

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-15-042**

PANEL: Ms Jacqueline Freedman, Chair
Dr. Lorna Turnbull
Dr. Chandulal Shah

APPEARANCES: The Appellant, [text deleted], was represented by
Mr. Ken Kaltornyk;
Manitoba Public Insurance Corporation (“MPIC”) was
represented by Mr. Matthew Maslanka.

HEARING DATE: April 17, 2019

ISSUE(S): Whether the Appellant is entitled to Personal Injury Protection
Plan benefits for her left wrist symptoms.

RELEVANT SECTIONS: Subsection 70(1) of The Manitoba Public Insurance
Corporation Act (“MPIC Act”).

Reasons For Decision

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.

Background:

The Appellant, [text deleted], was driving her vehicle on a gravel road on May 23, 2010, when she lost control and the vehicle rolled over into a ditch (the “MVA”). The Appellant suffered several injuries as a result of the MVA and received various treatments pursuant to the Personal Injury Protection Plan (“PIPP”) provisions of the MPIC Act.

The Appellant contacted MPIC in late 2011 to request PIPP coverage related to her left wrist symptoms. The case manager considered the request of the Appellant and obtained additional medical information. The case manager issued a decision dated August 22, 2014, which states as follows:

To assess the relationship of your ongoing left wrist symptoms to the motor vehicle collision the entire medical package was forwarded to our Health Care Services Department.

Our medical consultant, comments as follows:

“Based on my review of the information obtained from the documents presently contained in the BI3 claim file, it is my opinion the medical evidence does not support a cause and effect relationship between the incident in question and the reported left wrist symptoms.”

Based on the review, Manitoba Public Insurance is unable to provide PIPP benefits.

The Appellant disagreed with the decision of the case manager and filed an Application for Review.

The Internal Review Officer considered the decision of the case manager, as well as additional medical information received to the file, and issued a decision which upheld the decision of the case manager. The Internal Review decision, dated February 9, 2015, provides as follows:

As indicated in [Appellant’s surgeon’s] November 20, 2014 clinical note, you were diagnosed with Grade III lunotriquetral and scapholunate ligament tears [of the left wrist]. Given the apparent severity of the diagnosis and absence of wrist complaints at the time of the accident, I concur with the medical consultant that the totality of medical evidence does not support that you sustained a left wrist injury that is causally related to the accident based on the balance of medical probability. The consultant noted that if these tears developed acutely as a result of the accident, you would have presented with pain, limited range of motion and reduced left wrist function. This is not supported by my review of the available medical documentation.

Accordingly, I am upholding the case manager’s decision and dismissing your Application for Review.

The Appellant disagreed with the decision of the Internal Review Officer and filed this appeal with the Commission.

Issue:

The issue which requires determination on this appeal is whether the Appellant is entitled to PIPP benefits for her left wrist symptoms.

Decision:

For the reasons set out below, the panel finds that the Appellant has established, on a balance of probabilities, that she should be entitled to PIPP benefits for her left wrist symptoms.

Evidence of the Witnesses:

The Appellant testified at the hearing into her appeal. MPIC called as a witness one of its Health Care Services (“HCS”) consultants, [text deleted].

Evidence of the Appellant:

The Appellant described the MVA of May 23, 2010. She said that she was driving home from her mother’s house, when she lost control of the vehicle due to wind and bad road conditions. The vehicle flipped over and ended up in the ditch. She suffered numerous injuries, including cuts on her left shoulder and forearm, a cut on her right wrist, and injuries to her ribs and back. She also hit her head, and her left wrist was swollen and sore. There was glass in her right wrist and left shoulder and forearm, but not in her left wrist. The vehicle damage amounted to \$21,000.

The day following the MVA, May 24, 2010, her left wrist was still swollen and sore. She went to see her physician, [text deleted], who saw the swelling and ordered an x-ray of her left wrist. The problem with her left wrist did not resolve, but continued to bother her. She recalled complaining about it to her chiropractor and her husband.

At the time of the MVA, the Appellant was employed at [text deleted]. Her duties prior to the MVA included slicing meat, wrapping meat, and preparing deli trays. Following the MVA, the Appellant took three days off work, but then she went back to work. She thought getting out of the house would make her feel better. She went back on modified duties, just answering the phone and cashier duties, with no heavy lifting. She said that she did not feel better doing those duties. She worked at those light duties for 3 to 4 months. After 3 to 4 months, she returned to wrapping meat, and cleaning the deli, but she still had to be very careful because of the pain in her back and ribs, as well as the pain to her wrist. She said that if she bent she had trouble getting up. Once she returned to her regular duties, her left wrist would swell up, mostly at the end of the day. She worked an eight hour shift, with a one hour lunch break.

The Appellant said that [Appellant's physician #1] told her to get a brace for her left wrist, but she couldn't wear it at work, so she wore it at home. She did not recall when [Appellant's physician #1] told her that. On November 22, 2010, her chiropractor suggested she get a further x-ray of her left wrist. The Appellant said that treatment with her chiropractor concentrated on her back and ribs. She thought her wrist would get better and that is why it took so long before the chiropractor focused on her left wrist.

