

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-079**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Neil Margolis
Dr. Chandulal Shah

APPEARANCES: The Appellant, [the Appellant], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: October 6, 2015

ISSUE(S): Entitlement to further Permanent Impairment benefits for the injury to the Appellant's right hand.

RELEVANT SECTIONS: Section 127 of the MPIC Act and Section 1 of Manitoba Regulation 41/94, Schedule A, Division 13, Subdivision 2, Table 13.3

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 a motor vehicle accident on June 21, 2007 wherein he sustained soft tissue injuries to his neck, lumbar region, and right hip. He also sustained a right ankle sprain and an abrasion to his right knuckle.

The Appellant received a permanent impairment award to that right knuckle injury in the amount of \$2,609.78 (2% pursuant to Manitoba Regulation 41/94 Schedule A Division 13; Subdivision

2, Table 13.3 on March 9, 2009 following an assessment by [Appellant's physiotherapist] of [text deleted] on February 28, 2009 which assessed his right third finger and rated it as "a probable mild change in form and symmetry".

The Appellant applied for an Internal Review of this decision. The Internal Review Officer issued a decision on June 14, 2013 and found that there was no evidence to indicate that the Appellant had suffered more than a mild to moderate change in form and symmetry for which he had already received a 2% permanent impairment award.

The Appellant filed a Notice of Appeal on June 19, 2013.

The Claimant Adviser Office represented the Appellant and negotiations between MPIC and the Claimant Adviser Office did not result in a resolution of the dispute. On March 10, 2015, the Claimant Adviser Office sent a letter to the Commission advising that they were no longer representing the Appellant. On June 3, 2015 the Commission's Appeals Officer forwarded a letter to the Appellant and requested to know whether the Appellant wished to proceed with this appeal or whether he was withdrawing the appeal.

On July 14, 2015 the Commission's Secretary contacted the Appellant by telephone and the Appellant advised her that:

1. He is not interested in pursuing his appeal.
2. MPIC had done all they could to make his life miserable.
3. He had asked for help with the large amounts of paperwork and never received any help.
4. He is done with MPIC and with the Commission.

The Commission's Secretary advised him that if he did not want to pursue his appeal he could sign the Notice of Withdrawal that had been sent to him. The Appellant informed her that he would not sign anything and stated that the Commission is a "kangaroo court" and that our expenses and salaries are paid by MPIC so we are not truly independent. The Appellant requested that the Commission leave him alone.

The Commission scheduled a Case Conference Hearing for August 6, 2015 for the purpose of determining the status of the Appellant's appeal. The Appellant did not attend the Case Conference Hearing of August 6, 2015 and as a result the Commission set a hearing date for October 6, 2015 to hear the Appellant's appeal at 9:30 a.m. at the Commission's office.

A Notice of Hearing was sent by Xpresspost and by regular mail to the Appellant's address at [text deleted] which is the address listed on the Appellant's Notice of Appeal. The Notice of Hearing indicated the date and time of the hearing and stated:

"If you do not attend the hearing, the Commission may proceed with the hearing of your appeal in your absence, and render its decision either granting or dismissing the appeal in whole or in part. Alternatively, the Commission may adjourn the hearing to a new time and date or take other steps as it deems appropriate." (Underlining added)

The relevant provision of the MPIC Act is:

Lump sum indemnity for permanent impairment

127(1) 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.

Manitoba Regulation 41/94 provides:

Table 13.3: Evaluation Of Disfigurement For Other Parts Of The Body

Body Region	Alteration in Form and Symmetry		Scarring		Maximum Impairment Rating
Wrists and hands	Minor or moderate change	2%	Conspicuous	1.0%/cm ²	6%
	Severe change	6%			

Appeal Hearing – October 6, 2015:

The Appellant did not attend the appeal hearing at 9:30 a.m., however, MPIC’s legal counsel was present at the hearing. The Commission waited a period of 20 minutes before it commenced hearing the appeal.

The Commission determined, upon review of the information on the Appellant’s file, that the Appellant was properly served with the Notice of Hearing. The Commission requested MPIC’s legal counsel to state their position to the Commission.

MPIC’s legal counsel provided a written submission to the Commission which stated:

“This is the Appellant’s appeal. The burden of proof of establishing that the Internal Review Officer’s decision was incorrect is upon the Appellant, and as the Appellant has failed to attend today’s hearing, despite being properly notified that the hearing would be taking place, MPI submits that he has failed to satisfy the onus upon him to establish on a balance of probabilities that the Internal Review Officer’s decision was incorrect and therefore his appeal should be dismissed.

Alternatively, on the evidence before you, it is MPI’s position that the Appellant has failed to provide evidence that on a balance of probabilities establishes that the internal review officer came to an incorrect conclusion when he found that there was no further ratable impairment for the Appellant’s right hand.”

The Commission notes that the only issue that was appealed by the Appellant to the Commission is whether or not the appropriate compensation was paid to him for the change in the alteration in form and symmetry to the Appellant's knuckle.

MPIC's legal counsel further submitted that:

1. The decision by the Internal Review Officer as to the form and symmetry of the Appellant's knuckle was correct.
2. The Appellant did not provide sufficient evidence to refute that position.
3. MPIC relied upon the assessment of the Appellant's knuckle by the physiotherapist, [Appellant's physiotherapist], who had provided permanent impairment assessments to MPIC for many years. [Appellant's physiotherapist] performed three such assessments on the Appellant's knuckle in support of his opinion as to the change in the form and symmetry of the Appellant's knuckle.

The Commission notes that the issue the Commission had to determine is whether the injury to the Appellant's knuckle which caused an alteration in form and symmetry to the knuckle was of minor/moderate change or a severe change in order to determine the amount of compensation pursuant to Table 13.3 relating to wrists and hands.

MPIC's legal counsel further submitted that:

1. In [Appellant's physiotherapist's] opinion a severe change in form and symmetry is something that draws and holds the viewer's attention.
2. [Appellant's physiotherapist] concluded that although the Appellant's right hand was slightly different from his left hand it was not likely that this difference would attract the attention of a casual onlooker.

3. [Appellant's physiotherapist] concluded that the alteration in form and symmetry of the Appellant's knuckle is a minor/moderate change.
4. The Appellant provided no explanation to support his claim that there was a severe change.
5. With no supporting explanation, the Appellant failed to provide evidence to refute the Internal Review Officer's decision
6. The Commission should confirm the Internal Review Officer's decision.

MPIC's legal counsel further submitted that:

1. The Appellant has not pursued his appeal and has not provided evidence to satisfy the onus upon him to prove on a balance of probabilities that the Internal Review Officer's decision was incorrect.
2. On that basis, the appeal should be dismissed.

The Commission has carefully reviewed the medical and documentary evidence contained on the Appellant's file, as well as the submission made by MPIC's legal counsel.

The Commission agrees with the submission of MPIC's legal counsel that the decision of the Internal Review Officer dated June 14, 2013 is correct and finds that the Appellant suffered no more than a mild to moderate change in form and symmetry for which he received a 2% permanent impairment award.

Decision:

For these reasons the Commission determines the Appellant was therefore not entitled to a further permanent impairment award and dismisses the Appellant's appeal and confirms the Internal Review Officer's decision of June 14, 2013.

Dated at Winnipeg this 9th day of November, 2015.

MEL MYERS, Q.C.

NEIL MARGOLIS

DR. CHANDULAL SHAH