

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-11-156**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Guy Joubert
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], was represented by Ms Darlene Hnatyshyn of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Steve Scarfone.

HEARING DATE: April 15, 2014

ISSUE(S): Entitlement to Personal Injury Protection Plan ("PIPP") benefits.

RELEVANT SECTIONS: Section 70(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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

On August 2, 2007, the Appellant was the operator of a motorcycle travelling approximately 80 kilometres an hour southbound on [text deleted] when he struck a slower moving vehicle in front of him. Following the accident the Appellant was taken by ambulance to [Hospital]. The report from the emergency department documented his injuries as "Road rash to left knee and leg, right knee abrasion and flank abrasion. Soreness to lower legs. no neck or back pain. alert. Walking at scene." Due to the long wait at the Emergency Department and his discussions with the triage nurse, the Appellant and his parents decided to leave and follow-up with his family doctor in the

morning. The next day, the Appellant saw his family doctor at 8:00 a.m. The Appellant testified that his family doctor told him that he had had quite a fall and would take some time to recover.

The case manager spoke with the Appellant's mother on August 8, 2007. The Appellant's mother indicated that her son had injuries to his neck, back, and legs. She stated that the Appellant was unable to climb stairs or stand for a long period of time. She also advised that the Appellant had a follow-up appointment with his family physician on August 10, 2007.

The Appellant's father contacted the case manager on August 23, 2007. He advised that although no fractures had been identified, he was concerned about the Appellant's knees. The case manager recommended that the Appellant attend for an assessment with his family physician.

At the time of the motor vehicle accident, the Appellant was [text deleted] years of age and was employed full-time as a lot attendant at a car dealership. His duties involved cleaning and washing cars and delivering cars to customers. The Appellant quit working at this job on August 17, 2007. The Appellant then began working for his father at [text deleted] as a maintenance man. This job paid more than the position as a lot attendant. The Appellant's duties included crawling under [text deleted] to check/change valves and helping maintenance crews fix water leaks and sewer problems. In September 2007, the Appellant also attended high school in order to complete two outstanding courses which he required to obtain his grade twelve diploma. On or about October 24, 2007, the Appellant withdrew from his high school courses due to his failing grades and poor attendance.

Subsequently, a permanent impairment assessment was done on October 2, 2008 documenting physical scarring to the Appellant's right hip, right knee and left knee. A permanent impairment benefit was paid to the Appellant for these injuries.

On April 9, 2009, the Appellant contacted the case manager and advised that he was having a great deal of difficulty with his knees.

On February 18, 2010, the Appellant's father contacted the case manager advising that the Appellant was unable to hold employment due to the injury to his knees. The Appellant's father also advised that the Appellant was experiencing trouble remembering and communicating and he was concerned about a possible head injury.

On March 24, 2010, the Appellant's father spoke with a new case manager. He indicated that the Appellant had been for a physiotherapy assessment at the [Hospital] in [text deleted]. The case manager contacted [Appellant's Physiotherapist], on March 25, 2010. She stated that the injury reported by the Appellant was pain in the right knee, particularly when kneeling and there was also nerve pain and pinching.

The case manager subsequently requested a report from the [Appellant's Doctor]. In his report dated April 11, 2010, [Appellant's Doctor] notes that,

- 1) I have copied my notes to you so you will see what I have advised. I think I advised pads for when he crawls as he has pain from this activity, perhaps related to the original injury although I have no causal link other than history to that event.

...

I have only a diagnosis of non specific knee pain, with no cause identified, normal tests, *please see letter from ortho.*

[Appellant's Doctor's] clinical notes indicated that on July 22, 2008, the Appellant attended his office stating that he had fallen off a pillar while fishing on July 18, 2008, hitting the medial aspect of his right knee on concrete. His clinical note dated March 16, 2009 stated that the Appellant continued to get pain at times in the right knee, but the knee was not giving away, locking or collapsing. On examination both knees appeared normal. [Appellant's Doctor] noted that on April 6, 2009 the Appellant was experiencing periodic pain when kneeling on a hard surface. [Appellant's Doctor's] report included a copy of a radiology report of the right knee, which stated no significant bone or joint abnormality was demonstrated. It also included an MRI of the right knee which indicated "Normal MRI of the right knee".