[Text deleted] went out of business in August or September, 2011. After that, the Appellant got a job in a [text deleted], working only 16 hours per week as a cashier. Her job duties involved no heavy lifting, only dealing with cash and giving out pizza slices. In May, 2012, the Appellant moved to [city] and she did not find any work until April, 2013, when she began working only eight hours per month. After the surgery to her left wrist in September, 2014, the Appellant went for physiotherapy, they hired someone else and she lost her job. Since her surgery in 2014, her wrist is still the same. The surgery did not improve her condition.

On cross-examination, counsel for MPIC put to the Appellant that she did not specifically mention to MPIC that she had injured her left wrist in documents and conversations shortly after the MVA. He pointed to her Application for Compensation (AFC), dated May 31, 2010, and Application for Payment of Medical and Travel Expenses (AFP), of the same date. The Appellant acknowledged that the AFP lists a number of injuries but does not specifically list an injury to her left wrist. Similarly, counsel pointed out that the case manager recorded a conversation with the Appellant on June 1, 2010, in which the same injuries are listed and the Appellant agreed that there is no record of a specific injury to the Appellant's left wrist. Counsel did point out that the case manager's file note mentions [Appellant's physician's] x-ray of the Appellant's left wrist and shoulder.

Counsel reviewed with the Appellant the Emergency Room Report from the [city] and [health centre] dated May 23, 2010, which noted multiple abrasions and lacerations. He pointed out that the progress notes written by the physician are very brief and it appears that the word "wrist" is not in the notes. The Appellant responded that at the time of her visit to the Emergency Room immediately after the MVA, the Health Centre was using a generator, and the physician had been golfing. He was in a hurry with her and she did not trust that his progress notes were accurate.

The Appellant saw [Appellant's physician #1] in clinic on September 8, 2010. In response to a question from counsel regarding the Primary Health Care Report prepared by [Appellant's physician #1] dated September 10, 2010, the Appellant said that this report was prepared by [Appellant's physician #1] because her wrist was still sore and swollen. She said that her left arm was out the window of the vehicle when it flipped over. The left window broke and that's where all the glass came from. She had specifically mentioned her left wrist to [Appellant's physician #1]. The Appellant could not understand why [Appellant's physician #1] did not add a diagnosis regarding her left wrist

to the clinical diagnosis “whiplash/abrasions”, particularly since [Appellant’s physician #1] had seen her the day after the MVA.

Counsel questioned the Appellant regarding her visits with her chiropractor, [text deleted]. She agreed that he was treating her primarily for her ribs and back, although she said she did mention her wrist to him. Counsel pointed out that the only mentions of her wrist in [Appellant’s chiropractor’s] chart notes are on November 22, 2010 and May 4, 2011. The Appellant said that [Appellant’s chiropractor] likely did not record further mentions of it because, like her, he probably thought it was going to go away.

The Appellant saw [Appellant’s physician #1’s] colleague, [Appellant’s physician #2], in clinic on August 24, 2011. In response to a question from counsel regarding the x-ray of her left wrist ordered following that visit, the Appellant said that her wrist had been sore since the MVA, but she acknowledged that she had been concentrating on treatment to her back and ribs.

Regarding what remedy she is seeking from MPIC, the Appellant noted that she went back to work in September 2015. She is seeking reimbursement for her wages from September 2014 (after her surgery) to September 2015. In addition, there were other expenses that both she and her husband incurred, for which she would like to be reimbursed. She noted that [Appellant’s surgeon] has proposed further surgery for her wrist, which will involve a full arm cast, although she is no longer working at this time due to other health issues unrelated to the MVA.

Evidence of [MPIC’s Medical Consultant, Health Care Services]:

[MPIC’s medical consultant, Health Care Services] was qualified as an expert in sports medicine, with a specialty in forensic medical review. He indicated that with respect to the files that he reviews,

60% involve the question of causation. In those files, by the time they get to him there is a discrepancy in the evidence and the majority of his reviews would say that causation is not established. He noted that his opinion is just one factor and the case managers can make their own decisions. He got involved in this file when the case manager brought it to him to review the evidence and to determine whether the evidence supported a causal connection between the Appellant's wrist symptoms and the MVA.

He reviewed his report dated August 18, 2014. He noted that in the preparation of that report, he had access to all of the material on the Appellant's claim file to that date, including documents submitted from her health care providers as well as the file notes prepared by the case manager and the material on the vehicle damage claim file. [MPIC's medical consultant] confirmed his opinion in that report, that the medical evidence did not support a cause and effect relationship between the MVA and the Appellant's left wrist symptoms. He reviewed the items in his report that led him to that conclusion, the first being that there was no documentation of a left wrist injury or left wrist symptoms at the time of the MVA.

He referred to the x-ray of the Appellant's left wrist taken the day after the MVA, and said the fact that an x-ray was taken is not evidence of causation. One needs to look for evidence as to why the wrist was x-rayed in the first place; there needs to be evidence of specific symptoms, and in this case, there was no history provided. [MPIC's medical consultant] said it is possible that the wrist was x-rayed because the physician may have been investigating the wrist to determine its contribution to other areas of concern. When questioned by the panel as to whether the Appellant's wrist would have been x-rayed because it could have been contributing to injuries in the Appellant's arm or shoulder, [MPIC's medical consultant] responded he did not know why it was x-rayed. He said the fact that the wrist was x-rayed does not establish that there was an injury to the wrist; first, it has to be

established that there was an injury. He pointed out that there are other reasons to do an x-ray. He noted that the Appellant had glass in her arm; he said that the physician may have wanted to check her wrist for foreign bodies.

In coming to the conclusion in his report of August 18, 2014, regarding the absence of causation, [MPIC's medical consultant] also relied on the fact that there was no documentation that the Appellant had reported her wrist problems to her health care professionals shortly after the MVA. [MPIC's medical consultant] pointed out that there was no significant documentation of a wrist injury or wrist symptoms, as can be seen by looking at [Appellant's chiropractor's] chart notes. He noted that the Appellant was ultimately diagnosed with a significant ligament injury. There should have been symptoms, yet none are consistently documented by her health care providers until May 2011. He pointed out that on the Primary Health Care Report prepared by [Appellant's physician #1] in September 2010, she identified that the Appellant's entire left extremity was painful, but the diagnosis was restricted to whiplash and abrasions, without any specific reference to a wrist injury. The first documentation of left wrist physical findings was in August 2011, which was hard to link to the MVA which occurred more than a year earlier.

[MPIC's medical consultant] provided another review dated February 4, 2015, after his review of [Appellant's surgeon's] November 20, 2014, surgical report. He noted that the Appellant was diagnosed with grade III lunotriquetral and scapholunate ligament tears. [MPIC's medical consultant] agreed that [Appellant's surgeon] made significant findings with respect to the Appellant's wrist and that it had taken until 2014 to determine what was going on with her wrist. He said that the type of tears she was diagnosed with can develop without trauma, and the vast majority of such tears do not have a significant event. There can be a multitude of events that take a toll and result in such tears. He acknowledged that the MVA here was significant; however, a significant

finding does not require a significant event. [MPIC's medical consultant] said there were was an absence of evidence to connect the MVA to the Appellant's wrist tears, just the one x-ray immediately after the MVA. In his view, although [Appellant's surgeon] said her tears were likely caused by the MVA, [Appellant's surgeon] based his opinion on what he was told by the Appellant and [MPIC's medical consultant] said that he had access to more information than [Appellant's surgeon] did. [MPIC's medical consultant] also noted that while [Appellant's surgeon] referred to patients with this type of injury who may not present acutely, in his view it was unlikely that the Appellant would not have mentioned her left wrist complaints to a health care provider until November 2010, when it was first recorded in [Appellant's chiropractor's] chart notes.

On cross-examination, counsel for the Appellant questioned [MPIC's medical consultant] regarding scapholunate ligament injuries. [MPIC's medical consultant] said that they are not very common, and in fact he did not recall ever having seen one that he had diagnosed. He noted that he sees more degenerative injuries in the wrist than acute injuries, and only a small percentage of these is a ligament problem.

[MPIC's medical consultant] agreed with counsel that central to his opinion regarding the lack of causation is his view that there is an absence of reporting by the Appellant from shortly after the MVA. Counsel pointed to [Appellant's physician #1's] Primary Health Care Report dated September 10, 2010, on which the physician ticked "yes" beside a box identifying left "wrist/hand pain". [MPIC's medical consultant] queried whether this would refer to the Appellant's wrist or her hand. When counsel noted that there is no evidence in the file that the Appellant suffered from any left hand pain and that it must be referring to her left wrist, [MPIC's medical consultant] responded that [Appellant's physician #1's] clinical notes do not verify the ticking off of that box on that Report. Counsel questioned [MPIC's medical consultant] regarding whether the ticking of the box, coupled

with the fact that [Appellant's physician #1] had sent her for an x-ray of her left wrist immediately after the MVA, would give an indication that the Appellant was complaining of pain in her left wrist. [MPIC's medical consultant] responded that it did not, and he pointed to the clinical diagnosis on the Primary Health Care Report of "whiplash/abrasions" as support for his position.

In further response to questions regarding the May 24, 2010, x-ray of the Appellant's left wrist requested by [Appellant's physician #1], [MPIC's medical consultant] said that it is usual practice to send someone for an x-ray even though the problem is not in that area, because the problem may be referring from somewhere else. He said that it is possible that the Appellant's wrist could have been x-rayed in relation to potential problems in her shoulder and forearm; however, he did not have an explanation as to why the forearm itself was not x-rayed. When questioned by counsel regarding why he would assume that the purpose of the x-ray was to rule out the presence of glass in the Appellant's left wrist, [MPIC's medical consultant] agreed that he had made an assumption, but said that it was reasonable because she did have abrasions. He could not explain why x-rays were not performed in the areas where the Appellant did have abrasions, or why the x-ray report did not specifically say that no foreign bodies were found, if that had been the purpose of the x-ray. [MPIC's medical consultant] acknowledged that the x-ray report says that "there is no acute fracture or joint dislocation", and he said that in the majority of cases, the finding in the report would be an indication of what the x-ray was looking for, but here the evidence does not support that.

When questioned by counsel regarding the Appellant's initial presentation, [MPIC's medical consultant] agreed that a scapholunate injury would have very similar symptoms and presentation as a sprained wrist and could be considered as a sprain before eventual diagnosis; however, he said there would have to be an injury and the evidence for that is not present here. Counsel questioned [MPIC's medical consultant] regarding the difficulty of diagnosing these types of ligament tears. [MPIC's

medical consultant] agreed that diagnosis is difficult. He said that he was not sure how long diagnosis could take, but he agreed it could possibly take a year.

