

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-088**

PANEL: Ms Laura Diamond, Chairperson
Mr. Trevor Anderson
Ms Deborah Stewart

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

HEARING DATE: December 13, 2010 and July 7, 2011

ISSUE(S): Entitlement to Income Replacement Indemnity benefits beyond September 19, 2007.

RELEVANT SECTIONS: Section 70(1) and 1110(1)(c) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 8 of Manitoba Regulation 37/94

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, after being injured in a motor vehicle accident on February 7, 2007, complained of low back pain, left shoulder pain, headaches and left arm pain. At the time of the accident he worked as a long haul truck driver, but stopped working on February 13, 2007.

The Appellant had also been involved in an earlier accident on January 23, 2005.

Following the February 7, 2007 motor vehicle accident the Appellant received chiropractic and physiotherapy treatments, with a diagnosis of myofascial strain.

He also received Income Replacement Indemnity (“IRI”) benefits from MPIC.

In June and August of 2007, the Appellant continued to complain of left shoulder pain, hand numbness, neck pain, and headaches, as well as intermittent low back pain. He was treated by his family doctor and referred to a neurologist who indicated his shoulder should be seen by an orthopaedic specialist, with further testing to be done to determine a possible nerve problem in his wrists, but noted normal neurophysiologic studies and osteoarthritis changes in his cervical spine.

On September 12, 2007, the Appellant’s case manager terminated the Appellant’s IRI, finding that there was no objective medical information supporting his inability to work as a long haul truck driver as a result of the motor vehicle accident.

The Appellant sought an Internal Review of the case manager’s decision.

On September 5, 2008 an Internal Review Officer for MPIC reviewed the medical information on the Appellant’s file, including reports from [Appellant’s Neurologist], [Appellant’s Sports Medicine Specialist], the Appellant’s family physician and [MPIC’s Doctor], Medical Consultant with MPIC’s Health Care Services. The Internal Review Officer found that there was insufficient medical documentation to support his contention that his motor vehicle accidents had prevented him from being able to drive long haul truck. The only physical issue which might

cause difficulties related to his employment was a possible rotator cuff injury which was not related to the motor vehicle accident.

It is from this decision of the Internal Review Officer that the Appellant has now appealed. An extension of the time limits within which the Appellant could appeal the Internal Review Decision was set out in a decision of the Commission on November 4, 2009.

At the appeal hearing, counsel for the Appellant indicated that it was the Appellant's position that injuries suffered in his first motor vehicle accident on January 23, 2005 had now been exacerbated by the second motor vehicle accident of February 7, 2007, causing the inability of the Appellant to work as a long haul truck driver.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described his [text deleted] education and work history of construction and driving, which included driving half ton trucks and vans hauling produce to stores and picking up goods. He began highway driving in 1996 with a 1A licence.

The Appellant described the typical duties of a long haul truck driver. These included backing up the truck to the trailer, hooking up the trailer and poser cord, and rolling up dollies. He did a pre-trip truck and trailer inspection which included checking lights, tires, brake adjustments and hoses. He described the paperwork involved as well as the physical duties of loading and offloading, which could be quite physically demanding, depending upon what the customer's needs were. For example, helping to offload a load of furniture could be extremely heavy.

The Appellant also described the legal driving limits for a day of 10 hours in the U.S. and 13 in Canada. He generally worked six days with one day off, involving both day and night driving.

The Appellant described his health prior to 2005 as good. He could do whatever he wanted. He had a few lower back problems in 1974 and 1975 when he was young [text deleted], but those had never been enough to stop him from working.

The Appellant described the motor vehicle accident of January 23, 2005, as well as the resulting pain and injury and trip to hospital by ambulance. He said that since that time he has pain between his shoulder blades which will not go away. He missed quite a bit of work.

The Appellant attempted to return to work, following the motor vehicle accident, for [text deleted]. This job included offloading groceries with no loading dock, where he had to “hand-bomb” the cargo. He had difficulty doing this, particularly with his shoulders, neck and left hand. He began having migraines and found it difficult to do the work. He even had a hard time backing up his truck and using the mirrors, due to difficulty with turning his head.

The Appellant continued to see his family doctor, [Appellant’s Doctor #1], who he had been seeing for over 20 years. He also saw doctors at the [text deleted] Clinic and [Appellant’s Neurologist], for nerve conduction tests. He participated in reconditioning, including walking and weight lifting and benefited from chiropractic treatments to release the pain in his neck and back, and assist with the migraines. However, he continued to have back spasms.

The Appellant also described the motor vehicle accident which occurred on February 7, 2007. Following that motor vehicle accident he suffered from back spasms and pain in his left shoulder. As well, he now finds that both his hands go numb.

He stopped working for [text deleted] after the second motor vehicle accident, due to legal difficulties which prevented him from doing runs to the U.S. The employer did not have enough runs for him to do in Canada, and the Appellant also noted that he was having a hard time doing the driving.

The Appellant testified that he had not been employed as a long haul truck driver since the 2007 accident, because he cannot do that job anymore and cannot go back to highway driving. Whenever he hits a bump, he feels pain and the constant vibration of the truck puts a lot of pain into his shoulder and neck.

The Appellant testified that although long haul driving was the job he loved the most because of the freedom of travel involved, he could never go back to it.

Following the termination of his IRI benefits, the Appellant tried to do other work such as hauling gravel locally, but this caused a lot of pain as well.

He then went on to driving on some [text deleted] projects, involving a rock truck with no major turning or lifting involved. He also drove a school bus [text deleted], and did some driving of a rock truck at the [text deleted] project. The Appellant explained that he had done some aptitude testing with an employment insurance program and hoped to be able to do some custodial or engineering work, but that he could not sit for long in a chair. He also noted difficulties with

sleeping due to severe pain which impacted upon his ability to be alert during long haul truck driving.

On cross-examination, the Appellant admitted to some neurological difficulties in November 2002 when he felt some tingling and felt he would collapse during a Remembrance Day Service. He also agreed that he had had some problems with his lower back in August of 2003.

The Appellant was also asked about any work he might have done on a rental property in 2007, but he indicated that it was his ex-girlfriend who owned that property and that he had not done the renovations, but rather had just been with her when she did them. He did not recall telling his case manager that he had been painting, drywalling, hammering and using a screwdriver for these renovations.

The appeal hearing of December 13, 2010 was adjourned to allow the Commission to seek additional medical reports from [Appellant's Orthopedic Specialist], who had examined the Appellant in regard to his rotator cuff.

A report was received from [Appellant's Orthopedic Specialist] dated February 4, 2011 which indicated that an MRI performed to assess the Appellant's shoulder did not identify any rotator cuff pathology and identified a mild acromioclavicular joint arthrosis. [Appellant's Orthopedic Specialist] was of the opinion that the Appellant's symptoms were not shoulder related but might be radicular in nature and that no surgical procedure was required to address a shoulder condition.

The appeal hearing then reconvened on July 7, 2011.

Counsel for the Appellant submitted that the Appellant was incapable of working in his determined occupation of a long haul truck driver when his IRI benefits were discontinued by MPIC in September of 2007. In this regard, counsel emphasized the Physical Demands Analysis for a long haul truck driver, dated July 3, 2007 and provided in the Appellant's Indexed file before the Commission.

The Appellant had described both the January 2005 and February 2007 motor vehicle accidents. Following the January 2005 accident he had been suffering from back spasms, due to a significantly injured back and from a sore left shoulder. This made his job of long haul truck driving difficult and he spent some time off that job, although he did go back to work and try and work through it in spite of the migraine headaches and significant neck problems he suffered.

When the second motor vehicle accident occurred in February 2007, he hurt his back again. This time the headaches got worse and there was also pain in his left shoulder resulting from the pressure of the seatbelt. He encountered more problems using his left arm and with his hands and he was still not at the physical level he was at before that motor vehicle accident.

His employment with [text deleted] was terminated for non-motor vehicle accident related reasons. The Appellant had not been able to work as a long haul truck driver since that time. He had found a new employer, but was physically unable to hold a position as a long haul truck driver due to accumulated health issues resulting from both motor vehicle accidents.

Counsel noted the reports on the Appellant's Indexed file from [Appellant's Chiropractor], who had been his chiropractor since 2007. These indicated that although treatment was helpful, it was not a cure and the Appellant's pain kept coming back. He had difficulty with "hand-bombing" in his job, migraines arose, and he had problems moving his neck to back up the truck and do other work duties. The Appellant found it necessary to bring a second driver along to assist him.

MPIC sent the Appellant to a physiotherapist. However, the Appellant had indicated that these treatments made him worse and he would often have to go to a chiropractic treatment to undo the damage that the physiotherapy had done.

Although he loved working as a long haul truck driver, he testified that after 2007 and that motor vehicle accident the vibrations were too much for his back and he could no longer work at that job. He has done different types of driving, for example driving a rock truck with no loading duties, but he has not been able to work as a long haul truck driver and all of his various jobs have been temporary and short term. The Appellant submitted that he is at an educational disadvantage and his doctors recommend that he do sedentary work.

Counsel also reviewed reports provided by the Appellant's family physician, [Appellant's Doctor #1]. A letter from [Appellant's Doctor #1] dated February 27, 2009 reviewed the Appellant's MRI examinations of April 2005 and April 2007, recognizing a significant deterioration at C5-6 and C6-7. On May 27, 2007, [Appellant's Doctor #1] opined that the significant worsening of the degenerative changes in the Appellant's cervical spine seen between MRI examinations in 2005 and 2007 were excessive for a man of the Appellant's age. In [Appellant's Doctor #1's] view this was a result of the motor vehicle accident.

Further, he stated:

“Despite his many symptoms [the Appellant] could most likely find some kind of employment which would not require a lot of agility yet not involve prolonged sitting. It is likely that this would require retraining. I am certain that long distance trucking is not a choice for him.”

Counsel noted that the Appellant had been seeing [Appellant’s Doctor #1] for approximately 20 years, and so he was very knowledgeable about the Appellant’s health and history.

These degenerative changes at C5-6 and C6-7 were reviewed by the radiologist, [Appellant’s Radiologist], who noted that they had shown interval increase in the two year examination interval.

“The prominent lesion is the left posterolateral C5-6 disc protrusion and associated uncinat process osteophyte formation causing left C6 foraminal narrowing.”

Counsel also pointed to a report from [Appellant’s Chiropractor] dated February 1, 2010. After summarizing the Appellant’s complaints of moderate occipital headaches, left arm/shoulder pain with weakness, mid to lower back pain with muscular tightness, the chiropractor stated that:

“These aforementioned complaints with the present physical signs would encumber the occupational requirements of a professional truck driver/heavy machine operator. The ergonomics of a sitting/steering position superimpose compressional and shearing strains upon the afflicted regions. The areas presently afflicted are relatable to the injured regions involved in the February 7, 2007 automobile accident.”

[Appellant’s Chiropractor] noted that the Appellant was medically of strong character but that he would require a lifetime of intermittent physical care and intervention.

The panel was also referred to a letter from [Appellant’s Physiatrist], dated February 9, 2006. She set out a synopsis of the Appellant’s injuries including his neck and left shoulder pain, memory problems since the accident and carpal tunnel syndrome. She also noted degenerative

changes and objective signs of taut bands in the infraspinatus and the supraspinatus muscles.

[Appellant's Physiatrist] noted:

"My impression is that he has myofascial pain plus AC joint dysfunction secondary to the separation. We have reviewed with him a stretching program. I discussed with his wife regarding the etiology of the discomfort and that for the shoulder problem I could not do anything. For the muscle tightness we reviewed the exercises. We did suggest to the patient and the wife that maybe at this time he should seek an alternative type of occupation because of the significant problems with pain. According to the wife he does not have the education for any other employment and she would like Autopac to train him."

A letter from [Appellant's Doctor #2] was dated March 10, 2005. [Appellant's Doctor #2] noted that the Appellant continued to have difficulties with persisting headaches, bilateral arm paresthesias and difficulty finding words and speaking. He noted that these undiagnosed neurologic symptoms preclude him from his normal duties as a long haul truck driver. He stated that he should consider alternative sedentary work and that based on his last examination he would require a position with no lifting greater than 10 pounds, bending and the ability to sit or stand as comfortable.

In this regard, counsel pointed out that the Physical Demands Analysis of a long haul truck driver required the Appellant to have the ability to lift up to 75 pounds.

On November 26, 2007, [Appellant's Doctor #1], following a review of the Appellant's file, noted that there had been no significant complaints of hand, shoulder or neck symptoms prior to February 2005. He noted that [Appellant's Physiatrist] had found the Appellant suffered from myofascial pain in his neck with additional findings of some rotator cuff issues and carpal tunnel syndrome.

"My interpretation of all the material available to me is that [the Appellant] suffered a significant injury in the motor vehicle accident. He has been left with a chronic myofascial pain syndrome which is typically resistant to treatment. Successful

rehabilitation will likely require input from a physiatrist, physiotherapist, myself and the [text deleted] Clinic.

I am aware that [the Appellant] has diabetes and that some of the neck findings could be based on age related degeneration. It is not my opinion that these are significant factors in the chronic nature of his condition.”

[MPIC’s Doctor] reviewed the imaging and the reports of [Appellant’s Radiologist] and [Appellant’s Doctor #1] in a memorandum dated March 24, 2009. He noted:

“The natural history of degenerative changes involving the cervical spine is one of gradual worsening with time. It is not unreasonable to assume that changes noted on the MRI could be a byproduct of time itself in the absence of any traumatic event in the interval of time between the two examinations.”

However, counsel noted that [MPIC’s Doctor] had recognized the deterioration in spite of his reluctance to view it as an enhancement of a pre-existing condition caused by the motor vehicle accident.

Counsel submitted that the panel should consider the evidence of the Appellant along with the evidence as a whole, as contained in the Indexed file. Such a review leads one to the conclusion that the Appellant is unable to work as a long haul truck driver and has been so since the 2007 motor vehicle accident. He continues to be unable to work at this job as a result of the motor vehicle accident and counsel submitted that as the evidence showed this was not a result of a degenerative condition, the Appellant’s appeal should be allowed and the Appellant entitled to IRI benefits.

Evidence and Submission for MPIC:

In reviewing the evidence on the Indexed file, counsel for MPIC pointed out a note made by the appellant’s case manager on March 12, 2007, following a meeting with the Appellant which included the comment:

“He expressed interest in either going back to school to obtain some training or looking at other job options. He doesn’t feel there is a future for him in truck driving mainly because of the condition of his left shoulder. He said he was considering changing occupations 6 months prior to the Feb. 7/07 accident. He didn’t say he was currently actively looking for alternate employment.”

It was the submission of counsel for MPIC that the Appellant’s frame of mind, even immediately after the motor vehicle accident, was that even prior to the February 2007 motor vehicle accident he had been considering changing his occupation and wanted to be retrained.

The initial decision of the case manager on April 17, 2007 indicated that the Appellant was considered a temporary earner at the time of the accident, employed as a driver on a full-time basis, and set out his entitlement to IRI benefits.

As early as May 8, 2007, the case manager made a note of a conversation he had had with the [Appellant’s Chiropractor] who indicated that the Appellant was doing fine, had bought some rental property and had reported moving furniture to that rental property. Yet, in a Chiropractic Track 1 Report dated May 9, 2007, [Appellant’s Chiropractor] indicated that the Appellant’s self-assessment tools had indicated a crippling disability and that the Appellant could do no dolly-workloads or 5th wheel pin pulling.

By May 9, 2007, [Appellant’s Chiropractor] indicated that the Appellant’s condition had significantly worsened and he could not understand why. A referral to physiotherapy followed, with a report from the physiotherapist dated May 17, 2007 indicating that the Appellant was not currently at work and that the physiotherapist was unable to determine when he could begin even modified duties.

By June 26, 2007 the Appellant was complaining to the physiotherapist of acute pain, although the physiotherapist indicated there were not a lot of objective findings to confirm this. The physiotherapist indicated that he would like to see the Appellant return to work as soon as possible and MPIC proceeded to obtain a Physical Demands Analysis, dated July 3, 2007. A physiotherapy discharge report dated June 28, 2007 noted some inappropriate behaviour of the Appellant indicating that he would no longer be receiving treatment, following an incident where, when the physiotherapist brought up a possible return to work, the patient swore at him and walked out of the clinic.

Counsel submitted that this evidence showed that the Appellant was looking to get out of the long haul trucking business and whenever a return to work was mentioned, uncooperative behaviour from him would follow.

A verbal report from the Appellant's chiropractor on July 25, 2007 noted improvement and indicated an expected return to work for the Appellant within four weeks.

On July 31, 2007, the Appellant reported his visits with [Appellant's Neurologist] and [Appellant's Doctor #1] and indicated that he had been doing some painting and helping with drywalling at a friend's house. He did indicate that he would take frequent rest breaks.

The file was reviewed by [MPIC's Doctor] on August 9, 2007. [MPIC's Doctor] reviewed the amount of damage to the Appellant's vehicle, level of trauma and the documentation reviewing the courses of physiotherapy and chiropractic intervention he had had. He reviewed the file and indicated that the Appellant, in his opinion did not have a physical impairment of function as a

result of a medical condition arising from the motor vehicle accident in question, preventing him from returning to his pre-accident duties of a long haul truck driver.

On September 5, 2007, the chiropractor indicated that the Appellant was now capable of returning back to work as a truck driver, although he would have some difficulty if he had to hand bomb freight. This was followed by the completion of a modified duty report by the chiropractor indicating the Appellant could return to modified work from September 10, 2007 to approximately November 22, 2007 with four hours of driving every second day.

Around this time, [Appellant's Neurologist] provided a reported dated September 6, 2007. He reviewed previous difficulties the Appellant had had, including seeing him for low back problems in 2003. Counsel noted that this report demonstrates that the Appellant had a lot of symptoms, similar to those suffered after the motor vehicle accident, prior to either one of his motor vehicle accidents.

On September 12, 2007, the case manager issued a decision indicating that the Appellant was capable of holding the determined employment of a long haul truck driver and terminating his IRI benefits.

[Appellant's Neurologist] had provided, on September 13, 2007 a review of imaging diagnostics indicating that the Appellant did not suffer from carpal tunnel syndrome or ulnar neuropathy of the upper limbs.

A chiropractic report dated November 5, 2007 indicated that the Appellant was at work as a truck driver, but only doing driving, with no hooking up of rigs and squatting and that he was unable to do hand bombing, loading and unloading.

[Appellant's Neurologist] reported on November 15, 2007 indicating that he had found no neurophysiologic abnormality, and [Appellant's Doctor #1] reported on November 26, 2007 identifying chronic myofascial pain syndrome as a result of the motor vehicle accident.

[MPIC's Doctor] reviewed the file again on June 17, 2008 and noted long standing diffuse back, neck and mid-back problems which had been assessed in 2003. He reviewed [Appellant's Neurologist's] findings and noted that the only abnormalities which had been found to date were the cervical and lumbar degenerative changes at multiple levels in the Appellant's spine, as well as foraminal narrowing. In his view, from an objective standpoint, the Appellant had not been noted to have any significant physical impairment that would prevent him from performing the required demands of a truck driver or that the motor vehicle incidents enhanced a pre-existing medical condition. He noted the possible contributions of the Appellant's obesity and diabetes but did not change his conclusion that the Appellant had not been diagnosed as developing a medical condition as a result of the motor vehicle accidents that in turn would prevent him from performing the required demands of his occupation if he so desired.

[Appellant's Sports Medicine Specialist] reported on June 24, 2008. He identified shoulder complaints, suggested a possible left sided rotator cuff tear or tendonosis, and confirmed that the Appellant had an appointment with an orthopaedic surgeon coming up to address this.

[MPIC's Doctor] reviewed this report on July 28, 2008 and expressed his view that no shoulder injuries had resulted from the motor vehicle accident.

