

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-120**

PANEL: Mr. Mel Myers, Chairperson
Mr. Neil Cohen
Dr. Patrick Doyle

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Phil Lancaster of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: May 3, 2011

ISSUE(S): Entitlement to Permanent Impairment Benefits.

RELEVANT SECTIONS: Sections 70(1), 126 and 127 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 January 16, 2006. The Appellant was involved in a head-on collision and was wearing a seatbelt. She complained of pain through her left anterior ribcage, in the right chest, in the lower abdomen, in the neck and the tailbone. The Appellant received 25 physiotherapy treatments and had aches and pains in her ribs and neck which have largely disappeared. However, she continued to complain of pain to her tailbone and the tailbone area.

The Appellant was referred to [Appellant's Orthopaedic Surgeon], for assessment. In a letter to MPIC's case manager dated November 28, 2006, [Appellant's Orthopaedic Surgeon] stated:

1. He saw the Appellant on September 19 and October 10, 2006.
2. In respect of the Appellant's left leg, it looked normal except for varicosities.
3. "...There were two blotches, but I could not attribute either of them to bruises or blood. It looked as if there was slight enlargement of the varicose veins in this region, unrelated to her accident."
4. A CT scan of the Appellant's lumbar spine was done on June 23, 2006 and X-rays of her lumbar spine were done on September 19, 2006.
5. Both the CT scan and X-ray showed no "significant bony abnormality" and that the disc spaces looked fine and neither of these examinations were helpful for the diagnosis in the coccygeal area.
6. "X-rays of the sacrum and coccyx were done. A bone scan was done. She was then reviewed approximately one month later. X-rays of the sacrum and coccyx showed no bony abnormality. Then (sic) scan showed focal uptake in the lower sacrum in keeping with the possible sacral fracture, which could have happened nine months previously."
7. "...I have not been able to find any specific abnormality of the coccyx itself, but there is bone scan evidence of increased uptake in the sacrum, which could have been from a fracture of the sacrum." (underlining added)
8. Any further tests or medications were not suggested and that the Appellant should be managed conservatively.

The Commission noted that [Appellant's Radiologist] conducted a bone scan on September 27, 2006 and in his report indicated:

"IMPRESSION: Focal uptake in the lower sacrum is in keeping with a sacral fracture. The absence of hyperemia is consistent with the time since injury (9 months)."

On November 30, 2006 the Appellant made an Application for Review in which she stated:

"I am applying for PIPP. The injuries I sustained in the motor vehicle accident were painful and many times difficult to deal with. Most have healed to a tolerable level,

however the “tailbone” has not healed. I still experience the pain in this region everyday and frequently. I can sit fairly comfortably for about 30 minutes at a time. If I stand too long at a time, the “tailbone” pain acts up also.

The doctors tell me that time should heal the pain. I see no evidence of this after 9 months as the pain is consistant (sic).

Enclosed is a copy from [Appellant’s Orthopaedic Surgeon] regarding this injury.”

In a note to file on January 29, 2007, the case manager reported a discussion with [MPIC’s Doctor], Medical Consultant with MPIC’s Health Care Services team:

“I asked [MPIC’s Doctor] to review the medical package and advise if the claimant is entitled to a PI for the fractured coccyx. Although there are no x-ray results / reports on file, there is a Nov 28/06 medical report from [Appellant’s Orthopaedic Surgeon] advising that the sacrum and coccyx showed no bony abnormality. Then (sic) scan showed focal uptake in the lower sacrum.

[MPIC’s Doctor] reviewed the entire medical package as well as [Appellant’s Orthopaedic Surgeon’s] report. Although the claimant continues to have pain, there is no physical impairment. [MPIC’s Doctor] advised that the fracture is not displaced, therefore there is no award.” (underlining added)

The case manager had a further discussion with [MPIC’s Doctor] on March 5, 2007 to determine if any permanent impairment applied for the Appellant’s abdomen/hip discoloration and left shin discoloration. The case manager reported:

“[MPIC’s Doctor] advised the following:
 Abdomen/Hip Discolouration – is related to the mva and the claimant is entitled to 1% per Section 129(2) of the Manitoba Public Corporation Act.
Left Shin Discolouration – this is not related to the mva, but is from varicose veins, therefore, no impairment entitlement exists” (underlining added)

Case Manager’s Decision:

The case manager wrote to the Appellant on March 9, 2007 about the permanent impairment award. In this letter the case manager stated:

“You have also advised that you sustained a fractured coccyx in the above noted motor vehicle accident. A review of the medical information by our Health Care Services Team indicates that the fracture was not displaced. As such, there is no entitlement to an impairment payment for this injury.”

On March 31, 2007 the Appellant made an Application for Review for MPIC's failure to provide compensation for permanent impairment of bruising to the left shin and damage to her coccyx.

In a report to file dated June 18, 2007 the case manager set out a chart note from [Appellant's Orthopaedic Surgeon] of the Appellant's visit to him on January 16, 2006. In that report [Appellant's Orthopaedic Surgeon] stated:

"Patient had motor vehicle accident January 16, 2006. She sustained multiple injuries. I have diagnosed possible fracture of the sacrum on the basis of a bone scan. She still has pain in the area of the coccyx. She sits on a soft seat. She has a donut. She takes Advil periodically."

Internal Review Officer's Decision:

On August 8, 2007 the Internal Review Officer wrote to the Appellant confirming the case manager's decision dated March 9, 2007 and dismissed the Appellant's Application for Review.

In rejecting the Appellant's Application for Review, the Internal Review Officer stated the following reasons:

"You have submitted information from [Appellant's Orthopaedic Surgeon] which indicates that there may have been a sacral fracture at the time of your accident. At this point, however, there is no medical information demonstrating that the fracture is a result of the motor vehicle accident or that it constitutes a rateable Permanent Impairment pursuant to the Schedule.

With respect to the coccyx, you may want to discuss with your case manager the possibility of getting more precise medical information addressing the issue of whether there is, in fact, a rateable Permanent Impairment to your coccyx. As noted earlier, there is currently no medical information supporting your request for this particular Permanent Impairment benefit.

Similarly, you may wish to discuss, with the case manager, having your left shin photographed and assessed so that the case manager can properly consider your entitlement to a Permanent Impairment. Again, there is currently no medical information supporting your request for this particular Permanent Impairment benefit.

The Appellant filed a Notice of Appeal dated October 12, 2007.

On November 2, 2009 the Claimant Adviser Office provided a report from [Appellant's Phlebologist] dated January 10, 2010 (a copy of which was provided to MPIC). In this report, [Appellant's Phlebologist] indicated that he saw the Appellant on November 2, 2009 and he stated:

“For your information I have a background in Family Practice and Emergency Medicine but for the last 13 years, after spending 6 months in one on one training with a phlebology specialist, have restricted my practice almost exclusively to the treatment of varicose and spider veins of the legs. I have a full licence to practice medicine in Ontario and am currently certified with the College of Family Physicians of Canada. I am a member of the Canadian Society of Phlebology and the American Society of Phlebology.

[The Appellant] was involved in a motor vehicle accident in Manitoba on 16 Jan 2006. You asked me to see her for an opinion as to whether 2 patches of discolouration on her left shin were due to the accident or from varicose veins.

The patient had not had problems with veins, or been seen or treated for venous disease, before the date of the accident. She and her husband noticed 2 areas of discolouration on her left shin which they say were not there prior to the accident.

I examined her leg and included in my examination were a handheld Doppler examination and the use of a Veinlite. The examination shows these two lesions are **superficially protruding varicosities on a refluxing varicose vein**. The vein extends, from the lesions, above medially, and below distally and then medially, to the ankle. The discolouration of the varicosities is due to matting, and probably staining, related to these varicosities. She also has skin colour changes consistent with stasis inside the ankle.

It is therefore my opinion that although these lesions may have become more noticeable after the accident they are in fact related to venous disease which was almost certainly there before the accident. My rationale for that is the stasis changes inside the ankle are unlikely to have developed that quickly after the accident. Also although this cannot be proven without further testing [by duplex ultrasound mapping techniques], it is likely she has small saphenous vein disease which is unlikely to have been caused by the accident.” (underlining added)

On January 10, 2010, [Appellant's Phlebologist] wrote again to the Claimant Adviser Office again (a copy of which was provided to MPIC) and stated:

“I understand you want to know if the accident could have enhanced the venous disease.

I really feel that my original letter states my professional opinion adequately. ie these lesion may have become more noticeable to the patient after the accident but the venous disease itself was almost certainly there before the accident. (underlining added)

As to probabilities I know of no “evidence based” way of giving percentages for these findings and opinions.”

Permanent Impairment Award – Coccyx and/or Sacrum:

On April 26, 2010 [MPIC’s Doctor] wrote to MPIC’s legal counsel and stated:

“I have been asked to review this patient’s Manitoba Public Insurance bodily injury claim file, and comment on whether there is a probable permanent impairment entitlement for a coccygeal fracture, sacrum fracture, or the left shin discoloration.

I have reviewed the medical information in this patient’s Manitoba Public Insurance bodily injury claim file. At this time, there is not a probable diagnosis of a fractured coccyx, nor is there a probable diagnosis of a fractured sacrum. These are listed as possible diagnoses. Even if there was a probable diagnosis of the sacrum, given normal x-rays, this has probably healed without a permanent impairment entitlement.

The letters from the patient’s phlebologist, do not indicate that her areas of discoloration are probably causally related to the event in question. A letter from [Appellant’s Phlebologist] dated January 10, 2010 to the Claimant Advisor Office, indicates that the condition was almost certainly there before the accident. My translation of this would render it probably there before the accident. The doctor states that lesions may have become more noticeable after the accident, and this would in my opinion, be considered a possible worsening of the condition.

His prior letter of November 2, 2009 to the Claimant Advisor Office again does not indicate a probable causal relationship between the patient’s venous discoloration and the event in question. Therefore, an impairment benefit is not appropriate at this time in my opinion.” (underlining added)

Appeal:

The relevant Sections of the MPIC Act are:

Definitions

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

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

Meaning of "permanent impairment"

[126](#) In this Division, **"permanent impairment"** includes a permanent anatomicophysiological deficit and a permanent disfigurement.

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 hearing was held on May 3, 2011. The Appellant indicated that:

1. Prior to the motor vehicle accident she had never had any problems with her veins nor been treated for venous disease.
2. She noticed two areas of discoloration on her left shin that were not present prior to the motor vehicle accident.
3. The two areas of discoloration were conspicuous and she was entitled to a permanent impairment award in respect of these blemishes.
4. The pain to her coccyx and/or sacrum area commenced after the motor vehicle accident.
5. She had never had pain in this area prior to the accident and after that has continued to have pain every day.
6. She can sit fairly comfortably for about 30 minutes, but she cannot stand too long as it causes pain to the tailbone area.
7. She requested an impairment award in respect of the fracture to her coccyx and/or sacrum.

MPIC did not call any witnesses at this hearing.

Submission:

The Claimant Adviser submitted that:

1. The Appellant was entitled to a permanent impairment award in respect of the coccyx area.
2. The Appellant was a credible witness who testified that the pain to the coccyx area only occurred after the motor vehicle accident and has continued since that period of time.

The Claimant Adviser reviewed [Appellant's Orthopaedic Surgeon's] report of November 28, 2006 in which he stated that:

1. The bone scan showed a focal uptake in the lower sacrum in keeping with the possible sacral fracture, which could have happened nine months previously.
2. He had ``...not been able to find any specific abnormality of the coccyx itself, but there is bone scan evidence of increased uptake in the sacrum, which could have been from a fracture of the sacrum.``

The Claimant Adviser also referred to the report of [Appellant's Radiologist], who did the bone scan and reported that the focal uptake in the Appellant's lower sacrum was in keeping with a sacral fracture.

The Claimant Adviser also submitted that in a file note on January 29, 2007 the case manager reported a discussion she had with [MPIC's Doctor] who had determined that after he had reviewed the entire medical package which included [Appellant's Orthopaedic Surgeon's] report, he concluded that the Appellant's fracture was not displaced and therefore there was no award.

The Claimant Adviser also referred to the case manager's file note of March 13, 2007 wherein she reported a discussion she had with the Appellant indicating that there would be no entitlement to a payment for her fractured coccyx.

The Claimant Adviser submitted that having regard to the medical opinions of [Appellant's Orthopaedic Surgeon], [Appellant's Radiologist], and [MPIC's Doctor] had established on a balance of probabilities that there was a causal connection to the motor vehicle accident and the Appellant's fractured coccyx and/or sacrum.

The Claimant Adviser also submitted that the Appellant was a credible witness and the Commission should accept her testimony that prior to the motor vehicle accident she had no pain to her coccyx, but after the motor vehicle accident she commenced to have continuous pain in this area. The Appellant testified she could sit fairly comfortably for about 30 minutes and cannot stand too long as it causes pain to her tailbone area.

The Claimant Adviser therefore submitted that the medical opinions of [MPIC's Doctor] and [Appellant's Radiologist] corroborated the Appellant's testimony as to a causal relationship between the motor vehicle accident and the Appellant's fractured coccyx which has caused her significant pain. The Claimant Adviser therefore requested that the Commission allow the appeal, rescind the decision of the Internal Review Officer and direct MPIC to provide an impairment award to the Appellant in respect of her coccyx and/or sacrum.

In response, MPIC's legal counsel submitted that neither [MPIC's Doctor], [Appellant's Orthopaedic Surgeon] or [Appellant's Radiologist] had concluded that there was a causal connection between the Appellant's injuries to her coccyx and/or sacrum and the motor vehicle accident. MPIC's legal counsel submitted that the case manager erred in the report of her discussion with [MPIC's Doctor] on September 17, 2007 which indicated that [MPIC's Doctor] had advised that the Appellant had suffered from a fracture. MPIC's legal counsel also submitted that the case manager had also erred in her file note dated March 13, 2007 when she

advised the Appellant that there would be no payment for her fractured coccyx as there was no evidence of displacement.

MPIC`s legal counsel referred to [MPIC`s Doctor`s] report to the case manager dated April 26, 2010 where he clearly indicated that there was not a probable diagnosis of a fractured coccyx nor was there a probable diagnosis of a fractured sacrum. MPIC`s legal counsel further submitted that the written statement of [MPIC`s Doctor] should be given greater weight by the Commission than any report by the case manager who had misreported a discussion held with [MPIC`s Doctor] in a note to file dated September 17, 2007 where he referred to the Appellant`s fractured coccyx and his note to file dated March 13, 2007.

Discussion:

The Commission finds that the Appellant failed to establish, on a balance of probabilities that there is any causal connection between the motor vehicle accident and the pain that the Appellant complains about to her coccyx.

[Appellant`s Orthopaedic Surgeon] examined the Appellant on two occasions, September 19, 2006 and October 10, 2006, approximately eight months after the motor vehicle accident of January 16, 2006. In his report he describes the Appellant`s bone scan which showed a focal uptake in the lower sacrum in keeping with a possible sacral fracture. This is identical with his chart note where he indicates that “I have diagnosed possible fracture of the sacrum on the basis of a bone scan”.

In his report dated September 27, 2006 [Appellant`s Radiologist] stated “Focal uptake in the lower sacrum is in keeping with a sacral fracture”.

After reviewing the medical reports of [Appellant's Orthopaedic Surgeon] and [Appellant's Radiologist], [MPIC's Doctor] stated in his interdepartmental memorandum of April 26, 2010 that:

“...there is not a probable diagnosis of a fractured coccyx, nor is there a probable diagnosis of a fractured sacrum. These are listed as possible diagnoses.”

[MPIC's Doctor's] opinion is clear and unambiguous and is not subject to any other interpretation that the diagnoses of [Appellant's Orthopaedic Surgeon] and [Appellant's Radiologist] could amount to no more than a possible rather than probable diagnosis.

The Commission agrees with [MPIC's Doctor] that neither [Appellant's Orthopaedic Surgeon] nor [Appellant's Radiologist] had diagnosed that as a result of the motor vehicle accident the Appellant had a probable diagnosis of a fractured coccyx and/or sacrum. [Appellant's Orthopaedic Surgeon] clearly stated that he diagnosed a possible fracture to the sacrum on the basis of the bone scan but did not diagnose a probable fracture of the sacrum. [Appellant's Radiologist's] statement that the “focal uptake in the lower sacrum is in keeping with a sacral fracture does not establish that there was a probable fracture of the sacrum”. In the Commission's view [[Appellant's Radiologist] was at best indicating that the Appellant may have suffered from a possible, and not a probable, sacral fracture.