In response to questions regarding swelling of the wrist, [MPIC's medical consultant] agreed that if an injury was initially diagnosed as a sprain, but was actually a small tear, it could progress to a larger tear depending on activity. He said that if you modify the load on the wrist, symptoms may subside. If symptoms subside, and then activity is resumed, the wrist could become irritated or inflamed.

Counsel questioned [MPIC's medical consultant] regarding [Appellant's surgeon's] 2014 surgery and subsequent reporting. [MPIC's medical consultant] noted that [Appellant's surgeon] found fairly significant ligament tears but speculated that [Appellant's surgeon] did not repair them because he thought he should leave it and discuss it with the Appellant after the procedure. The arthroscopic procedure involves cleaning up the tissue and not repairing it. In response to a question regarding [Appellant's surgeon's] comment in his report that "we commonly see patients with scapholunate ligament injuries that do not present acutely", [MPIC's medical consultant] acknowledged that this makes sense; however, he pointed out that there would have to be an event and in the Appellant's case, she saw numerous medical professionals but reported nothing.

[MPIC's medical consultant] reiterated his view on further questioning by counsel from MPIC. He stated that the Appellant saw many health care professionals, and it is not probable that she would not report problems with her left wrist. Immediately after the MVA, the Ambulance Patient Care Report indicated that she had a strong grip, and did not indicate any problems with the Appellant's wrist. He would also expect to see further documentation in her physician's chart notes.

Submission for the Appellant:

Counsel for the Appellant provided both written and oral argument. He noted that the issue in this appeal is whether the Appellant is entitled to PIPP benefits for her left wrist symptoms.

He reviewed the Appellant's testimony regarding her visit to [Appellant's physician #1] the day after the MVA due to pain and swelling in her left wrist, which resulted in the x-ray of her left wrist dated May 24, 2010. He also pointed to [Appellant's physician's #1's] Primary Health Care Report of September 10, 2010, which identifies left wrist/hand pain and tenderness. The Appellant also suffered from pain in her right rib area for several months following the MVA. She suffered cuts to her left forearm and left upper arm and also to her right wrist. Conspicuous scars remained on her forearm and left upper arm.

The Appellant testified that her left wrist problems continued over the course of the year following the MVA, especially when she over-used her left hand at work. However, her main problem continued to be the pain in her back and ribs area. In August 2011, [Appellant's physician's #1's] colleague, [Appellant's physician #2], referred the Appellant for an x-ray of her left wrist, which identified a possible scapholunate injury. She eventually received a CT scan of her left wrist in March 2012, and an MRI in August 2013, which confirmed a low grade partial tear of the scapholunate ligament. Counsel noted that the Appellant's surgeon, [text deleted], stated as follows in his pre-surgical report dated May 26, 2014:

From the history that I had taken on two separate occasions, it appears that she did not have any pain prior to her accident, and as such I do believe that this is likely secondary to her automobile injury.

There is no evidence of pre-MVA wrist pain in the chart notes of the Appellant's physician or chiropractor.

Counsel reviewed the evidence of MPIC's HCS consultant, [text deleted], including his reports. He pointed to [MPIC's medical consultant's] first report dated August 18, 2014, which found that there was no causal connection between the Appellant's left wrist symptoms and the MVA. In support of his conclusion, [MPIC's medical consultant] relied on an "absence of documentation indicating [the Appellant] reported problems with the left wrist to the health care professionals that assessed her shortly after the incident in question." Counsel argued that [MPIC's medical consultant] clearly missed the x-ray report of May 24, 2010, and the Primary Health Care Report of September 10, 2010, which documented a possible left wrist problem. If he did not miss these documents, then he should have dealt with them in his August 18, 2014, report and explained why he did not find them persuasive. Counsel argued that in taking the position that there was "no evidence" that the Appellant complained of left wrist symptoms shortly after the MVA, [MPIC's medical consultant] was departing from the standard of proof utilized in this forum, a balance of probabilities, and insisting that each piece of evidence rise to a scientific standard.

Although [Appellant's physician #1's] clinical notes do not contain a detailed discussion of the left wrist symptoms which led to the May 24, 2010 x-ray, it was counsel's position that there would have been no referral for an x-ray of the left wrist in the absence of symptoms. Although [MPIC's medical consultant] suggested that the Appellant's wrist may have been x-rayed to determine problems in her forearm, he did not explain why there was no x-ray of her forearm itself. In addition, [MPIC's medical consultant] admitted that he was speculating when he suggested that her wrist may have been x-rayed to look for "foreign bodies". He acknowledged that if that had been the purpose of the x-ray, he would expect the x-ray report to have stated "no evidence of foreign bodies". Counsel noted that there was no laceration to the Appellant's left wrist, so there would have been no reason for [Appellant's physician #1] to be concerned about foreign bodies in her left wrist. Rather, the Appellant had lacerations on her forearm, so it would have made more sense for [Appellant's physician #1] to have

requested an x-ray of her forearm if she was concerned about foreign bodies. [MPIC's medical consultant] also acknowledged that in the majority of cases, where the x-ray report states that there were no fractures or dislocations, that reflects the purpose of the x-ray.

