

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-99-66**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Keith Addison;
the Appellant, [text deleted], appeared on her own behalf,
accompanied by her husband

HEARING DATE: August 19th, 1999

ISSUE: Whether surgery and consequent expenses and loss of
income were attributable to motor vehicle accident.

RELEVANT SECTIONS: Section 81(1) of the 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 involved in an automobile accident on February 14th, 1996. At the time of the accident, [the Appellant] had been off work and in receipt of workers' compensation benefits by reason of an injury to her lower back that she had sustained on July 11th, 1995 in the course of her part-time, casual employment as a [text deleted] in the employ of [text deleted].

Since the motor vehicle accident ('MVA') appeared to have produced soft tissue injuries to [the Appellant's] right shoulder and to the right side of her neck, she did receive income replacement

indemnity from MPIC from the time when her workers' compensation benefits ran out in June of 1996 until, on December 4th, 1996, MPIC decided to terminate those benefits. [The Appellant] appealed from that earlier decision and, as the result of a hearing held on April 8th, 1998, this Commission extended her income replacement benefits for a further thirty days, for the reasons set forth in our decision bearing date April 10th, 1998.

Since that time, [the Appellant] continued to receive physiotherapy and chiropractic treatments. On November 30th, 1998 she underwent surgery on her right shoulder by [text deleted], an orthopaedic surgeon.

Not having returned to work since December 5th, 1996, [the Appellant] sought reinstatement of her income replacement indemnity from the latter date, to continue until such time as she felt able to return to work. MPIC's claims team turned down that application, and their decision was confirmed by a decision of MPIC's internal review officer, [text deleted], in a decision of June 2nd, 1999. It is from this latter decision that [the Appellant] now appeals to this Commission.

Part of [MPIC's Internal Review Officer's] decision reads as follows:

Although your Application seeks a number of PIPP benefits going back to December 5th, 1996, we agreed at the outset of the hearing that the issue to be determined on this review is whether you are entitled to various benefits in connection with the surgery which was performed on your right shoulder on November 30th, 1998. The specific benefits being sought are an income replacement indemnity, coverage for physiotherapy and medication expenses, and reimbursement for travel expenses.

I wish to make it clear at this point that I am satisfied that the surgery in question, and the subsequent physiotherapy treatment and medications, were all medically required, and that your absence from the workforce for a period of time following the surgery was fully justified. Both of these points are well established by the material on file.

The real issue in my mind is whether the available medical evidence establishes, on a balance of probabilities, the requisite causal connection between your motor vehicle accident on February 14th, 1996 and the shoulder condition which required surgery on November 30th, 1998.

It is this last-noted issue that confronts us now.

The Commission referred the Appellant to [text deleted], an orthopaedic surgeon, for an independent medical examination in November, 1997. His report of December 15th, 1997 relates that [the Appellant] presented with some "ache and discomfort situated over the right side of her cervical spine with radiation to the right shoulder as well as extended towards the thoracic spine and right scapula".

[The Appellant] told [independent orthopaedic surgeon] that the collision caused her to be "jerked forward, hurting her neck".

On examination by [independent orthopaedic surgeon], she "appeared to be slightly apprehensive on deep palpation of the dorsum of the right sacroiliac joint as well as on finger pressure over the upper border of the right trapezius muscle and at the tip of the right shoulder" which [independent orthopaedic surgeon] attributes to her motor vehicle accident. He referred to it as "minor muscular fascial ligamentous sprain" and offered the opinion that it would heal within a few months to a year. He added that she had excellent range of motion in her right shoulder girdle.

(Although [independent orthopaedic surgeon's] report also speaks of [the Appellant's] right shoulder being "slightly sore and stiff due to multiple trauma received a number of years ago during baseball games", she denies having either sustained injuries in that matter or saying so to [independent orthopaedic surgeon].)

At the hearing of [the Appellant's] appeal, we had been provided with a report from [Appellant's

orthopaedic surgeon] bearing date December 7th, 1998. Since the question of causation was not clear from that report of [Appellant's orthopaedic surgeon's], we wrote to him on August 25th, 1999 to ask, specifically, whether the condition of [the Appellant's] shoulder that he had discovered during the course of his surgery on her right shoulder on November 30th, 1998 was, on a reasonable balance of probabilities, caused by her motor vehicle accident. [Appellant's orthopaedic surgeon] responded under date of October 4th, 1999. That response reads, in part, as follows:

The rotator cuff impingement syndrome can be caused by numerous conditions.....The impingement could be caused by encroachment of the space from above, like in congenital deformity of the acromion when it curves down like a bird beak, formation of osteophytes on the acromion or in the area of acromo-clavicular joint, or it could be caused by thickening of the rotator cuff tendons themselves which usually occurs because of degenerative tendonitis or because of partial or complete tear of the tendon.

In his earlier report of December 7th, 1998, [Appellant's orthopaedic surgeon] had confirmed that an arthroscopic examination of [the Appellant's] right shoulder showed that the shoulder was structurally normal and that there was not, in fact, any tearing of the rotator cuff. However, he said, the acromion was noted to be down-sloping and he had therefore carried out an anterior acromioplasty. The impingement was related to the downward sloping of the acromion, but trauma to the rotator cuff might have precipitated the symptoms.

We interpret [Appellant's orthopaedic surgeon's] most recent opinion of October 4th, 1999 as saying, in effect, that the impingement from which [the Appellant] was suffering could have been caused by one of three things:

- (a) a congenital deformity of the acromion;
- (b) an arthritic condition of the shoulder; or
- (c) a thickening of muscle tendons caused either by a degenerative tendonitis or due to a

partial or complete tear of the tendon.

Since [Appellant's orthopaedic surgeon] found no evidence of rotator cuff tear, nor does he describe any thickening nor other pathology of the tendons, and since arthritis is not an applicable factor here, we are left with congenital deformity of the acromion, which is the condition that [Appellant's orthopaedic surgeon] did find and did correct by surgery.

[Appellant's orthopaedic surgeon] does comment that the condition of [the Appellant's] shoulder could have been exacerbated by direct or indirect trauma, such as had been described to him by [the Appellant]. [The Appellant] herself has written to this Commission, to say that at the time of the collision she was reaching down with her right arm and hand in order to adjust her car radio. With great respect, however, we have to point out that [the Appellant] made no mention of any such movement in any of the material on file, nor at the hearing of either her first or second appeal. On both these latter occasions, she described the mechanics of her accident in some detail, including the fact that she was looking to the right rather than straight ahead when the collision occurred. At no time did she mention any contact between her right hand and the radio or dashboard, nor any other trauma of the kind that could have been transmitted through her hand, wrist and arm up into the right shoulder. If that is [the Appellant's] recollection now, we are obliged to rely upon her several recollections that are much closer, temporally, to her accident.

We therefore concur in the decision of [MPIC's Internal Review Officer], to the effect that [the Appellant's] most recent surgery was medically necessary, but that the need for it was not caused by her motor vehicle accident. It follows that her appeal must be dismissed.

Dated at Winnipeg this 16th day of November, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED