndrome to the motor vehicle collision of February 1, 2001. In my opinion, the issue of whether or not the carpal tunnel syndrome is pre-existing is not relevant. The diagnosis of carpal tunnel syndrome does not have a medically probable cause and effect relationship with the motor

vehicle collision. The injuries sustained in a motor vehicle collision would not be expected to result in a diagnosis of carpal tunnel syndrome. Direct trauma to the wrist could be associated with an acute episode of carpal tunnel syndrome, but the history presented is not consistent with that scenario.

The cervical radiculopathy is secondary to a structural finding documented on the CT scan. The intervertebral foraminal stenosis (narrowing) is a degenerative phenomenon and not due to a single traumatic event, such as a motor vehicle collision. One might propose that an asymptomatic individual with cervical foraminal stenosis might be made symptomatic as a result of a "*whiplash type*" injury, but this relationship would be expected to occur in the acute phase following a collision and not at a point in time many months later. The temporal relationship between the motor vehicle collision and the onset of radicular symptoms argues against a cause and effect relationship.

Internal Review Decision

The Appellant's case manager had advised him, on May 9, 2002, that because the cause of his ongoing disability was related to his pre-existing carpal tunnel syndrome, MPIC would not consider any further IRI benefits beyond February 17, 2002. The Appellant applied for an Internal Review of this decision. On March 28, 2003, the Internal Review Officer issued a decision agreeing with [MPIC's doctor's]. As [MPIC's doctor] was unable to relate either the cervical radiculopathy or the carpal tunnel syndrome to the motor vehicle accident of February 1, 2001, the case manager's decision to suspend IRI benefits was upheld by the Internal Review Officer. It is from this decision that the Appellant has appealed.

Submissions

The Appellant submitted that immediately following the accident he suffered from a stiff neck, sore ribs, sore knee, sore left arm and a banged head. Following that date, he suffered, almost continuously, from arm, shoulder and neck pains and headaches.

The Appellant submitted that although the diagnostic tests may have shown that he suffered from carpal tunnel syndrome, he had not been aware of this and had not suffered from any symptoms due to carpal tunnel syndrome prior to the accident. He pointed to documentary evidence on the file from [Appellant's doctor], his physiotherapist, his employer and a co-worker. All took the position that the Appellant had not had any difficulties with carpal tunnel syndrome in the past. It was the Appellant's view that it was the effects of the accident, and possibly of the spray and stretch treatments following the accident, which had prevented him from working. He indicated that he went back to work full time on August 27, 2002, but had missed 91 days of work between February 2002 and August 26, 2002 and had missed 36 days from August 27th, 2002 to date.

Counsel for MPIC agreed that as regards the ability of the Appellant to function, carpal tunnel syndrome was not the major problem. The medical evidence indicated, he submitted, that the Appellant's significant functional problem was a result of radiating pain down his right side to his arm. This, he submitted was not something caused by the accident.

Counsel for MPIC pointed to [MPIC's doctor's] opinion that the Appellant's foraminal stenosis was not caused by the accident, although it is possible that trauma such as an accident can exacerbate or worsen such a problem. He noted that in this case, the Appellant did not have right side radicular pain immediately following the accident. This right sided pain did not happen until January 2002, when suddenly, on January 13, 2002 the Appellant woke up one morning with numbness and pain on the right side.

Counsel for MPIC submitted that the foraminal stenosis was a structural problem that the Appellant had, that was not aggravated by the accident. He speculated that some other factors in his life, such

as working on the computer or performing his farm duties had aggravated the problem, but the exacerbation appeared too far in time after the accident to be considered connected to it.

In reply, the Appellant submitted that he did not do an increased amount of computer work, and that his wife and son had taken over the bulk of the farming chores, after his accident. He submitted that he had had problems with both his right and left side since the accident. The pain did not always take the same form or have the same severity, but he has suffered from dorsal pain running from the top, down his arm and with neck pain and headaches since the accident occurred. He submitted the difficulties he experienced in January 2002 were of the same nature he had been continuing to experience since the accident and in his submission, were connected to the accident.

Discussion

Section 81(1) of the MPIC Act provides:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

The onus is on the Appellant to show that his inability to continue his full time employment has occurred as a result of the accident.

Counsel for MPIC and the Appellant were in agreement that the primary cause of the Appellant's inability to work was **not** symptoms from carpal tunnel syndrome. However, while the Appellant

took the position that the radiculopathy and foraminal stenosis were caused or exacerbated by the accident, MPIC took the position that the symptoms which were preventing him from working in February of 2002 and following were different symptoms, of a different nature, and appeared too late for the motor vehicle accident to have been the cause.

The Commission finds that the exacerbation of the Appellant's symptoms was neither delayed nor different in kind from the symptoms he reported immediately following the accident and continued to report throughout the period in question.

[Appellant's doctor's] Initial Health Care Report of February 2, 2001 indicates that the Appellant reported headache, left elbow and knee pain, tender neck, limited movement in both shoulders, and tender right forearm.

On February 5, 2001, the Appellant's physiotherapist, [text deleted] reported severe post occipital headache, severe pain in the neck at C7-T1, left and right difficulty turning neck, pain down to the left forearm, pain in shoulders and right scapula area, back and chest wall. She also reported right thumb, index and middle finger tingling.

[Appellant's physiotherapist] reported again on April 11, 2001 indicating a forward head cluster, and tightening of the muscles of the cervical spine bilaterally, especially on the right side.

[Appellant's independent nurse case manager] reported on June 8, 2001 that the Appellant suffered from pain in the right neck radiating downwards into the right shoulders and trapezius, with left neck rotation causing spasm in the left trapezius, headaches and low back pain.

On September 5, 2002 [Appellant's physiotherapist] reported that the Appellant had shown no signs of right carpal tunnel syndrome and that none of his therapy had dealt with that.

. . . Treatment has always been focused on his cervical spine with concerns of right C7-T1 joint and nerve root problems.

This was confirmed by [Appellant's doctor] on October 17, 2002 and April 5, 2004, and reiterated by [Appellant's physiotherapist] on October 28, 2003, where she stated (after a thorough review):

. . . My objective assessment and findings throughout his rehabilitation with me from day one, did not indicate any signs of carpal tunnel problems. All findings suggested problems with right C6-C7 and C7-T1 regions as well as upper cervical concerns, which have been addressed earlier. . .

The Commission finds that the symptoms which the Appellant complained of in January 2002 and following, were not substantially different from those reported by the Appellant and his caregivers, immediately after the accident and following. We do not accept the submission of MPIC that the Appellant did not suffer from pain on his right side until January 2002. The Commission is of the view that these symptoms did not appear suddenly, but rather were all part of the same ongoing complaints and difficulties that the Appellant had been having since the accident. The fact that he complained of intensified pain and symptoms on January 13, 2002 does not mean that this is part of a new and different problem.

The Commission has not heard any evidence to indicate other causes for the Appellant's pain and symptoms. [Appellant's doctor] and [Appellant's physiotherapist] had the opportunity of examining the Appellant in close proximity to the accident and an ongoing basis thereafter. They have had the opportunity to observe him and to assess him. [MPIC's doctor] did not have the benefit of examining the Appellant, or of assessing his demeanor and credibility.

The Appellant testified at the hearing into this appeal, and the Commission found him to be a credible witness. His position that his symptoms were related to the accident is corroborated by the opinion of the practitioners who examined and treated him following the accident.

Accordingly, we accept the evidence of the Appellant, which is corroborated by the reports of [Appellant's doctor] and [Appellant's physiotherapist], that the complaints which caused the Appellant to stop work in January and February 2002, resulted from the same symptoms and complaints that he had suffered from since the accident and that his caregivers had been endeavoring to treat throughout.

Decision

The Commission therefore determines, on the basis of the Appellant's evidence and submissions and the medical reports of [Appellant's doctor] and [Appellant's physiotherapist], as well as the other documentary evidence reviewed, that, on the balance of probabilities, the cause of the Appellant's ongoing disabilities were the injuries sustained in the motor vehicle accident of February 1, 2001. It is the view of the Commission that injuries sustained in the motor vehicle accident prevented the Appellant from continuing his full time employment and as a result he is entitled to IRI benefits for the periods during which he was unable to perform the duties of his regular employment beyond February 17, 2002, pursuant to Section 81(1) of the MPIC Act.

The decision of MPIC's Internal Review Officer dated March 28, 2003 is therefore rescinded. The Appellant shall be entitled to IRI benefits, in accordance with Section 81(1) for the periods

he was unable to work as a result of the accident, after February 17, 2002. Interest in accordance with Section 167 of the MPIC Act shall be added to that amount.

Dated at Winnipeg this 7th day of January, 2005.

LAURA DIAMOND

DR. PATRICK DOYLE

WILSON MACLENNAN