Counsel referred to [MPIC's medical consultant's] report dated February 12, 2018, which states his opinion that had the Appellant suffered a significant scapholunate injury in the MVA which ultimately required surgery, it would be unusual for her "not to present with clinical findings of wrist dysfunction (i.e., swelling, loss of range of motion, pain with resisted movements, loss of function), to some level, shortly after the injury". Counsel pointed out that this conflicts with the opinion of the Appellant's surgeon, [text deleted], who provided a report dated January 19, 2016, which states as follows:

We commonly see patients with scapholunate ligament injuries that do not present acutely. This could be attributed to a small sprain and no immediate medical attention will be sought. These patients often present many years later with increasing wrist pain or wrist arthrosis.

[MPIC's medical consultant] did not address [Appellant's surgeon's] expert opinion on this point in his reports. [MPIC's medical consultant's] testimony on this point was in fact inconsistent, counsel noted. On the one hand, he said that the damage found in the Appellant's wrist would have required a major injury. On the other hand, he said that it could have arisen as a result of no injury at all, but rather through degenerative changes. However, [MPIC's medical consultant's] primary opinion seemed to be that there is no evidence that the Appellant reported a wrist injury prior to November 22, 2010. Counsel argued that it was not reasonable for [MPIC's medical consultant] to take this position, given that he clearly missed the documentary evidence that the Appellant reported her left wrist symptoms as early as the day after the MVA. Counsel acknowledged that there are deficiencies in the physician's chart notes, but argued that the Appellant should not suffer prejudice due to those

deficiencies. There are deficiencies in numerous documents on the file, such as the Ambulance Report, which does not note that the Appellant had injured her back and ribs.

It is not logical to suggest, as [MPIC's medical consultant] has, that degenerative changes in the Appellant's wrist pre-dated the MVA and were asymptomatic from the date of the MVA until November 2010, when the Appellant's chiropractor first recorded her left wrist complaints in his chart notes. Rather, counsel argued, given that the Appellant was involved in a rollover accident in which she sustained numerous injuries, and bearing in mind that her physician ordered an x-ray report of her left wrist on the day after the MVA, and on September 10, 2010, her physician identified left wrist/hand pain, it would be unreasonable to suggest that the Appellant's left wrist was not injured in the MVA. There is no evidence that the Appellant had an injury to her left wrist which pre-existed the MVA. There is no evidence in her physician's or chiropractor's chart notes prior to the MVA of left wrist symptoms. Her testimony was that subsequent to the MVA, she modified her duties at work so as not to use her left hand. When she resumed use after a few months, it would get sore and swollen at the end of the day. If the Appellant's injury had been pre-existing, then the x-ray of May 24, 2010 would have shown some evidence of it. But it was not until the x-ray of August 29, 2011 that there was evidence of a ligament injury in the imaging, because her injury had become worse over time since the MVA. The Appellant does not dispute [MPIC's medical consultant's] testimony that a ligament tear can occur without trauma; but he also testified that it can occur because of trauma. It is the Appellant's position that a trauma, the MVA, caused her ligament tears, which became worse from the time of the MVA until they were ultimately diagnosed.

Counsel submitted that the Appellant suffered an injury to her left wrist in the May 23, 2010, MVA, significant enough that [Appellant's physician #1] ordered an x-ray the next day to rule out a fracture or dislocation of her wrist. The Appellant testified that she had assumed that her left wrist symptoms

related to a sprain which would resolve. Her main problems were her back and ribs. She performed modified duties for a few months, during which time she was not using her left arm very much. When she returned to her regular duties, her left wrist was swelling and painful later in the day. When her wrist problems failed to resolve, there is documentary evidence that she complained to her chiropractor a few months later about continuing pain and swelling in her left wrist, and the chiropractor recommended that she get another x-ray. When the pain and swelling did not resolve, the Appellant eventually did get a further x-ray, a CT scan, an MRI, and then arthroscopic surgery, all of which confirmed the scapholunate ligament tears.

Counsel submitted that the Appellant's ligament tears were, on a balance of probabilities, caused by the MVA of May 23, 2010, that the Internal Review decision should be overturned and the Appellant should be entitled to PIPP benefits for her left wrist symptoms.

Submission for MPIC:

Counsel for MPIC reviewed the issue under consideration in this appeal. MPIC accepted that the Appellant was diagnosed with ligament tears in her left wrist by [Appellant's surgeon] in 2014. However, MPIC disagreed that these tears are causally connected to the MVA based on the totality of the evidence, and that was the finding of the Internal Review decision of February 9, 2015. Counsel noted that the onus is on the Appellant to establish that the Internal Review decision is incorrect.

It is MPIC's position that there is no documentary evidence from shortly after the MVA that the Appellant complained of an injury to her left wrist or of left wrist symptoms. There are nine documents on file from the first week after the MVA, and none of them indicate left wrist symptoms being recorded. Counsel argued that the x-ray of May 24, 2010, does not reflect the Appellant's complaint of left wrist symptoms because it does not explain why it was ordered, nor do [Appellant's

physician #1's] chart notes of that date contain an explanation. [MPIC's medical consultant] testified that there are other reasons that the x-ray could have been ordered, such as to rule out foreign bodies or to rule out other injuries, because the Appellant was complaining of injuries to her whole arm, and [MPIC's medical consultant's] testimony was uncontradicted. This affects the weight that should be accorded to the x-ray report.

