

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-29**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Mr. Wilfred De Graves

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

HEARING DATE: October 29, 2009

ISSUE(S): Whether the Appellant's low back problems are causally
related to the motor vehicle accident of September 16, 1994.

RELEVANT SECTIONS: Section 81(1) of The Manitoba Public Insurance Corporation
Act ('MPIC Act')

**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, [text deleted], is appealing the Internal Review Decision dated March 19, 2008, with respect to his entitlement to Personal Injury Protection Plan ("PIPP") benefits arising out of a motor vehicle accident of September 16, 1994.

The facts giving rise to this appeal may be briefly summarized as follows:

1. The Appellant was involved in a motor vehicle accident on September 16, 1994. As a result of that accident, the Appellant sustained bodily injuries, including an injury to his

lower back, and became entitled to PIPP benefits in accordance with Part 2 of the MPIC Act.

2. At the time of the motor vehicle accident, the Appellant was a journeyman carpenter. As a result of the injuries which he sustained in the motor vehicle accident, he was no longer capable of holding that employment following the motor vehicle accident.
3. On July 8, 1999, MPIC completed a two-year determination of employment for the Appellant. The Appellant was determined as being capable of performing finish carpentry work, which falls within the job demands of medium to heavy work. The Appellant's entitlement to income replacement indemnity ("IRI") benefits ended on July 8, 2000. The Appellant did not seek an internal review of this decision.
4. In or about June 2001, the Appellant sustained an aggravation of his low back pain. In a report dated June 27, 2001, [Appellant's doctor #1], the Appellant's family physician, advised that the Appellant should not do heavy physical carpentry, but should stay with lighter carpentry work such as finish carpentry. [Appellant's doctor #1] did feel that the Appellant had an aggravation of his low back pain, similar to what he had after his motor vehicle accident in 1994. However, he opined that the most aggravating factor was that the Appellant was doing heavy construction work rather than finish carpentry.
5. The Appellant sought further PIPP benefits from MPIC as a result of this injury. In a decision dated July 24, 2001, MPIC's case manager determined that the Appellant was not entitled to further IRI benefits or reimbursement of physiotherapy treatments by MPIC because he had taken a job as a construction carpenter which was beyond his physical abilities. As a result, the case manager determined that the Appellant was not entitled to any benefits for injuries sustained while performing this type of work. The Appellant sought an internal review of this decision. In a decision dated September 12, 2001, the Internal Review Officer confirmed the case manager's decision and dismissed

the Appellant's application for review. The Internal Review Officer found that the Appellant's injuries were neither a relapse, nor sustained in a motor vehicle accident. Therefore, he was not entitled to further PIPP benefits from MPIC.

6. The Appellant subsequently made a claim with the Workers Compensation Board of Manitoba ("WCB") relative to his low back injury. This claim was accepted by WCB.
7. On November 22, 2004, the Appellant filed an application for review of the case manager's decision of July 8, 1999 (respecting the two-year determination of employment). In a decision dated July 15, 2005, the Internal Review Officer dismissed the Appellant's application for review. The Internal Review Officer found that she could not accept the Appellant's excuse for the delay in filing the application for review and refused to review the two-year determination of employment.
8. The Appellant appealed that Internal Review Decision (July 15, 2005) to this Commission (AC-01-118). In a decision dated July 16, 2007, the Commission determined that the Appellant did not have a reasonable excuse for failing to file the application for review of the case manager's decision of July 8, 1999 within 60 days as set out in Section 172(1) of the MPIC Act.
9. On or about November 3, 2007, the Appellant submitted further medical information to his case manager at MPIC seeking a review of the two-year job determination. The Appellant requested that MPIC review his current medical information in regards to the 1999 job determination. He submitted that he could no longer work at the same capacity as a finishing carpenter in the last several years. He also commented that his medical condition was worsening which affected not only his employment but his leisure activities.

10. In a decision dated December 28, 2007, MPIC's case manager determined that there was no new information that would support the reinstatement of the Appellant's PIPP benefits. The case manager found that:

Your PIPP benefits were originally ended in July 2000 following the one year search period after your 2 year determination was completed.

They were not reinstated in 2001 because you chose to hold an employment you knew was beyond your restrictions resulting in low back and left leg pain.

As the new medical information does not support a relationship between your current complaints and the September 16, 1994 motor vehicle accident your entitlement to PIPP benefits will not be reinstated.

11. The Appellant sought an Internal Review of that decision. In a decision dated March 19, 2008, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision of December 28, 2007. The Internal Review Officer found that the Appellant's lower back pain/current symptoms were not related to the motor vehicle accident of September 1994.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant's low back problems are causally related to the motor vehicle accident of September 16, 1994.

Appellant's Submission:

At the hearing of the appeal, the Appellant submitted that his low back problems stem from the motor vehicle accident of September 1994. He maintains that all of his back problems originated with the motor vehicle accident and prevent him from returning to work. Additionally, he argues that notwithstanding the event in 2001 when he aggravated his low back injury at work, he maintains that he would not have reinjured his back if it had not been for the original injury

caused by the motor vehicle accident. He claims that the condition of his back was permanently compromised as a result of the motor vehicle accident. He argues that his back condition has now worsened and that he should be entitled to reinstatement of PIPP benefits.

MPIC's Submission:

Counsel for MPIC submits that the Internal Review decision is correct and the Appellant's appeal should be dismissed. He maintains that MPIC did acknowledge that the Appellant did have back problems as a result of the motor vehicle accident. The two-year determination of employment was undertaken specifically because MPIC acknowledged that the Appellant would not be able to return to his pre-accident employment as a carpenter. Counsel for MPIC points out that the two-year determination of employment is final and the Appellant has no further recourse to challenge that decision. He maintains that the Appellant had been extensively rehabilitated by July 1999, when the two-year determination of employment was done. It was only when the Appellant undertook heavy construction work in June 2001, that he injured his back. As a result, counsel for MPIC argues that there is no relationship between the symptoms in 2007 and the motor vehicle accident of September 16, 1994.

In further support of his position, counsel for MPIC relies on the opinions of the Appellant's medical caregivers, who are unable to support a connection between the motor vehicle accident and the Appellant's ongoing back problems. Those opinions are as follows:

1. In a report dated February 25, 2009 from [Appellant's doctor #2], [Appellant's doctor #2] recanted his prior letter of December 17, 2008 in which he felt that the Appellant's collision was the probable cause of his low back pain. In his most recent letter, [Appellant's doctor #2] indicated that he was unable to confirm that the Appellant's symptoms were causally related to the motor vehicle accident. He stated that the

symptoms could be part of an aggravation of a pre-existing condition. This changed his opinion from probable to only possible.

2. The opinion provided by [Appellant's doctor #3] in his letter of April 13, 2009 stated that it would be impossible to judge whether the changes noted on the Appellant's x-ray and MRI's would be the result of an accident or not. He stated that it was possible but certainly not necessarily probable that this was the cause of the Appellant's problems.
3. [Appellant's doctor #1's] clinical note dated March 11, 2008 wherein [Appellant's doctor #1] wrote that "I don't think MVA is major cause of his back pain at this time".

Counsel for MPIC maintains that when all of the medical information is taken into consideration, it cannot be determined that the Appellant's motor vehicle collision was the probable cause of his back pain as of November 2007. As a result, counsel for MPIC maintains that the Appellant's appeal should be dismissed and the Internal Review Decision of March 19, 2008 should be confirmed.

DECISION:

Upon 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 Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that his current low back problems are causally related to the motor vehicle accident of September 16, 1994. The Commission finds that such a causal connection is not borne out by the evidence on the Appellant's file. In support of our conclusion, we rely upon the opinions of the Appellant's medical caregivers, including [Appellant's doctor #1], [Appellant's doctor #3] and [Appellant's doctor #2], who are unable to support such a causal relationship. We find that when all of the medical information is taken into consideration, it

cannot be determined that the Appellant's motor vehicle accident of September 16, 1994 was the probable cause for his current back pain. As a result, we find that there is no probable evidentiary basis upon which to establish an ongoing relationship between the Appellant's chronic low back condition and the motor vehicle accident of September 16, 1994.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated March 19, 2008 is confirmed.

Dated at Winnipeg this 8th day of December, 2009.

YVONNE TAVARES

NEIL COHEN

WILFRED DE GRAVES