The Commission finds that having regard to the testimony of the Appellant, the medical evidence from [Appellant's Orthopaedic Surgeon], [Appellant's Radiologist] and [MPIC's Doctor] as well as the documentary evidence on the file, the Appellant has failed to establish the burden of proof required in these proceedings that there was a probable causal connection between her pain complaints to her coccyx and/or sacrum and the motor vehicle accident.

In the Law of Evidence in Canada, Second Edition, the authors John Sopinka, Sidney N. Lederman and Alan W. Bryant state at page 155:

“B. Civil Cases

85.43 The degree of probability required to discharge the burden of proof in a civil case has been defined by several leading jurists. Lord Denning, in *Miller v. Minister of Pension*, [1947] 2 All E.R. 372, at 374 (K.B.), defined it in these terms:

It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘we think it more probable than not’, the burden is discharged, but if the probabilities are equal it is not.

Cartwright J. in *Smith v. Smith*, [1952] 2 S.C.R. 312, articulated the test as follows:

...that civil cases may be proved by a preponderance of evidence or that a finding in such cases may be made upon the basis of a preponderance of probability and I do not propose to attempt a more precise statement of the rule. I wish, however, to emphasize that in every civil action before the tribunal can safely find the affirmative of an issue of fact required to be provided it must be reasonably satisfied, and that whether or not it will be so satisfied must depend upon the totality of the circumstances on which its judgment is formed including the gravity of the consequences of the finding.”

The Commission also finds the Appellant`s complaints of pain to her coccyx and/or sacrum is not corroborated by medical evidence. The Commission therefore determines the objective medical evidence in this appeal does not support the Appellant`s complaint that there was a probable causal relationship between her pain complaints to her coccyx and/or sacrum area and the motor vehicle accident.

In the alternative, the Commission accepts the findings of [MPIC’s Doctor], who stated in his report of April 26, 2010:

“Even if there was a probable diagnosis of the sacrum, given normal x-rays, this has probably healed without a permanent impairment entitlement.”

The Commission, therefore, finds that if there was a fracture of either the coccyx and/or the sacrum as a result of the motor vehicle accident the Appellant has not established on a balance of probabilities that this fracture constituted a rateable permanent impairment pursuant to the Schedule.

For these reasons the Commission dismisses the Appellant's appeal in respect of an award for a rateable permanent impairment for a fracture of the coccyx and/or sacrum and confirms the decision of the Internal Review Officer dated August 8, 2007.

Permanent Impairment Award – Left Shin

The Appellant testified at the hearing that as a result of the motor vehicle accident she suffered a permanent impairment of discoloration to two areas of her left shin. The Appellant further testified that prior to the motor vehicle accident she had no discoloration to the two areas of her left shin, but shortly after the motor vehicle accident, the discoloration appeared. The Appellant therefore requested she be given a permanent impairment in respect of these impairments.

In a Note to File dated January 24, 2007, the Appellant informed the case manager that she had discoloration to her right hip area and lower left leg.

The case manager requested [text deleted] to assess the following impairments relating to injuries sustained by the Appellant relating to discoloration. The assessment occurred on February 12, 2007, conducted by [Appellant's Occupational Therapist]. In this report, [Appellant's Occupational Therapist] indicates that the Appellant consented to photographs being taken for the purpose of assessing her claim for permanent impairment. In respect of the shin, [Appellant's Occupational Therapist] describes Impairment #3 as follows:

Type of Impairment	Discoloration
Anatomical Location	This conspicuous impairment was located on the mid-section of the claimant's left shin
Description	This conspicuous impairment appeared as a round purplish bruise
Corresponding Photographs	5 and 6

Impairment #4

Type of Impairment	Discoloration
Anatomical Location	This conspicuous impairment was located on the mid-section of the claimant's left shin just below Impairment #3
Description	This conspicuous impairment was observed to be a bruise that was purplish and red in colour. This impairment was round in shape
Corresponding Photographs	7 & 8

[MPIC's Doctor] reviewed the Appellant's medical file in respect of impairment entitlement relating to her left shin discoloration and stated:

"Left Shin Discolouration – this is not related to the mva, but is from varicose veins, therefore, no impairment entitlement exists"

Case Manager's Report:

The case manager stated:

"The assessment report of February 12, 2007 from [text deleted] indicates an impairment to your left shin (discolouration). A review of the information on file does not support this injury is as a result of this accident. As such, there is no entitlement to an impairment payment for this injury. "

The Appellant applied for a review of the case manager's decision to deny a permanent impairment award in respect of discoloration of the Appellant's left shin.

