

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-96-22

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

APPEARANCES: (This hearing was conducted by telephone conference call.)
Manitoba Public Insurance Corporation ('M.P.I.C.') was
represented by Ms Joan McKelvey;
[Text deleted], the Appellant, appeared in person.

HEARING DATE: Tuesday, September 10th, 1996

ISSUE: Entitlement to compensation for permanent impairment.

RELEVANT SECTIONS: Sections 126, 127, 129(1) and 130 of the M.P.I.C. Act and
Regulation 41/94, Schedule A, Division 2, Subdivision 4.

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 FACTS:

[The Appellant] was involved in a single vehicle accident on June 29th of 1994 when, in order to avoid another vehicle which was coming towards her and swerved into her lane, she had to put her truck into the ditch and hit a bank. The vehicle turned completely around and then flipped over and landed on its hood. As a result she sustained injury to her left shoulder, a torn left bicep and laceration of her left elbow, plus a mild neck trauma.

[The Appellant] has a permanent scarring to her arm and musculo-tendinous rupture, including reduction of muscular strength, to her left bicep, for which she has already received \$6,520.00 compensation. What remained to be dealt with, and are the subject of the present appeal, are [the Appellant's] claims for compensation for permanent impairment of two kinds:

- (a) her shoulder causes her some problems whenever she tries to lift heavy objects, and aches whenever she does lift something heavy, she says; and
- (b) she has trouble with her left wrist and with the palm of her left hand, which occasionally become numb and, on other occasions, produce a tingling sensation when she is working or when something touches the wrist.

Both of these conditions appear to have reached a point of maximum improvement; from [the Appellant's] testimony, as well as from the written reports of her medical advisors, it seems unlikely that either condition would improve further.

We have been provided with a copy of a narrative report from [text deleted], a consultant neurologist, to whom [the Appellant] was originally referred in May of 1995 by [the Appellant's] general practitioner, [text deleted]. We have also been provided with copies of reports from [text deleted], a specialist in orthopaedic surgery, who first saw [the Appellant] on October 5th, 1994 and who also examined her on either January 31st or February 1st of 1995. While it seems fairly clear from those medical reports that [the Appellant] has not suffered the 25% sensory impairment in her wrist and hand that are prerequisites to the award of any compensation for that portion of her claim (see attached photocopy of the relevant portions of Regulation 41/94), it was less clear to us, from the evidence presented to date, whether there was

any permanent restriction of movement of her shoulder joint to bring her within the limits of Schedule A, Part 1, Division 1 and Subdivision 1 of that same Regulation (see copy of relevant portion annexed hereto and highlighted). We therefore arranged for [the Appellant] to attend once more upon [Appellant's orthopaedic surgeon], and requested [Appellant's orthopaedic surgeon] to address, in his report to us, those specific forms of restriction of movement to which reference is made in the Regulation. [Appellant's orthopaedic surgeon's] further report having come to hand, and being only marginally of greater assistance than the earlier medical information made available to us, we are left (as is not infrequently the case) with the task of arriving at what is essentially a medical conclusion without knowing the real extent to which the Appellant's permanent impairment falls within the compensable limits set out in Regulation 41/94.

[Appellant's orthopaedic surgeon's] final report indicates that [the Appellant] has the conditions noted below which, in the view of [Appellant's orthopaedic surgeon], are 'likely permanent and not likely to improve significantly'. We have set out, beside each compensable, permanent impairment, the percentage of the total, maximum amount of compensation under Section 127 of the Act, and have calculated the amount of compensation pursuant to Section 129(1) of the Act and to Regulation 41/94, namely:

minor loss of internal rotation of the left shoulder	1%
mild loss of both elbow flexion and supination power (loss of less than 25%)	1%

Applying the provisions of Regulation 41/94, [the Appellant] appears, to us at least, to be entitled to 2% of the maximum impairment benefit which, in 1994 (the year of the accident) was \$100,000.00. It follows, therefore, that [the Appellant] is entitled to payment of an additional \$2,000.00 for the impairments noted above.

Since this is the first appeal to come before us, involving a disputed claim for permanent impairment and, in particular, for more than one impairment, it may be that either [the Appellant] or M.P.I.C. will wish to make further representations to us as to the manner of computing the quantum of her damages. We shall therefore remain seized of this matter for a further period of fourteen days before this Decision, in its present form, becomes final. In the absence of any further submission from either the Appellant or M.P.I.C. within that fourteen-day period, dealing only with the manner in which we have calculated compensation, this Decision will then become final, subject always to the right of appeal to the Court of Appeal, with that Court's prior consent, upon a point of law or of jurisdiction.

Dated at Winnipeg this 13th day of December 1996.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED