

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-121**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Wilf DeGraves
Dr. Lorna Turnbull

APPEARANCES: The Appellant, [text deleted], was represented by Ms Laurie Gordon of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

HEARING DATE: June 20, 2011

ISSUE(S): Entitlement to Income Replacement Indemnity benefits.

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 series of three motor vehicle accidents from 1995 to 1996. He was also involved in a motor vehicle accident on January 16, 2002. The Appellant is appealing the Internal Review Decision dated July 18, 2007 with respect to whether the neck surgery he underwent on May 7, 2007 resulted from a motor vehicle accident-related condition.

The Internal Review Decision of July 18, 2007 succinctly sets out the facts surrounding [the Appellant's] appeal as follows:

According to your Application for Compensation (signed January 24, 2002), on January 16, 2002 you were the seat-belted driver of a vehicle that was rear ended.

As a result of this accident, you reported soreness to your lower back and an exacerbation with previous problems with your back.

According to your submission, on February 28, 1996, you were broadsided by a vehicle that ran a red light. According to the statement that was taken on May 2, 2003, you did not miss any work as a result of this accident. You stated that you continued to work full-time up to January 16, 2002.

At the time of your 2002 motor vehicle accident, you were employed full-time as an Assembly Technician with [text deleted]. You returned to work in December of 2003.

According to a note to file dated September 27, 2006, you advised that your doctor had recommended surgery on your neck and that you were to stay off work for approximately a month.

Your Case Manager sent a request for medical information to [Appellant's Doctor #1] who replied by report dated November 7, 2006. [Appellant's Doctor #1] indicated that you developed a cervical spinal stenosis and that a surgical decompression has been scheduled and would take place in the next 12 to 14 weeks.

We also received [Appellant's Doctor #2's] clinic notes as well as his report dated November 29, 2006, wherein he wrote that you are employed in a physically demanding job requiring bending/twisting and working in awkward positions. He wrote that you should be considered totally disabled until surgery has been performed and you have recovered sufficiently.

[MPIC's Doctor], a Medical Consultant with the MPI Health Care Services Team, reviewed your file and provided a report dated March 20, 2007. [MPIC's Doctor] noted the following:

1. You did not report any problems with your cervical spine following any of your motor vehicle accidents;
2. There is no documentation containing objective physical findings indicative of a cervical spine injury following any of your motor vehicle accidents;
3. You saw numerous health care professionals between January 16, 2002 and August 2006 and did not report any problems involving your cervical spine;
4. An MRI of your head and spine taken on May 25, 2000 identified minor posterior and plate degenerative changes;
5. An MRI performed on February 15, 2006 documented abnormalities at the C5-C6 level.

On the basis of the above, [MPIC's Doctor] opined that you did not sustain an injury to your cervical spine as a result of any of your motor vehicle accidents. Rather, the medical information indicates that your cervical spine underwent progressive degenerative changes between 2000 and 2006, as noted on the MRI, and that these changes likely occurred as a result of your daily work activities but not as a result of any motor vehicle accident.

In support of your Application for Review, you provided an accident account, a photo of the scene of the accident, and your 2006 resume.

A claimant is entitled to PIPP benefits where he or she can establish that a condition is related to injuries sustained in a motor vehicle accident which occurred on or after March 1, 1994.

Since the medical evidence on your file does not establish that your neck condition is causally related to any of your post-1994 motor vehicle accidents, I must confirm the Case Manager's decision.

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, argues that the Appellant's neck problems were caused by the January 16, 2002 motor vehicle accident. As a result of his neck problems, the Appellant was unable to continue with his full-time employment and had to undergo neck surgery in May 2007. The Claimant Adviser also relies upon the Appellant's testimony at the appeal hearing. In his testimony before the Commission, the Appellant related his neck problems to the overall impact of all of his motor vehicle accidents since 1995. He attributes his current physical condition and continuous decline since 1995 to all of the accidents and most directly to the accident of 1996 when he was broadsided by another driver. The Appellant testified that originally he didn't ascribe any problems directly to his neck because he thought that the source of all of his problems was his back. He thought that his pain radiated up and down from his back. It was only when he was referred to [Appellant's Doctor #3] that he was diagnosed with a cervical spinal stenosis and that's when he became aware of his neck condition. The Appellant maintains that his neck pain has been present since the series of accidents in 1995-1996 and the most recent accident of January 2002, simply aggravated his condition and caused it to become more symptomatic.

In support of the Appellant's position, the Claimant Adviser also relies on [Appellant's Doctor #2's] medical report of July 6, 2010. [Appellant's Doctor #2] has been the Appellant's caregiver throughout most of the relevant time period. In his report, [Appellant's Doctor #2] opines as follows:

I believe that [the Appellant's] neck pain is due to a combination of three factors: age, occupational demands and 4 motor vehicle accidents.

In the 6 years between his 2 MRIs, cervical stenosis and osteophyte formation developed with 1 MVA occurring in the interim. I believe that [the Appellant] may not have experienced neck pain until 2 years post accident due to the following reasons:

1. He was preoccupied with severe back pain and at the time, his cervical neck pain may have been minor or non-existent. His main area of focus was severe lumbar pain as he awaited a surgical remedy.
2. He was being treated with a heavy narcotic which could easily block any low level or minor cervical neck pain.
3. As the degeneration in his neck progressed over the following 2 years the pain generated by the developing cervical stenosis may have "declared" itself around March 2004. At that time, his dosing of oxycet escalated to manage the now progressing cervical pain. Prior to that, the cervical condition was probably "subclinical" due to previously mentioned factors.

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At the time of the latest accident, [the Appellant] was close to [text deleted] years of age. Spinal degeneration may typically present in the mid to late [text deleted] depending on several factors: genetics, body mass, occupational demands and accumulated injuries.

Therefore, I believe [the Appellant's] neck difficulties are in part, but not solely, due to his accident of 2002. His presentation was modified by the pre-existing severe lumbar pain and the effects of masking his symptoms due to his pharmacotherapy he had already been receiving.

The motor vehicle accident likely triggered his pre-existing condition advancing the natural progression of disease until the point it became clinically apparent in 2004.

The Claimant Adviser relying upon [Appellant's Doctor #2's] report, submits that the Appellant's appeal should be allowed since [Appellant's Doctor #2's] opinion corroborates the Appellant's testimony and the medical information on the Appellant's file. As a result, the Claimant Adviser maintains that the Appellant should be entitled to Income Replacement Indemnity benefits since his neck condition is related to the motor vehicle accident of January 16, 2002 and prevented him from working at his full-time position.

MPIC's Submission:

Counsel for MPIC submits that the medical information on the file does not support the Appellant's position that his neck condition was caused by the series of motor vehicle accidents. Rather, counsel for MPIC submits that slow progressive changes to the Appellant's cervical spine most likely resulted from the Appellant's work activities. Counsel for MPIC maintains that the degenerative changes in the Appellant's cervical spine began in 2000, without any specific trauma to the neck, and slowly progressed and were likely aggravated by his work activities, rather than the motor vehicle accident in January 2002. Further she maintains that the Appellant did not report any cervical problems following any of his motor vehicle accidents. Even though the Appellant's position is that all of his problems were caused by the accident in 1996, he never complained of any neck pain even though he had a variety of other complaints throughout the relevant time. Specifically the Appellant complained of arm pain, right leg pain, left leg pain and lower back pain after the motor vehicle accidents without any specific mention of neck pain until 2004. Counsel for MPIC also notes that [Appellant's Doctor #2] relates the Appellant's neck condition to the 2002 motor vehicle accident and not the 1995-1996 motor vehicle accidents, as does the Appellant.

In support of her position, counsel for MPIC relies on the inter-departmental memorandum of [MPIC's Doctor], medical consultant to MPIC Health Care Services Team. In his inter-departmental memorandum dated February 22, 2010, [MPIC's Doctor] notes the following:

[Appellant's Doctor #2's] theory as it relates to the development of the degenerative changes in [the Appellant's] cervical spine is possible but not medically probable based on information previously reviewed and documented in my March 20, 2007 interdepartmental memorandum. If the 2002 motor vehicle incident contributed to the development of the degenerative changes involving the cervical spine, then symptoms would have been reported shortly after the incident in question. This does not appear to be the case based on my previous review.

According to your request for review, [the Appellant] indicated the injuries he sustained in the 1996 motor vehicle accident were the deciding factor. Unfortunately, [Appellant's Doctor #2]

did not provide any documentation as relates to [the Appellant's] medical condition at or around the time of the 1996 motor vehicle incident.

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It is noted in the x-ray reports that degenerative changes were present in the lumbar spine particularly at the L5 level. It is documented that flexion/extension deformities as well as a minor alteration of cervical lordosis was evident in the cervical region. Information obtained from [Appellant's Doctor #4] indicates [the Appellant] was assessed for symptoms involving his lower back subsequent to a motor vehicle incident occurring on May 17, 1995. It is noted that the MRI performed of [the Appellant's] brain, neck and mid and lower back were to assess chronic low back pain that resulted in hyperreflexia with right foot dragging and possible cerebellar dysfunction.

The reports noted above that deal with symptoms [the Appellant] reported in 1995 do not indicate he was experiencing any cervical discomfort or problems that in turn might lead to the development of significant degenerative changes many years later. These reports do not contain information indicating [the Appellant] sustained a specific injury to his cervical spine as a result of a motor vehicle incident that occurred in 1995. Based on this, it is not medically probable that [the Appellant] sustained an injury to the cervical spine in 1995 or 1996 as a result of a motor vehicle incident that in turn would contribute to the development of the degenerative changes noted in 2000 and to a greater extent in 2006.

Based on this review, it is my opinion a probable cause/effect relationship does not exist between the degenerative changes noted in [the Appellant's] cervical spine and the motor vehicle incidents he was involved in.

Relying upon [MPIC's Doctor's] opinion, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated July 18, 2007 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 has not established an entitlement to Income Replacement Indemnity Benefits as a result of his cervical spine injury which required surgery and necessitated his absence from the workplace.

Reasons for Decision

Upon a careful review of all of the information before it, the Commission finds that the Appellant did not establish, on a balance of probabilities, that the motor vehicle accidents caused the cervical stenosis which necessitated his neck surgery in May 2007 and required him to be off work before and after that time. Rather, based upon a review of all of the information before us, the Commission finds that the Appellant's degenerative changes occurred in the absence of any trauma and were most likely related to his employment activities, rather than the motor vehicle accidents. Further, the lack of any documented neck complaints following the accidents in 1995 and 1996 and following the accident of 2002, leads us to conclude that the Appellant did not sustain an injury to the cervical spine as a result of any of the motor vehicle accidents in question. Rather, we agree with [MPIC's Doctor's] opinion that [the Appellant's] cervical spine underwent progressive degenerative changes between 2000 and 2006 as noted on the MRI and that the changes likely occurred as a result of his daily and work activities and not secondary to the motor vehicle accidents in question. As a result, we are unable to conclude that the Appellant's neck surgery in May 2007 was causally connected to any of the motor vehicle accidents.

Accordingly, the Commission finds that the Appellant is not entitled to Income Replacement Indemnity Benefits as a result of the motor vehicle accident of January 16, 2002. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated July 18, 2007 is hereby confirmed.

Dated at Winnipeg this 10th day of August, 2011.

YVONNE TAVARES

WILF DEGRAVES

DR. LORNA TURNBULL