[Appellant's Doctor] referred the Appellant to [Appellant's Orthopedic Surgeon]. In [Appellant's Orthopedic Surgeon's] report of April 28, 2009, he states that on examination the Appellant's knee had stable range of motion, no definite posterior cruciate laxity. There was some peripatellar tenderness and crepitus.

An initial therapy report completed by [Appellant's Physiotherapist], documented that the Appellant attended with right knee complaints. On examination the Appellant had full strength and range of motion of the knee.

A narrative report from [Appellant's Orthopedic Surgeon] dated April 30, 2010, documents a diagnosis of anterior knee contusion, specific underlying abnormality not identified, with normal MRI; suspect other soft tissue or chondral injury. [Appellant's Orthopedic Surgeon] stated that historically and temporally there was a relationship to the motor vehicle collision, however a precise cause to the ongoing problem and symptoms in the Appellant's knee had not been identified.

The Appellant's file was then reviewed by a medical consultant with MPIC's Health Care Services. The consultant concluded that based on his review it was his opinion that the medical evidence did not establish a cause and effect relationship between the motor vehicle accident of August 2, 2007 and the Appellant's reported right knee symptoms.

On May 26, 2010, MPIC's case manager provided the Appellant with a decision stating that based on the medical information on file, there was no cause and effect relationship between the motor vehicle accident and his reported right knee symptoms.

On August 10, 2010, the Appellant underwent an arthroscopy of the right knee. In [Appellant's Orthopedic Surgeon's] operative report, he notes that, in summary, the Appellant had a normal MRI, lots of complaints about the knee but just some relatively mild synovial hypertrophy and reaction, which was trimmed and smoothed. [Appellant's Orthopedic Surgeon] stated that there was very little surgical correction done on the knee and therefore the Appellant would likely have some degree of chronic anterior knee syndrome, but would be permitted essentially full activity as tolerated.

The Appellant's file, including the recent medical information was once again reviewed by MPIC's Health Care Services consultant. In an interdepartmental memorandum dated April 14, 2011, the medical consultant provided the following opinion:

A further review of [the Appellant's] file was performed to determine whether a cause/effect relationship can be established between the incident in question and his reported right knee problems. Based on this review, it is once again my opinion a cause/effect relationship cannot be established based on the following:

- The absence of documentation indicating [the Appellant] sustained a traumatic injury to his right knee that in turn might lead to long term symptoms (In the Ambulance Patient Care Report as well as documents submitted by the [Hospital],

it is noted that [the Appellant] had clinical findings in keeping with abrasion involving his right leg and knee. There is no documentation indicating a structural change or functional abnormality was identified relating to the right knee).

- The absence of documentation indicating [the Appellant] was assessed for any problems relating to his right knee between August 2, 2007 and July 22, 2008;
- Documentation indicating [the Appellant] was assessed on July 22, 2008 for problems relating to his right knee when he fell from a pillar while fishing on July 18, 2008 striking the medial aspect of the knee on concrete. It is noted that at that time, [the Appellant's] clinical presentation was suggestive of a sprain;
- The absence of documentation indicating [the Appellant] was reporting any difficulties with his right knee between July 22, 2008 and March 16, 2009;
- The documentation indicating no structural abnormalities were identified on MRI evaluation of [the Appellant's] knee that could account for his symptoms;
- Documentation indicating an arthroscopic procedure performed on August 10, 2010 identified some degree of hyperplastic inflammatory synovium as well as Grade 1 chondromalacia involving the lateral border of the patella (changes are very common in the active population).

The medical evidence would indicate [the Appellant's] right knee problems did not become evident until July 22, 2008 and were a byproduct of a traumatic event he sustained a few days previously. Subsequent to this date there is documentation of examinations performed to assess the knee as well as documentation of knee symptoms. Prior to this, there is no documentation of any specific symptoms involving the knee and/or documentation outlining the results of a physical examination of his knee to address any symptoms he is reporting during this period of time.

Based on this review, it is my opinion an arthroscopic procedure performed on August 10, 2010 was not medically required in the management of a condition he developed secondary to the incident in question.

A further case manager's decision dated June 27, 2011 was provided to the Appellant. That decision stated that:

You have asked that further medical information be reviewed regarding your ongoing knee complaints and requesting PIPP benefits following your knee surgery. [Appellant's Orthopedic Surgeon] submitted a March 3, 2011 report which has been reviewed by our Health Care Services Team. Based on this review, there remains any (sic) evidence that your right knee condition was a direct result of your motor vehicle accident, and further there is indication of right knee trauma a few days prior to your first report of knee problems to MPI in 2008. As we continue to be unable to link your ongoing right knee

symptoms to your August 2, 2007 motor vehicle accident, again we must advise that we are unable to extend PIPP benefits to you for this condition.

The Appellant sought an Internal Review of that case manager's decision. The Internal Review Officer, in a decision dated September 22, 2011, dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that there was no objective medical information to support a relationship between the Appellant's right knee concerns and the motor vehicle accident of August 2, 2007. As a result, the Internal Review Officer determined that the Appellant did not qualify for PIPP benefits for his right knee signs and symptoms.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to PIPP benefits as a result of his right knee signs and symptoms.

At the appeal hearing, the Appellant testified that he noticed problems with his knee immediately following the motor vehicle accident. However, he didn't initially mention his complaints about his right knee to his family doctor. In the months following the accident, the Appellant testified that he mainly saw his doctor about an infection, a constant cough and swollen lymph nodes. He lost over 100 lbs. following the accident and he was concerned that he may have had a serious medical condition. He often forgot to mention his right knee problems when he saw his doctor as they weren't his top priority. It was only when his right knee problems started to cause problems in his relationship with his girlfriend that he made the appointment with his family physician.

The Appellant further testified that he booked the appointment with his family physician for July 22, 2008 to discuss his knee problems, before he had the fall while fishing. He maintains that this doctor's appointment (on July 22, 2008) was for his right knee. His knee was causing him increasing difficulties and creating relationship problems with his girlfriend. He found that he couldn't kneel on his right knee and the symptoms weren't resolving on their own, so he booked the appointment.

The Appellant also testified that he no longer does any work that requires him to crawl around on his knees. He maintains that since 2008, he has been unable to crawl under mobile homes in order to deal with maintenance issues. The Appellant indicated that there are no real physical demands with his job duties now, but since he had to stop doing the maintenance work which required him to squat and kneel on his knees, his pay has been cut. The Appellant contends that he was [text deleted] years of age at the time of the motor vehicle accident. He had no prior problems with his right knee and these problems started after the motor vehicle accident. On cross-examination, the Appellant was unable to provide any details regarding the fall he had while fishing with his friend on July 18, 2008. The Appellant claims though, that he lost his balance that day on the pillar and fell onto sand, not concrete.

The Appellant's mother and father also testified at the appeal hearing. They both testified to the fact that the Appellant has suffered with knee complaints since the motor vehicle accident and that his knee problems have prevented him from doing maintenance work at the mobile home park. The Appellant's mother and father maintain that the Appellant's knee problems are connected to his motor vehicle accident of August 2, 2007. Both of the Appellant's parents also testified that they were preoccupied with their own personal health issues, and as a result, they probably overlooked the Appellant's complaints.

Appellant's Argument:

The Claimant Adviser, on behalf of the Appellant, submits that there is a causal relationship between the Appellant's knee symptoms and the motor vehicle accident of August 2, 2007. The Claimant Adviser maintains that the Appellant testified in a frank and open manner that his knee problems started following the accident of August 2, 2007. Based upon the Appellant's testimony, she argues that the Appellant did not mention his knee problems to his family physician prior to July 22, 2008 because he was preoccupied with other, more pressing health concerns at the time. His knee problems were not his top priority.

