

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-50**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Leanne Zabudsky.

HEARING DATE: January 5, 2010

ISSUE(S): Entitlement to Permanent Impairment Benefits

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Manitoba Regulation 41/2000.

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 was injured in a motor vehicle accident on October 31, 2006. Following treatment and assessment, the Appellant's case manager wrote to him on December 21, 2001, setting out the following permanent impairment award.

INJURY/IMPAIRMENT	%	APPLICABLE SECTION	APPENDIX #
Right Elbow Range of Motion	4	Division 1: Subdivision 1, Item 2.5(a)(v) & 2.5(b)(iii)	2
Right Wrist Range of Motion	3	Division 1: Subdivision 1, Item 3.5a(a)(iv) & 3.5a(b)(iii)	3
Right Radius Fracture	1	Division 1: Subdivision 1, Item 2.2(a)	4
TOTAL	8%		

The Appellant sought an Internal Review of this decision. He sought an award for a left shoulder permanent impairment as well as higher percentages for permanent impairments to his right elbow range of motion, right wrist range of motion, and right radius fracture.

An Internal Review Officer for MPIC reviewed the Appellant's file, and on February 25, 2008, upheld the case manager's award of 4% impairment for right elbow range of motion, 3% entitlement for right wrist range of motion and a 1% award for a right radius fracture.

The Internal Review Officer relied, as had the case manager, on the assessment of the Appellant's injuries performed by [Appellant's Physiotherapist] with [text deleted], who had assessed the Appellant at this (sic) home, on December 6, 2007.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described the injuries to his wrist and explained that although he had discussed wrist surgery with his caregivers, [Appellant's Doctor #1] and [Appellant's Doctor #2], he had decided against the surgery as it would involve a lot of pain and rehabilitation for the extensive fracture. He described the possible complications from the surgery, including the possibility of having to take a part from his back to fix his wrist, and fear of ending up in a wheelchair. He noted that there was still a bump on his wrist and that he could not work with it as the bulge was large and painful.

The Appellant submitted that he should receive a greater permanent impairment award for lack of proportion, because his right wrist is so out of proportion to the size of his left wrist. He also

described difficulties with the range of motion in his elbow, and problems with lawn and snow removal and the pain that that caused him. He indicated that his writing is terrible and that his wrist had not healed properly.

Counsel for MPIC submitted that the best evidence on the Appellant's file regarding his impairments was contained in [Appellant's Physiotherapist's] report which contained specific measurements of the active range of motion of his right wrist and right elbow. [Appellant's Physiotherapist] also photographed the Appellant's wrists, and noted the lump on the ulnar side of the right wrist, likely reflecting abnormal healing of that wrist.

Counsel also noted that the case manager's calculation of the Appellant's total entitlement took into consideration the 1% entitlement for abnormal healing of that wrist, as well as the percentages for impairment of range of motion in the wrist and elbow.

The case manager then applied the relevant sections to determine the Appellant's entitlement. Therefore, she submitted there was no further entitlement for the Appellant.

Discussion:

Section 127 of the MPIC Act provides:

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 onus is on the Appellant to show, on a balance of probabilities that the Internal Review Decision and the permanent impairment award calculation of the case manager were incorrect. However, after reviewing the evidence of the Appellant, the material on the indexed file and the submissions of the parties, the Commission must conclude that the best evidence regarding the Appellant's injuries and permanent impairment are contained in [Appellant's Physiotherapist's] measurements and assessment report of December 11, 2007. The case manager then proceeded to correctly calculate the entitlements owing to the Appellant based upon this assessment. The Appellant has not provided evidence which contradicts this assessment and has failed to show that he is entitled to any further award for permanent impairment benefits.

Accordingly, the decision of the Internal Review Officer dated February 25, 2008 is upheld and the Appellant's appeal dismissed.

Dated at Winnipeg this 28th day of January, 2010.

LAURA DIAMOND