



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-48

PANEL: Ms. Laura Diamond, Chairperson
Ms. Barbara Miller
Ms. Wendy Sol

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms. Dianne Pemkowski.

HEARING DATE: February 7, 2005

ISSUE(S): Entitlement to Permanent Impairment Benefits.

RELEVANT SECTIONS: Section 127 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 injured in a motor vehicle accident on January 31, 2003. As a result of the accident, he suffered from whiplash injuries, and was in receipt of Personal Injury Protection Plan benefits under the MPIC Act, including Income Replacement Indemnity benefits.

However, the Appellant also sought permanent impairment payments for a fracture of his left C4 lamina with a fracture subluxation and subsequent healing of the C4-5 facet joint.

A case manager's decision of November 6, 2003 found that because the Appellant's fracture was described as being old and not identified by his caregivers as likely related to the motor vehicle collision, the Appellant was not entitled to a permanent impairment payment.

Internal Review Officer's Decision

The Appellant made Application for Review of the case manager's decision. On February 13, 2004, the Internal Review Officer issued her decision and confirmed the case manager's decision. The Internal Review Officer reviewed the medical evidence and found that the medical information disclosed an old previous fracture and degenerative changes which were not related to the motor vehicle accident in question. Accordingly, the Application for Review was dismissed. It is from this decision that the Appellant now appeals.

Submissions

The Appellant testified that he was healthy and had no health or back problems prior to the motor vehicle accident. He submitted that he had never had a spinal injury of any kind before the accident. While he admitted that much of the population might show degenerative changes as they age, he believed that two vertebrae in his neck and one in his middle back had been compressed by the accident. This resulted in a permanent tilt to his head, loss in height, and a good deal of pain and discomfort, since the accident.

The Appellant submitted that three months had passed before he was able to see a specialist following the accident, and in that time, some healing or fusion had occurred. This, he believes, led his doctors to the conclusion that the fractures which showed up on the CT scan and x-ray were as a result of old injuries, and not as a result of the motor vehicle accident. The Appellant submitted that had the scans been done and had he been attended to by a specialist more quickly

following the accident, the results would have been different, and the same degree of healing would not have occurred.

Counsel for MPIC submitted that there is a difference between pain and permanent impairment. The Appellant did suffer pain from a whiplash injury which resulted from the accident. However, there is nothing in the medical information to say that the fracture which was found on the x-ray and CT scan causes him any pain. Further, there is no evidence to show that the fracture is a result of the accident.

There is no ratable permanent impairment under the statute and regulations for pain in the neck, and, since the fracture is too old to have resulted from the accident, there can be no permanent impairment payment resulting from that fracture.

She pointed to the medical evidence which identified degenerative changes and old fractures. Not one of the Appellant's caregivers or MPIC's doctors gave any indication that there was even a remote possibility that the fractures were a result of the motor vehicle accident. As such, she submitted, the Appellant had not met his onus to show that a ratable permanent impairment was caused by the accident.

Discussion

Section 127 of the MPIC Act provides:

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.

As counsel for MPIC points out, the onus is on the Appellant to show that he has suffered a permanent physical or mental impairment because of the motor vehicle accident.

However, there is no medical evidence to support this position.

The Appellant's physician, [text deleted], in a report dated April 1, 2003, identified narrowing of disc spaces, a slight degree of spondylolisthesis, and degenerative changes in the lower facet joints. He recommended a neurosurgical consultation.

The Appellant was then seen by [text deleted], a Neurosurgeon. On July 31, 2003, [Appellant's neurosurgeon] provided a report which stated:

There was concern about him by his family physician for anterolisthesis of C5/6. Careful review of all of his films and films done in our hands, show that this is in fact a degenerative malalignment of approximately 2 mm at C5/6, which is related to degenerative arthropathy.

He has no evidence of radiculopathy or myelopathy.

...

... I think much of this discomfort is likely related to the soft tissue effects of any motor vehicle accident. I am unable to suggest that there is bony or osseoligamentous-type injury requiring surgical attention.

...

I am, however, quite convinced that there is no neurosurgically relevant diagnosis for this gentleman's cervical discomfort and his x-ray changes are of long-standing.

A review of the reports of the Appellant's x-ray and CT scans of April 24, 2003 showed the following:

- ◆ C5/C6 degenerative changes

- ◆ Advanced degenerative narrowings of the c5-c6 and cs-c7 discs. No other abnormality is observed.
- ◆ Impression: degenerative type changes with associated malalignment.
- ◆ Old left laminar fracture at c4. In addition the left c4-c5 facet joint is abnormal, with the appearance suggesting an old interfacet subluxation and fracture with subsequent healing and fusion.
- ◆ At c5-c6 there is a very severe degenerative-type disc narrowing.
- ◆ C6-c7 shows severe degenerative disc narrowing, and bilateral apophyseal joint osteoarthritis.
- ◆ Changes are present on the left at the c4-c5 facet joints suggestive of an old interfacet fracture dislocation which was subsequently fused.

The medical information was reviewed by [text deleted], Medical Consultant to MPIC's Health Care Services Team, on October 16, 2003. [MPIC's doctor] described the injuries as:

. . .a whiplash injury of the cervical spine with muscle strains and a contusion to the sternum. Further investigations were undertaken due to an anterolisthesis of the cervical spine which was later deemed by the claimant's treating neurosurgeon to be degenerative in nature and not related to the motor vehicle collision in question.

PERMANENT IMPAIRMENT AWARDS

The CT scan report submitted by [Appellant's doctor] did report that the claimant had a previous fracture of the left C4 lamina with a fracture subluxation and subsequent healing of the C4-5 facet joint. As this was described as being old and was not identified by either the treating physician or neurosurgeon to be likely related to the collision, no impairment award would be ratable for this injury.

Based upon my review of the medical documentation on file, it did not appear that the claimant had a ratable permanent impairment of his cervical spine.

Decision

The Commission finds that, having regard to all of the medical evidence on file, and the submissions of the parties, the Appellant has not met the onus of showing that a permanent impairment resulted from the motor vehicle accident in question. None of the medical evidence supports a causal connection between the fractures and degenerative changes identified and the motor vehicle accident of January 31, 2003. Although his medical caregivers have acknowledged that the Appellant had a whiplash injury and has experienced a great deal of pain, no medical evidence was presented which related his pain to the fracture or, more importantly, which related the fracture to the motor vehicle accident.

Accordingly, the Appellant has failed to show, on the balance of probabilities, that the Internal Review Officer erred in her finding that the Appellant's fractures were of long standing and that he did not have a ratable permanent impairment related to his motor vehicle accident.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date February 13, 2004.

Dated at Winnipeg this 23rd day of February, 2005.

LAURA DIAMOND

BARBARA MILLER

WENDY SOL