



## Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-03-110

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Diane Beresford  
Ms Mary Lynn Brooks

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

**HEARING DATE:** June 30, 2009

**ISSUE(S):** Entitlement to Permanent Impairment Benefits for injury to the left thumb.

**RELEVANT SECTIONS:** Sections 121 and 136 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 was injured in a motor vehicle accident on October 28, 2001. On November 7, 2002, the Appellant filed an application for compensation regarding difficulties with the thumb on his left hand.

Following investigation, the Appellant's case manager wrote to him in February 2003 to address the issue of the Appellant's request for a lump sum payment due to a permanent impairment resulting from the injury to his left thumb.

Based on a review of the medical information received by MPIC's Health Care Services, the case manager found that the symptoms reported by the Appellant involving his left thumb were not causally related to the motor vehicle accident in question. Although a hand specialist, [text deleted], had found that the Appellant had sustained a traumatic injury to his thumb, the case manager concluded that there was no documentation of the Appellant experiencing symptoms or limitations from his thumb in the three months post-accident. Therefore, this would make it unlikely that the symptoms reported one year after the incident were a bi-product of the motor vehicle accident.

The Appellant sought an Internal Review of the case manager's decision. On July 8, 2003 an Internal Review Officer for MPIC reviewed reports from the hand specialist, [text deleted], and from [MPIC's doctor] of MPIC's Health Care Services team. Reports from the Appellant's chiropractor, [text deleted], were also reviewed.

The Internal Review Officer noted that although there were reports to [Appellant's chiropractor] on November 9, 2001 of wrist pain and diminished left grip strength, this was characterized as a generic reference. [Appellant's hand specialist], in a report dated December 18, 2002, had observed that he would normally expect that a volar plate injury occurring as a result of a single traumatic event would result in pain, swelling and ecchymosis of the thumb. Ongoing deficits would likely consist of pain, a feeling of instability and decreased strength. Yet, [MPIC's doctor] observed that there was a lack of documentation showing that the Appellant had experienced these symptoms or functional limitations of the three month post motor vehicle accident. It was unlikely that the symptoms reported one year after the incident were a bi-product of the motor vehicle incident.

The decision of the Appellant's case manager was upheld.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

**Evidence and Submission for the Appellant:**

The Appellant testified at the hearing into his appeal. He described the motor vehicle accident and his recovery from his injuries. He noted that he was suffering from a good deal of pain and sometimes had difficulty even getting out of bed. Most of the pain was in his neck and upper back and he was concerned about re-injury (due to an earlier motor vehicle accident). He mainly sought chiropractic care from [Appellant's chiropractor]. He was not doing a lot around the house, even household chores, and was not working at the time.

As time went by, he started to improve and reduce his chiropractic treatments from twice a week to once a week. However, he often experienced pain and stiffness.

In approximately October 2002, he sought physiotherapy treatment which increased his strength. He felt he started to get somewhat better.

The Appellant testified that he had been physically active prior to the motor vehicle accident and had suffered from various sprains. At first, he thought that the difficulties with his left thumb, after the motor vehicle accident, were just a result of a sprain which would eventually improve.

The Appellant described the difficulties he was having with his thumb when he performed the treatments which the physiotherapist had attempted.

It was his view that he didn't notice the severity of the injury to his thumb immediately following the motor vehicle accident, because he thought it was just a sprain that would get better and also because he was just lying in bed recovering from his other injuries and not doing much at the time. However, he now sees that it was a result of the motor vehicle accident.

As the Appellant became more active, he noticed that he was having a great deal of difficulty with his thumb. As time went by, he noticed that even if he just tapped his thumb lightly, it would get very puffy and swollen. He complained about this to [Appellant's chiropractor] and the physiotherapist and finally, was referred to [text deleted], a hand specialist. He showed the doctor how he could fold his thumb almost in half. [Appellant's hand specialist] confirmed that this was not a regular sprain, calling it a volar plate injury.

The Appellant submitted that this injury occurred as a result of the motor vehicle accident and that he should be entitled to Permanent Impairment benefits as a result.

**Submission for MPIC:**

Counsel for MPIC noted that while the Appellant does suffer from a condition in his thumb, it was the position of MPIC that the Appellant had failed to establish causation, and show that the injury to his thumb was caused by the motor vehicle accident. The greatest difficulty with the Appellant's position was the lapse of time before the condition was reported to MPIC or to a health care provider. He only saw [Appellant's hand specialist], and had the injury to his thumb documented, about a year after the accident.

Counsel for MPIC reviewed the various health care reports on the Appellant's file and noted that the first real note of the left thumb injury was in October of 2002, when the Appellant saw [Appellant's hand specialist].

A review of the reports filed by the Appellant's caregivers in the months prior to that make no mention of left thumb symptoms or injury.

