

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-12-021**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Ms Jean Moor

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Ken Kaltornyk of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: April 23, 2014

ISSUE(S): Whether the Appellant's L4-5 disc herniation is related to the motor vehicle accident of May 6, 2011.

RELEVANT SECTIONS: Section 81(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

The Appellant, [text deleted] was involved in a motor vehicle accident on May 6, 2011, when a vehicle made an unsafe lane change impacting the front right side of his vehicle. Following the motor vehicle accident, the Appellant reported back pain, shoulder pain and neck pain. The Appellant had previously been involved in a motor vehicle accident on December 13, 2010, following which he experienced upper and low back pain. He was referred to physiotherapy for treatment of those injuries. Additionally, on August 19, 2009, the Appellant had injured his back at work after lifting a heavy object, following which he developed severe low back pain and right

leg numbness. The Appellant recovered from that workplace incident and returned to work full-time.

At the time of the motor vehicle accident, the Appellant was employed as a shipper/receiver at [text deleted]. The Appellant testified that following the motor vehicle accident he was able to return to work, but he was accommodated with light duties due to his back pain complaints. On August 30, 2011, the Appellant opened an injury claim with MPIC. In the initial contact with his case manager on September 19, 2011, the Appellant reported low back pain which was getting worse. He advised that the pain was so significant that he had recently attended the Emergency Department at [text deleted] Hospital and was taken off work for two days. After a trial of modified work duties due to ongoing pain, the Appellant was taken off work completely as of October 14, 2011.

During his visit to the Emergency Department at [text deleted] Hospital on September 15, 2011, a CT scan of the lumbar spine was ordered. The Appellant subsequently followed-up with his family physician on September 24, 2011. The CT scan ordered at the hospital was then available and showed “central disc herniation with spinal stenosis and also impinging on S1 nerve root”.

Initially, the Appellant’s claim for income replacement indemnity (“IRI”) benefits was accepted by MPIC’s case manager. In a letter dated November 15, 2011, the Appellant was advised of his entitlement to IRI benefits commencing October 14, 2011. Subsequent to that, the case manager obtained additional medical documentation from the Appellant’s caregivers. Upon obtaining that medical documentation, the case manager referred the Appellant’s file to a medical consultant with MPIC’s Health Care Services for an opinion as to whether the Appellant’s current symptoms and functional limitations were causally related to the motor vehicle accident of May

6, 2011. In an interdepartmental memorandum dated December 28, 2011, MPIC's medical consultant provided an opinion that a cause and effect relationship could not be established between the motor vehicle accident and the documented L4-5 disc herniation. Based on this opinion, MPIC's case manager issued a decision dated January 4, 2012 terminating the Appellant's entitlement to IRI benefits as of January 4, 2012.

The Appellant sought an Internal Review of that decision. In a decision dated February 7, 2012, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of January 4, 2012. The Internal Review Officer found that the medical information on the Appellant's file did not support a cause and effect relationship between the disc herniation and the motor vehicle accident of May 6, 2011. The Internal Review Officer determined that:

Despite numerous assessments by practitioners, the medical findings were minimal and were not supportive of an accident-related disc herniation. You continued to work for four months following the accident until there was a significant increase in symptoms. This, in and of itself, would be inconsistent with a four month old trauma induced injury.

Based on a totality of medical evidence, I concur with the medical consultant that a cause and effect relationship cannot be established between the accident and the L4-5 disc herniation resulting in mild to moderate central spinal stenosis.

The Appellant has now appealed from that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether there is a causal relationship between the Appellant's L4-5 disc herniation and the motor vehicle accident of May 6, 2011.

Appellant's Testimony:

The Appellant testified at the hearing of this matter. He testified that following the motor vehicle accident he took two days off work but returned to work thereafter. He indicated that he was accommodated by his employer with light duties, including doing paper work and packing

very light items. During this time, his back would get worse from time to time and gradually the pain began radiating to his legs and his legs started cramping. The Appellant maintains that he had back pain immediately following the motor vehicle accident; after three to four weeks the Appellant advised that he developed tingling and numbness through the legs. He continued to attend upon his family physician regularly throughout this time. On June 3, 2011 he attended upon his family physician for an unrelated problem, but reported back pain which was tolerable. On July 13, 2011, he again saw his family physician for an unrelated problem, but reported ongoing back pain.

The Appellant testified that he then decided to take some time off work in July to see whether a rest would help his back pain. He also decided that he would take a trip home to [text deleted] during his time off work. The Appellant testified that he was away for about five to six weeks in [text deleted]. He testified that the six hour flight to [text deleted] caused his back pain to flare up. He began experiencing even more sharp pain, leg cramps, tingling and numbness throughout his legs. He didn't do much on his vacation due to his pain.

The Appellant testified that he attended the [text deleted] Hospital Emergency Department on September 15, 2011 due to intense back pain with shooting pain down his left leg. At that time he was unable to sit, sleep and decided to go to the Emergency Department to try to obtain some relief. Prior to attending at [text deleted] Hospital, he was still on light duties at work. However, he missed work on September 15 and 16, 2011 and then returned to light duties thereafter, but his back pain continued to get worse.

On September 24, 2011, the Appellant again attended upon his family physician who had then received the copy of the CT scan in which the imaging study identified a central disc herniation “at L4-5” with spinal stenosis impinging on the S1 nerve root.

The Appellant testified that he continued to work but his pain was getting worse. At work he was having trouble standing, so he was sitting. His leg was cramping and he fell on the floor. Following this incident, his supervisor took him off work duties and would no longer accommodate him.

On October 12, 2011, the Appellant again saw his family physician who advised that he could not perform any jobs at work and he was taken off work pending an upcoming appointment with [Appellant’s Doctor].

The Appellant testified that he still has low back pain and tingling down his leg. He is contemplating surgical treatment but to date he has not gone for surgery since his condition is slowly improving with conservative treatment, although he has not yet been able to return to work.

Appellant’s Submission:

The Claimant Adviser submits that there is a causal relationship between the Appellant’s L4-5 disc herniation and the motor vehicle accident of May 6, 2011. Reviewing the evidence on the file, the Claimant Adviser notes that:

- The Appellant's family physician during his examination of the Appellant on May 13, 2011 documented back discomfort, left shoulder pain, as well as decreased range of motion of the lumbar spine.
- [Text deleted] who was the Appellant's lead hand at the workplace, confirmed that he had provided the Appellant with light duties from the date of the accident until his light duties accommodation was revoked, on or about October 13, 2011.
- The Appellant testified that the pain in his lower back was increasing during June and July of 2011, so in late July he took approximately five or six weeks off work to rest and visited his family in [text deleted]. The Appellant testified that his back pain increased significantly during the long flight and that after the flight his left leg started to cramp intermittently. The Appellant stated that he did very little in the way of activities while on vacation.
- The Appellant testified that when he returned to [text deleted] in late August 2011 he returned to his light duty job, but again was experiencing increasing pain and cramping in his left leg. He testified that the problem eventually became so severe that he went to the [text deleted] Emergency Department on September 15, 2011. He was diagnosed with likely mechanical back pain and prescribed Percocet. On September 17, 2011, his family physician cleared him to return to work light duties. As a result of that visit to [Hospital] Emergency, the Appellant was sent for a CT scan and it was at that point that evidence of a large disc herniation was found.

The Claimant Adviser maintains that following the accident of May 6, 2011, the Appellant complained of back pain within a week and his condition deteriorated to the point that he had to request light duties at work. Following that, the Appellant's lower back condition continued to

deteriorate rather than improve. Within a few months, the Appellant was no longer able to perform any kind of work. The Claimant Adviser submits that this was a progression of disc pathology –

- the Appellant reported pain soon after the motor vehicle accident;
- he experienced clinical signs, including reduced range of motion;
- there was a change in his work duties to light duties;
- the Appellant began experiencing symptoms in the legs;
- thereafter, the Appellant's symptoms progressed to the point where a disc herniation was identified.

The Claimant Adviser also relies on the reports and testimony of the Appellant's family physician that support and corroborate the Appellant's testimony and the medical information on the Appellant's file. As a result, the Claimant Adviser submits that there is a causal connection between the Appellant's L4-5 disc herniation and the motor vehicle accident of May 6, 2011. Accordingly, the Claimant Adviser maintains that the Appellant should be entitled to Personal Injury Protection Plan ("PIPP") benefits since his condition is related to the motor vehicle accident of May 6, 2011.

MPIC's Submission:

Counsel for MPIC submits that the medical information on the file does not support the Appellant's position that his L4-5 disc herniation was caused by the motor vehicle accident of May 6, 2011. He maintains that the Appellant has failed to establish the connection. Counsel for MPIC claims that there is a lack of a temporal connection between the motor vehicle accident and the Appellant's symptoms which manifest in late August and September 2011. He submits

that there is no connection between the motor vehicle accident and the disc herniation which was identified in September of 2011, on a balance of probabilities.

Counsel for MPIC submits that the May 6, 2011 accident was not a significant motor vehicle accident. He argues that in May, June and July of 2011 the Appellant's lower back pain was not that significant. It was not the major issue that he was being seen for by his family physician. Counsel for MPIC maintains that there should have been more evidence of a persistent low back problem to indicate ongoing back problems. He notes that the Appellant's significant symptoms commence with the pain shooting down his leg after his lengthy flight to [text deleted]. Counsel for MPIC argues that the Appellant's medical records do not support an extended period of symptomology being present related to his low back. He notes that until September 3, 2011, the Appellant's presentation to his family physician had been similar to what it was before the motor vehicle accident. Counsel for MPIC maintains that in the absence of clinical documentation outlining the worsening of his symptoms, there is no causal connection between the Appellant's disc herniation and the motor vehicle accident of May 6, 2011.

In conclusion, counsel for MPIC submits that there was no significant result from the May 6, 2011 motor vehicle accident that could lead to the symptomology which developed in September of 2011. He maintains that there is a lack of evidence establishing a causal connection between the two events and that there are inconsistencies in the evidence of the Appellant and the Appellant's family physician. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision of February 7, 2012 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is entitled to PIPP benefits as a result of his L4-5 disc herniation. We find that there is a causal relationship between the Appellant's L4-5 disc herniation and the motor vehicle accident of May 6, 2011.

Reasons for Decision:

Upon a careful review of all the information before it, the Commission finds that the Appellant has established, on a balance of probabilities, that the motor vehicle accident of May 6, 2011 caused or contributed to the L4-5 disc herniation. We find that the medical evidence on the file is consistent with that conclusion. The Appellant had low back problems that presented immediately following the motor vehicle accident. He continued to complain with ongoing back problems through May, June, July, August, and September and even to date, that did not improve but continue on. The Appellant then developed symptoms with leg involvement. We find that there is a consistent chronological progression of symptoms for the Appellant that account for an alteration of his function.

The Commission had the benefit of the Appellant's testimony at the hearing which provided evidence of ongoing back problems from May 2011 to September 2011. The Commission found the Appellant was forthright in his testimony and accepts that there were consistent complaints of low back problems which progressively worsened from May 2011 through to the diagnosis of the disc herniation in September 2011. As a result, the Commission concludes that the Appellant's L4-5 disc herniation was causally connected to the May 6, 2011 motor vehicle accident and the Appellant is entitled to PIPP benefits as a result.

Accordingly, the Appellant's appeal is allowed and the Internal Review decision dated February 7, 2012 is hereby rescinded.

Dated at Winnipeg this 21st day of May, 2014.

YVONNE TAVARES

PAUL JOHNSTON

JEAN MOOR