Additionally, the Claimant Adviser maintains that there were complex family health issues ongoing at the time of the motor vehicle accident. Both of the Appellant's parents had complex health issues of their own and they were not able to give the Appellant and his difficulties the attention that they deserved. As a result, the Appellant's knee problems were initially overlooked.

In summary, the Claimant Adviser argues that the Appellant had a serious motor vehicle accident. The extent of his injuries at the time of the motor vehicle accident was not fully appreciated. She submits that his knee injury developed over time, to the point that the Appellant finally sought medical attention regarding his right knee. The Claimant Adviser contends that there was a lot going on in the Appellant's family during this time - both parents were dealing with serious medical conditions. As a result, the Appellant's injuries were overlooked and ignored. The Claimant Adviser submits that the Appellant has continually complained about his knee problems since the accident and relates them to the motor vehicle accident of August 2, 2007. As a result of his knee condition, he has been severely compromised in his ability to do his job as a maintenance person and therefore he should be entitled to PIPP

benefits. The Claimant Adviser submits that the Appellant's appeal should be allowed and the Internal Review decision should be rescinded.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established a causal relationship between his current and ongoing right knee signs/symptoms and the motor vehicle accident of August 2, 2007. Counsel for MPIC maintains that there is a lack of documentation between August 2, 2007 and July 2008 concerning any knee problems reported by the Appellant. Further, counsel for MPIC argues that based upon [Appellant's Doctor's] clinical note from July 22, 2008, there were no complaints by the Appellant of pre-existing knee problems. The family physician's entire note for that visit dealt with the Appellant's fall off of the pillar while he was fishing. There were no notes made of any pre-existing knee problems. Counsel for MPIC contends that the Appellant's right knee injury did not manifest itself until a year after the motor vehicle accident. It was only in July 2008 that the Appellant came forward complaining of right knee symptoms. Thereafter, there are no further doctors' visits until March 2009 when he visits his family physician to complain again about right knee symptoms. Counsel for MPIC argues that even by March of 2009, there was very little evidence of a right knee injury given the scant medical attention which the Appellant had sought regarding his right knee complaints.

Counsel for MPIC submits that the Appellant has not shown on a balance of probabilities that he sustained an injury in the motor vehicle accident of August 2, 2007 that impacted his ability to work. Rather, counsel for MPIC submits that the Appellant started a job (the maintenance man position) after the motor vehicle accident which he did not like. This resulted in his complaints regarding his inability to do the job. As a result, counsel for MPIC submits that the Appellant's

appeal should be dismissed and the Internal Review decision dated September 22, 2011 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary and oral evidence filed in connection with this appeal and after hearing submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to PIPP benefits relating to his right knee signs and symptoms.

Reasons for Decision:

The Commission finds that there is a lack of objective evidence, including medical evidence, to substantiate that the Appellant suffered a right knee injury as a result of the motor vehicle accident of August 2, 2007. The Commission finds that the significant gap of time between the motor vehicle accident on August 2, 2007 and the first reported knee complaints in July 2008 lead us to the conclusion that a cause and effect relationship cannot be established. There is a complete absence of any documentation indicating that the Appellant was assessed for any knee problems between August 2, 2007 and July 22, 2008. Finally when he was assessed on July 22, 2008 for problems relating to his right knee, this assessment related to his fall from a pillar while fishing on July 18, 2008. There is a further absence of documentation indicating that the Appellant reported any right knee problems between July 22, 2008 and March 16, 2009. This represents a significant gap in time from the motor vehicle accident where relatively few knee complaints are documented from the Appellant. As a result, the Commission finds that there is a lack of objective evidence to causally relate the Appellant's right knee symptomology to his

motor vehicle accident of August 2, 2007. Therefore, the Commission finds that the Appellant has not established an entitlement to PIPP benefits due to his right knee symptomology.

Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated September 22, 2011 is therefore confirmed.

Dated at Winnipeg this 23rd day of May, 2014.

YVONNE TAVARES

GUY JOUBERT

SANDRA OAKLEY