In the 15 months following the MVA, until the August 24, 2011 visit to her physician's colleague which led to the second x-ray, there is only one other recorded visit to the Appellant's physician, in September 2010, and the only mention of the MVA was as a cause of stress. Counsel acknowledged that there is the Primary Health Care Report which is dated September 10, 2010, but he pointed out that there is no record of a clinical examination in the physician's chart notes to accompany that Report. [MPIC's medical consultant] also testified that there could be some question regarding whether the box checked off in the Primary Health Care Report related to the Appellant's wrist or her hand. A reasonable interpretation is that she was complaining of everything with her left arm, and that is why everything is checked off on the form. Counsel argued that [MPIC's medical consultant] did not miss the May 24, 2010 x-ray or the September 10, 2010 Report, he just did not consider them relevant, or persuasive, and that is why he did not mention them in his reports.

The Appellant was also being treated by her chiropractor, [Appellant's chiropractor], who recorded notes of her numerous visits. She testified that she did complain to him regarding the pain and swelling in her left wrist, but also that she thought the pain would go away. Counsel pointed out that there are only two recorded complaints out of 131 visits, on November 22, 2010, and May 4, 2011, neither of which referred to the MVA. This is not consistent with an injury from the MVA which was gradually worsening, especially when the chart notes record that the Appellant was conducting other activities such as washing floors and mopping.

Counsel submitted that [MPIC's medical consultant] was qualified as an expert, he was the only expert to testify, he did so in a thorough and convincing manner, he did a forensic review, and this is the only way to come to a conclusion on causation. [MPIC's medical consultant], in his testimony, reviewed his initial report, dated August 18, 2014, which was based on the evidence available at that time, in which he found that the Appellant's left wrist symptoms were not caused by the MVA. Subsequent to that, he reviewed further evidence, including [Appellant's physician #1's] chart notes, which he had requested, and [Appellant's chiropractor's] chart notes, but there was nothing which provided further evidence of causation. He prepared five further reports, but did not change his opinion regarding causation. He testified that a scapholunate ligament tear can arise in various ways, including repetitive use, and that there doesn't always have to be an event. It is known that the Appellant was employed in a job where she'd have to use her hands.

Counsel referred to the report from the Appellant's surgeon, [Appellant's surgeon], dated January 19, 2016, which states: "We commonly see patients with scapholunate ligament injuries that do not present acutely ... no immediate medical attention will be sought." MPIC's position is that because the Appellant was under regular medical care from her chiropractor, if her wrist was increasingly getting sore, it is reasonable to assume that she would have mentioned it to her health care provider. Further, it is not reasonable for the Appellant to assert that she was complaining to her chiropractor of her left wrist being sore and yet he was not recording those complaints. It is more likely that she was not complaining of any left wrist symptoms. Counsel argued that what is most reasonable is that when the Appellant received the x-ray results in August 2011, which showed a possible ligament tear, she recalled the MVA as being a significant event and assumed that the MVA was the cause. However, the evidence does not support that. It is MPIC's position that any reported wrist complaints prior to the August 2011 x-ray were not caused by the MVA but could have been caused by degenerative changes, such as may have resulted from the Appellant's job.

Counsel argued that MPIC relies on the opinion of [MPIC's medical consultant], that there is no cause and effect relationship between the MVA and the Appellant's left wrist symptoms, as well as his testimony that this kind of scapholunate ligament tear can arise in the absence of a traumatic event. [MPIC's medical consultant] also testified that a wrist x-ray can be done for several reasons and there is no certainty as to why the May 24, 2010, x-ray was done. Nor was there any follow-up to the May 24, 2010, x-ray. The September 10, 2010, Primary Health Care Report is also inconclusive. These two documents are not sufficient to support the Appellant's position that she reported her wrist injury subsequent to the MVA, especially when the chiropractor's extensive chart notes are reviewed and there are only two mentions of her left wrist contained in those notes. MPIC therefore submitted that the Appellant failed to meet the onus upon her of showing that the Internal Review decision was incorrect.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that she is entitled to PIPP benefits for her left wrist symptoms. The relevant provisions of the MPIC Act are as follows:

Definitions

70(1) In this Part,

"**accident**" means any event in which bodily injury is caused by an automobile;

"**bodily injury caused by an automobile**" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile ...

...

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Accordingly, in order to be entitled to PIPP benefits, the Appellant needs to show that her left wrist symptoms were caused by the MVA. There is no dispute that the Appellant was ultimately diagnosed

with a left wrist injury, specifically grade III lunotriquetral and scapholunate ligament tears as reported by [Appellant's surgeon] in his November 20, 2014, surgical report. The dispute is whether this injury was caused by the MVA.

In making our decision, as set out below, the panel has carefully reviewed all of the documentary evidence filed in connection with this appeal. We have given careful consideration to the testimony of the witnesses and to the submissions of counsel for the Appellant and counsel for MPIC. We have also taken into account the provisions of the relevant legislation and the applicable case law.

It is the Appellant's position that her left wrist was injured in the MVA. She argued that after the MVA, her left wrist was swollen and sore, and so the next day she went to see [Appellant's physician #1], who referred her for an x-ray, which did not show any fracture or dislocation. Her ribs and back were causing her greater pain, and she thought her wrist was sprained and that the sprain would go away, so she concentrated her chiropractic treatment on her ribs and back. She returned to work initially on light duties. When she resumed full duties, her wrist would get sore by the end of the day. Eventually, the wrist pain became greater, and she was referred for a further x-ray, a CT scan, an MRI and eventual surgery and diagnosis.

It is MPIC's position that based on the significance of the eventual diagnosis, if the Appellant had injured her wrist in the MVA, she would have been complaining of pain and restricted range of motion to all of her health care providers. It was [MPIC's medical consultant's] opinion that there was not consistent reporting by the Appellant regarding her left wrist pain from the time of the MVA. It was also MPIC's position that the Appellant's left wrist injury could have arisen by virtue of repetitive use over the course of her working life.

[MPIC's medical consultant] testified, and also stated in his reports repeatedly, that he could not find that the MVA was a significant event which could have caused the Appellant's left wrist injury, because of the absence of sufficient post-MVA documentation of left wrist complaints. In contrast to this, the Appellant's surgeon, [text deleted], provided a report dated January 19, 2016, which states, in part, as follows:

We commonly see patients with scapholunate ligament injuries that do not present acutely. This could be attributed to a small sprain and no immediate medical attention will be sought. These patients often present many years later with increasing wrist pain or wrist arthrosis.

In his testimony, [MPIC's medical consultant] agreed that a scapholunate ligament tear could initially present similarly to a sprained wrist. In addition, although he said that these types of ligament tears can often arise without a significant event, [MPIC's medical consultant] agreed that they can also arise from a significant event. [MPIC's medical consultant] also agreed with [Appellant's surgeon] that, left unattended, a ligament tear could progress from what presents as a minor sprain to a much more serious problem. It was more than four years from the date of the MVA to the date of the Appellant's surgery, which could have allowed a wrist tear to progress. The Appellant testified that her left wrist was sore and swollen the day after the MVA. She thought her wrist was sprained, but she thought the sprain would go away. When the pain did not go away, she sought further investigation and treatment. She testified in a frank and forthright manner, and we accept her evidence.

The panel has carefully considered the evidence in the context of whether the Appellant reported left wrist complaints following the MVA. We note the following:

- On May 24, 2010, the day after the MVA, [Appellant's physician #1] examined the Appellant in the [Outpatient Emergency Department] (OPD). The OPD record, while not easily legible, does not seem to specifically refer to a left wrist injury. It does clearly identify, under the "Investigation" heading, that [Appellant's physician #1] referred the Appellant for an x-ray

of her left shoulder and left wrist. The x-ray report of the same date states, regarding the left wrist, that “there is no acute fracture or joint dislocation”.

- On May 31, 2010, the Appellant completed an Application for Compensation (AFC) and an Application for Payment of Medical and Travel Expenses (AFP). In the AFC, when asked to describe the injuries that she received in the accident, the Appellant wrote “see AFP”. The AFP lists a number of injuries but does not refer specifically to her left wrist. Further down in the AFC, still under the heading “Injury Information”, the Appellant is asked to describe her anticipated treatments, and she wrote: “saw [Appellant’s physician #1] on May 24 for wrist and shoulder/x-rays ordered”.
- The case manager recorded file notes of a meeting with the Appellant on May 31, 2010, during which the AFC was completed. Those notes, which indicate that they were created on June 1, 2010, list the same injuries as on the AFP, again with no specific mention of a left wrist injury. They also state: “[the Appellant] was seen by [emergency attending doctor] at the [hospital] on the date of the accident. She later followed up with [Appellant’s physician #1] at the [Medical Clinic] and [Appellant’s physician #1] ordered x-rays for her wrist and shoulder. ...”.
- Just over three months later, on September 8, 2010, the Appellant visited [Appellant’s physician #1] in clinic. [Appellant’s physician #1] noted that the Appellant “has had increased stress since MVA on May long weekend”.
- On September 10, 2010, [Appellant’s physician #1] completed a Primary Health Care Report, in which she checked a box, identifying that the Appellant was complaining of left “wrist/hand pain”.
- Two months later, on November 15, 2010, the chart notes of the Appellant’s chiropractor, [text deleted], contain a notation as follows: “hands are falling asleep ... TPT – elbows & wrists”. A subsequent notation regarding her visit on November 22, 2010, states as follows: “swollen L wrist, advised re x-ray”.
- Six months later, on May 4, 2011, the chart notes of [Appellant’s chiropractor] contain a notation as follows: “... didn’t sleep well last night [illegible] & sore L wrist”
- Almost 4 months later, on August 24, 2011, the Appellant visited her family physician’s office. The physician’s chart notes contain a notation as follows: “L wrist tender over dorsal radial head/carpals as well as snuff box. no erythema, has good wrist ROM”. The Appellant was diagnosed with left wrist tendonitis, provided with a prescription for a wrist brace and sent for a further x-ray.
- On August 29, 2011, the chart notes of [Appellant’s chiropractor] contain the following notation: “... wears a wrist brace – when I lift [illegible] it swells”.
- Also on August 29, 2011, the Appellant went for the x-ray of her left wrist. The imaging report noted “there might be slight widening of the scapholunate joint space suggesting ligamentous injury”. Subsequent CT and MRI investigation, followed by arthroscopic surgery, eventually confirmed the lunotriquetral and scapholunate partial ligament tears.