After reviewing [Appellant's hand specialist's] report, [MPIC's doctor] noted that had the Appellant sustained a traumatic injury to his thumb, he would have presented with pain, swelling, ecchynosis and functional limitations. These were not reported in the three months post accident, and it is unlikely that the symptoms reported one year later were a result of the motor vehicle accident.

Although [Appellant's chiropractor] was asked to provide his opinion, he did not provide any clear answer to the question of whether the Appellant's injury was caused by the motor vehicle accident and whether there were earlier reports of this injury to him by the Appellant.

Accordingly, Counsel for MPIC submitted that the Commission should uphold the Internal Review Officer's decision that the thumb injury was not caused by the motor vehicle accident.

### **Discussion:**

#### **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.

The onus is on the Appellant to show, on a balance of probabilities, that the injury to his thumb was caused by the motor vehicle accident.

The panel has reviewed the evidence on the indexed file as well as the oral testimony of the Appellant. We find that the reports from [Appellant's chiropractor] do not assist in the analysis of whether or not the Appellant's injury to his thumb was caused by the motor vehicle accident.

However, we do find that the Appellant, in his testimony, has presented a credible account of the period following the motor vehicle accident and his recovery from his injuries. The Appellant explained that at first the more serious pain and symptoms resulting from his neck and back injuries, and even to his hand and wrist, consumed the greater part of his attention to his injuries and to his treatment. It was not until these injuries found some resolution that he even turned his mind and attention to other injuries such as his thumb. He testified that he felt pain in his thumb the day after the motor vehicle accident, but his main concern at that time was his neck and spine and a fear of exacerbation of a previous motor vehicle injury. His evidence established that he had suffered from sprains in the past and so at first thought that the problems with his thumb were just due to a sprain which would heal with time, of its own accord. However, as time progressed, and his other more serious injuries began to resolve somewhat, he noticed more severe symptoms in his thumb. So, he began to question [Appellant's chiropractor] about these symptoms. However, [Appellant's chiropractor] indicated that this was not his specialty and he could not assist. Finally, after some time had gone by, he obtained a referral to a hand specialist.

The waiting period for the referral and consultation with the hand specialist took a number of months. Finally, the Appellant was able to see [Appellant's hand specialist]. This was the first

caregiver that he saw who was qualified to diagnose the injury to his thumb. The thumb problems had been concerning him for some time, but until he saw [Appellant's hand specialist], he did not fully realize their significance.

There is a lack of written documentation of thumb complaints on the file, leading up to the point where the Appellant saw [Appellant's hand specialist]. However, even the Appellant's earliest reports following the motor vehicle accident referred mostly to his knee pain, when clearly, later reports established other injuries to his neck and back, as well as hand and wrist which were also not initially mentioned. Therefore, we prefer the oral testimony of the Appellant at the hearing. The Appellant's oral testimony made it clear that he was experiencing symptoms in his left thumb, the day following the motor vehicle accident, but attributed these to a sprain which would resolve with time. When the thumb symptoms did not resolve, and became even more severe, it took some time, in spite of his complaints about the thumb to [Appellant's chiropractor], before he was able to obtain a diagnosis of a volar plate injury.

[Appellant's hand specialist], in a report dated December 2, 2005, noted that it was probable that a volar plate injury could manifest in the manner it had, with the Appellant noting that it took a number of months for the general pain and swelling to his wrist and hand to subside, in order for him to identify the injury as being specific to his thumb. According to [Appellant's hand specialist], it was possible that the Appellant's volar plate injury could have resulted from a single traumatic event such as his motor vehicle accident without the presence of ecchymosis (as noted by [MPIC's doctor]), but he noted that he had not seen the patient until a year after the injury.

The panel finds, that although [Appellant's hand specialist] did not see the Appellant until a year after the accident, on the balance of probabilities, the Appellant, on the strength of his credible accounting at the hearing of the events in the year following the motor vehicle accident, has established on a balance of probabilities, that the injury to his thumb did arise as a result of the motor vehicle accident.

Accordingly, the panel finds that the Appellant's injury to his left thumb was a result of the motor vehicle accident, and that he should be entitled to permanent impairment benefits, where provided by the MPIC Act and Regulations, for this injury. Accordingly, the decision of the Internal Review Officer dated July 8, 2003 is hereby overturned and the Appellant's appeal is allowed. The issue of the Permanent Impairment benefits to which he should be entitled on account of the injury to his left thumb will be referred back to the Appellant's case manager for determination. Interest in accordance with Section 163 of the MPIC Act will be added to this amount. The Commission will retain jurisdiction in the event the parties are unable to agree to the determination of these amounts.

Dated at Winnipeg this 4<sup>th</sup> day of August, 2009.

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**LAURA DIAMOND**

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**DIANE BERESFORD**

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**MARY LYNN BROOKS**