Internal Review Officer Decision:

The Internal Review Officer, in her decision dated August 8, 2007 stated:

“Similarly, you may wish to discuss, with the case manager, having your left shin photographed and assessed so that the case manager can properly consider your entitlement to a Permanent Impairment. Again, there is currently no medical information supporting your request for this particular Permanent Impairment benefit.”

In his submission, the Claimant Adviser indicated that the Appellant was a credible witness and the Commission should accept her testimony that there was no discoloration in the two areas of her left shin prior to the motor vehicle accident and that these discolorations occurred after the motor vehicle accident. The Appellant testified that although she may have had varicose veins prior to the motor vehicle accident, there was no visible discoloration on her left shin until after the motor vehicle accident. The Claimant Adviser therefore submitted that the discoloration occurred as a result of the injuries the Appellant sustained to her leg.

MPIC’s legal counsel responded by asserting that both the medical reports of [Appellant’s Phlebologist] and [MPIC’s Doctor] concluded that there was not a causal relationship between the two blemishes to the Appellant’s left shin and the motor vehicle accident. MPIC’s legal counsel therefore requested that the Appellant’s appeal be dismissed and the Internal Review Officer’s Decision upheld.

Discussion:

The Commission finds that the Appellant has not established on a balance of probabilities that there was a causal connection between the injuries the Appellant sustained in the motor vehicle accident and the two areas of discoloration to her left shin. The Commission finds there is no objective medical evidence supporting the Appellant’s testimony as to a causal relationship between the motor vehicle accident and the discoloration to her leg.

[MPIC's Doctor] concluded that the left shin discoloration is not related to the motor vehicle accident but that it was a result of the Appellant's varicose veins. The Claimant Adviser requested [Appellant's Phlebologist] to provide an assessment in respect of the blemishes on the Appellant's left shin and specifically requested to know whether the accident could have enhanced the Appellant's venous disease. [Appellant's Phlebologist], who restricted his practice strictly to treatment of varicose veins of the legs, assessed the Appellant and did not find that the discolorations of the Appellant's left shin were due to the motor vehicle accident. [Appellant's Phlebologist] acknowledged that the discolorations may have become more noticeable to the Appellant after the motor vehicle accident, but the venous disease itself was present prior to the motor vehicle accident.

Upon review of [Appellant's Phlebologist's] report, [MPIC's Doctor] stated that [Appellant's Phlebologist] had concluded that the lesions may have become more noticeable after the motor vehicle accident and in [MPIC's Doctor's] view, [Appellant's Phlebologist] considered this to be a possible worsening of the condition. [MPIC's Doctor] therefore determined that [Appellant's Phlebologist] did not find that the areas of discoloration of the Appellant's shin were causally related to the motor vehicle accident. The Commission finds that [MPIC's Doctor] and [Appellant's Phlebologist] both agree that there is no causal connection between the Appellant's discoloration on her left shin and the motor vehicle accident.

The Commission therefore determines that there is no objective medical evidence provided by the Appellant to support her position that there was a probable causal relationship between the motor vehicle accident and the areas of skin discoloration to her left shin.

The Commission finds that having regard to the decisions of *Miller v. Minister of Pension* (supra) and *Smith v. Smith* (supra), that the Appellant has not discharged the burden upon her to establish, on a balance of probabilities, that the two areas of discoloration on her shin are causally related to the motor vehicle accident. For these reasons, the Commission confirms the Internal Review Officer`s decision of August 8, 2007 denying a permanent impairment benefit in respect of the shin discoloration and denies the Appellant`s appeal.

Dated at Winnipeg this 1st day of June , 2011.

MEL MYERS

NEIL COHEN

DR. PATRICK DOYLE