Following the decision of the Internal Review Officer on September 5, 2008, [Appellant's Radiologist] reported on January 8, 2009, identifying degenerative changes at C5-6 and C6-7. [Appellant's Doctor #1], in a report dated February 27, 2009, suggested that the increase in deterioration from the Appellant's last investigation could be due to the motor vehicle accident. [MPIC's Doctor] addressed this point on March 24, 2009, noting that [Appellant's Radiologist] had indicated that the changes were not significant (i.e. "slight interval increase in size"). He stated:

"The natural history of degenerative changes involving the cervical spine is one of gradual worsening with time. It is not unreasonable to assume that changes noted on the MRI could be a byproduct of time itself in the absence of any traumatic event in the interval of time between the two examinations. In other words, the changes noted on the MRI do not reflect an acute traumatic event occurring to [the Appellant's] cervical spine after April 28, 2005 that in turn would lead to the interval change. The changes noted on the MRI in August 2007 are not changes that can only occur as a byproduct of a traumatic event...

Base (sic) on this review, it is my opinion the information obtained from the reports does not, based on the balance of probability, indicate the motor vehicle incident resulted in an enhancement of a pre-existing medical condition."

[Appellant's Doctor #1] did not agree, and on May 27, 2010 reported that in his opinion, the changes between 2005 and 2007 were excessive for a man of the Appellant's age. He also noted that the Appellant required retraining into some kind of employment which would not require a lot of agility yet not involve prolonged sitting.

Counsel for MPIC submitted that this suggestion was significant, having regard to the Appellant's suggestion to his case manager six months prior that he was looking for employment that did not involve truck driving.

[MPIC's Doctor] again addressed [Appellant's Doctor #1's] opinion that the degenerative changes were excessive for the Appellant's age group, in a report dated October 1, 2010. [MPIC's Doctor] also noted the Appellant's history of neck and back problems dating back to 2003, as indicated in the reports obtained from [Appellant's Neurologist]. He indicated that he did not agree that [Appellant's Radiologist's] report indicated that the overall changes were excessive or significant and noted that it was equally possible that the increase in degenerative changes would have developed even if the Appellant had not been involved in the motor vehicle incidents in question.

[MPIC's Doctor] also noted the Appellant's history of neck and back problems dating back to 2003, as indicated in the reports obtained from [Appellant's Neurologist].

Counsel for MPIC noted that the natural history of degenerative changes is one of gradual worsening with time. Therefore, she submitted that it was not unreasonable that the changes to the Appellant's degenerative condition were a by-product of time itself and did not reflect acute traumatic changes. Counsel submitted that the evidence of [MPIC's Doctor] should be preferred to the opinion of [Appellant's Doctor #1], as [MPIC's Doctor] had had an opportunity to review the Appellant's complete medical file as well as the Physical Demands Analysis and the information of pre-existing difficulties which [Appellant's Neurologist] had set out.

In summary, counsel for MPIC suggested that if anything was preventing the Appellant from returning to work as a truck driver, it is those pre-existing degenerative conditions. No injuries sustained in the motor vehicle accidents prevented him from returning to work as a truck driver and, as such, the Appellant's benefits were properly terminated by the case manager. The decision of the Internal Review Officer should therefore be upheld.

Discussion:

The MPIC Act provides:

Definitions

[70\(1\)](#) In this Part,

"accident" means any event in which bodily injury is caused by an automobile;

Events that end entitlement to I.R.I.

[110\(1\)](#) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(c) the victim is able to hold an employment determined for the victim under section 106;

Manitoba Regulation 37/94 provides:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

The onus is on the Appellant to show, on a balance of probabilities, that he can no longer work as a long haul truck driver due to injuries sustained in the motor vehicle accident.

The panel has reviewed the evidence of the Appellant at the hearing, as well as the evidence contained on the Indexed file and the submissions of counsel for the Appellant and MPIC.

The panel has carefully reviewed the demands of the long haul truck driving position described in the Physical Demands Analysis dated July 3, 2007. These duties were also described by the Appellant and included materials handling, checks and inspections, hooking and unhooking and long-term driving for durations of longer than half an hour, with accompanying vibrations.

Restrictions on the Appellant's ability to work identified by [Appellant's Chiropractor], [Appellant's Doctor #1], [Appellant's Psychiatrist] and [Appellant's Doctor #2] do indicate that the Appellant would not be able to complete and fulfill all of the duties set out in the Physical Demands Analysis, as required in his job as a long haul truck driver.

However, the panel notes that the onus is also on the Appellant to show that any impairments which prevent him from performing his job duties were caused by the motor vehicle accident. The Appellant takes the position that these impairments were caused by or exacerbated by his motor vehicle accidents. In support of this position, he cites the opinion of [Appellant's Chiropractor], on February 1, 2010, where he stated that:

“These aforementioned complaints with the present physical signs would encumber the occupational requirements of a professional truck driver/heavy machine operator. The ergonomics of a sitting/steering position superimpose compressional and shearing strains upon the afflicted regions. The areas presently afflicted are relatable to the injured regions involved in the February 7, 2007 automobile accident.”

He also pointed to opinions provided by [Appellant's Doctor #1] on November 26, 2007, February 27, 2009, and May 27, 2010, that in his view, the Appellant had experienced a significant worsening of the degenerative changes in his cervical spine and that this could be attributed to the trauma of the motor vehicle accident.

The panel notes that the Appellant suffered from a number of conditions which pre-existed the motor vehicle accidents. There had been previous issues of a left shoulder dislocation, diabetes and pre-existing, longstanding diffuse neck, mid back, and low back problems. For example, [Appellant's Neurologist] referred to visits for such complaints as far back as 2003, with some quite significant difficulties and discomfort around that time. [Appellant's Neurologist] found

no neurologic abnormalities, attributing the Appellant's difficulties to degenerative changes at several levels for potential for nerve root compression.

Degenerative changes were confirmed by the radiological report of January 8, 2009. [Appellant's Physiatrist] examined the Appellant for numbness in his wrists, noted taut bands in the infraspinatus and supraspinatus muscles and diagnosed myofascial pain. At that time, she noted the MRI report:

“...We do have an MRI report of the lumbar spine, which showed mild disc space narrowing and intervertebral disc desiccation throughout the lumbar spine, more moderate at L5-S1, with prominent Schmorl's node in the anterior superior end plate of the vertebral body of L5. At L4-L5 there is a shallow central disc bulge with no evidence of disc herniation, central spinal stenosis or nerve root compression. Mild left sided facet degenerative changes were seen. At the L1-L2 and the L3-L4, prominent disc herniation is seen extending into the paravertebral soft tissue. At the L5-S1 he had a posterior left lateral disc herniation identified, contacting the left S1 nerve root. There is no displacement of the nerve root, however, irritation or compression cannot be excluded. Mild facet degenerative changes were seen. There was no evidence of any central spinal stenosis. He also has an x-ray of the shoulder, which shows that the AC joint is widened and the appearance was compatible with second-degree separation. X-ray of the knee shows no fracture or dislocation.”

Although [Appellant's Doctor #1] took the view that there was significant worsening of the degenerative changes in the Appellant's spine which were excessive for his age, [MPIC's Doctor] closely examined the radiological report, noting that the changes had not been described as significant or excessive in that report and that the report did not lead to the conclusion that the motor vehicle incident resulted in either a traumatic change or an enhancement of a pre-existing medical condition.

The panel agrees with [MPIC's Doctor's] conclusions in his reports of March 24, 2009 and October 1, 2010 that it is equally possible that an increase in degenerative changes would have developed even if the Appellant had not been involved in the motor vehicle incidents in question.

We agree with the submission of counsel for MPIC that the medical information on the Appellant's file suggests that the symptoms and impairment of function from which the Appellant is suffering are the result of a pre-existing condition. The panel finds that the Appellant has failed to meet the onus upon him of showing, on a balance of probabilities that his condition and symptoms were caused or enhanced by the motor vehicle accidents in question.

As a result, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated September 5, 2008 is hereby upheld.

Dated at Winnipeg this 3rd day of August, 2011.

LAURA DIAMOND

TREVOR ANDERSON

DEB STEWART