

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-34**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: October 27, 2009

ISSUE(S): Entitlement to Permanent Impairment Benefit for Tinnitus

RELEVANT SECTIONS: Sections 127 and 129 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 1 and Schedule A of Manitoba Regulation 41/94.

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 August 19, 2003. As a result of the injuries which he suffered in that accident, the Appellant sustained permanent physical impairments which, pursuant to Section 127 of the MPIC Act, entitle him to a lump sum indemnity in accordance with the regulations to the MPIC Act. The Appellant is appealing the Internal Review Decision dated February 5, 2009 with regards to his entitlement to a permanent impairment benefit for tinnitus.

Section 127 of the MPIC Act provides that:

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 Regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

The Internal Review Decision dated February 5, 2009, confirmed the case manager's decision of October 3, 2008 which found that there was insufficient evidence on the Appellant's file to support a causal relationship between the Appellant's current signs/symptoms (tinnitus) and the motor vehicle accident of August 19, 2003. As a result, the Appellant did not qualify for a further permanent impairment award in relation to tinnitus.

At the appeal hearing, the Appellant's representative advised that since the motor vehicle accident, the Appellant had developed persistent tinnitus. The Appellant's representative submitted that the most probable cause of the tinnitus was certainly the motor vehicle accident, since the Appellant sustained significant damage to his face and head in the accident. The Appellant's representative submitted that the impact of the collision to the Appellant's head and the side of his face caused nerve damage and although it hadn't impacted the Appellant's hearing, he claims that it has caused the Appellant's tinnitus. The Appellant's representative argues that the concussion and the significant trauma which the Appellant sustained to his face resulted in the tinnitus. He maintains that there is no other probable cause and the motor vehicle

accident of August 19, 2003 was the most likely event which led to the development of the Appellant's tinnitus.

Additionally, the Appellant's representative argues that the Appellant had a lot of injuries that he was dealing with immediately after the accident which took precedence over the tinnitus. As a result, the Appellant did not immediately report the tinnitus to his caregivers and this resulted in the time lag from the accident to the report of the tinnitus in 2007. The Appellant's representative therefore submits that the Appellant should be entitled to an additional permanent impairment benefit in respect to the tinnitus.

Counsel for MPIC submits that the Appellant's permanent impairment benefits have been properly assessed and rated pursuant to the Schedule of Permanent Impairment Benefits and that the Appellant has received his full entitlement to permanent impairment benefits. Counsel for MPIC maintains that the Appellant has not established a causal relationship between the motor vehicle accident of August 19, 2003 and the development of the tinnitus. She argues that the first reported symptoms of tinnitus were not until 2007 which represents a significant time lapse since the accident. Additionally, counsel for MPIC refers to the medical reports from the Appellant's caregivers which are not supportive of a relationship between the accident and the Appellant's tinnitus:

1. [The Appellant's Doctor's] report dated June 20, 2008, wherein [the Appellant's Doctor] advises that "I am at a total loss to explain [the Appellant's] tinnitus and it's relationship to his accident".
2. An April 11, 2008 report from [the Appellant's Otolaryngologist], states that the Appellant's hearing was normal and there was no particular treatment for this or objective proof that tinnitus exists. [The Appellant's Otolaryngologist] was unable to

establish the probable cause of the tinnitus and did not describe any particular treatment or objective proof that the tinnitus exists.

Counsel for MPIC also relies upon the reports of [MPIC's Doctor], medical consultant to MPIC's Health Care Services team, wherein [MPIC's Doctor] advises that as he is unable to establish a probable cause effect relationship between the Appellant's tinnitus and the motor vehicle accident, as the specific cause for the Appellant's tinnitus has not been elucidated. Counsel for MPIC also maintains that there is no evidence that the tinnitus is permanent and accordingly it would not attract a permanent impairment benefit. As a result, counsel for MPIC submits that the appeal should be dismissed and the Internal Review Decision dated February 5, 2009 confirmed.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant's representative and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established a causal relationship between the motor vehicle accident of August 19, 2003 and the Appellant's tinnitus, on a balance of probabilities. On this appeal, the onus of proof rests with the Appellant to establish a probable causal relationship. The Commission finds that the Appellant has not met that onus. The medical evidence on the Appellant's file simply does not establish a probable relationship between the motor vehicle accident of August 19, 2003 and the Appellant's tinnitus. As a result, the Commission finds that the Appellant has not established that he qualifies for a permanent impairment benefit in accordance with Section 127 of the MPIC Act in relation to the tinnitus.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated February 5, 2009 is therefore confirmed.

Dated at Winnipeg this 6th day of November, 2009.

YVONNE TAVARES