We note that the parties did not agree regarding whether the two earliest documents, the x-ray report of May 24, 2010, and [Appellant's physician #1's] Primary Health Care Report of September 10, 2010, reflected evidence of the Appellant's symptoms. It was [MPIC's medical consultant's] evidence, and thus MPIC's position, that there was no documentary evidence of clinical symptoms to support the reason why the May 24, 2010, x-ray was ordered, and that the x-ray could have been ordered for a number of reasons, including to search for foreign bodies. In addition, it was [MPIC's medical consultant's] evidence, and thus MPIC's position, that there was no documented clinical chart note to support [Appellant's physician #1's] Primary Health Care Report, and therefore it was not certain whether [Appellant's physician #1] actually did a physical examination of the Appellant. As well, her diagnosis on that Report was restricted to "whiplash/abrasions". It is the Appellant's position that [Appellant's physician #1] ordered the x-ray on May 24, 2010, because the Appellant was complaining of pain and swelling in her left wrist and that is the same reason [Appellant's physician #1] identified those symptoms on the Primary Health Care Report.

The panel has considered the arguments of the parties with respect to these two documents and we find that we do not agree with MPIC. With respect to the x-ray, on cross-examination, [MPIC's medical consultant] was asked whether, if an x-ray was taken for the purpose of searching for foreign bodies, then the x-ray report would say "no foreign bodies", and his response was that he would expect that it should say that. Here, the imaging report does not say that. Instead, the imaging report refers to fracture and dislocation. [MPIC's medical consultant's] evidence was that in the majority of cases, when the report refers to fracture and dislocation, then that is what the x-ray is looking for. We find that it is most reasonable to conclude that [Appellant's physician #1] ordered the x-ray to rule out a fracture or dislocation because the Appellant was complaining of pain and swelling in her left wrist, as was the Appellant's evidence, which we accept.

With respect to the Primary Health Care Report, it is true that [Appellant's physician #1's] chart notes do not contain a record of a clinical examination corresponding to the Report. However, we note that there are numerous other instances in the indexed file in this case where physicians' chart notes are not to the level where perhaps we might be accustomed to seeing. For example, the Appellant received a CT scan on March 26, 2012, which indicates that it was initiated by [radiologist], a colleague of [Appellant's physician #1]. There does not appear to be any corresponding chart note related to this scan. However, a deficiency of chart notes does not undermine the finding of the scan, and should not prejudice the Appellant. Thus, while it would have been preferable if [Appellant's physician #1] had completed chart notes to accompany her Primary Health Care Report of September 10, 2010, we find that, even without accompanying chart notes, it is reasonable to conclude that the symptoms identified in the Primary Health Care Report reflect the symptoms complained of by the Appellant as of the date of that Report.

Therefore, the panel finds there is documentary evidence that the Appellant consistently reported problems with her left wrist to her health care providers over the 15 month time period beginning right after the MVA. There is a record from the day after the MVA, as well as records from 4 months thereafter, 2 months later, 6 months after that, and 3 months after that.

The panel is supported in our findings with respect to the two early documents (the May 24, 2010, x-ray and the September 10, 2010, Primary Health Care Report) by noting that other medical professionals, including another MPIC HCS consultant, also share the view that these early documents reflect early mentions of the Appellant's left wrist complaints. In 2016, the Appellant was referred for a third-party chiropractic examination with [Appellant's chiropractor #2]. For the purposes of his consultation, MPIC provided to [Appellant's chiropractor #2] the Appellant's medical file for his review. [Appellants chiropractor #2] provided a report to MPIC dated February 29, 2016,

as well as an Evaluation Summary of the same date. The Evaluation Summary was in specific response to questions asked by MPIC. In response to the question “any other information arising out of your examination which you believe to be relevant to the claim for care and treatment”, [Appellants chiropractor #2] stated as follows:

[The Appellant] expressed some disaffection with MPI’s dismissal of income replacement benefits for the left wrist. I sensed that this has left her feeling invalidated within the context of her involvement in a traumatic rollover accident. [The Appellant] relayed that MPI could not establish a link between the left wrist ligamentous tear and the accident. The file information package sent to me mentions the left wrist in early medical reports that may have been missed on MPI review.

[Appellant’s chiropractor #2’s] report was reviewed by MPIC’s HCS chiropractic consultant, who provided a report dated March 31, 2016. That report stated as follows:

Additional information:

[Appellant’s chiropractor #2] within his third party examination report, comments that the medical file information he received prior to his examining the claimant, makes mention of a left wrist complaint, found early within the medical reports.

In consideration of the above, in addition to the new narrative report provided by [Appellants surgeon] on January 19, 2016, it would be recommended that the Case Manager have the file re-reviewed by a medical consultant to review if the medical file supports an established link between the claimant’s left wrist ligamentous tear and the motor vehicle accident of May 23, 2010.

It appears that MPIC’s case manager did not act on this suggestion. MPIC’s medical consultant, [MPIC’s medical consultant], did ultimately re-review the file, when requested to do so by legal counsel, almost 2 years later, on February 12, 2018. [MPIC’s medical consultant] again concluded in his report of that date that there was no causal connection between the Appellant’s left wrist symptoms and the MVA.

Counsel for MPIC argued that since [MPIC's medical consultant] was the only medical expert to testify, the panel was bound to accept his opinion on causation; however, we disagree. The Supreme Court of Canada stated, in *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25, at paragraph 38:

The presence or absence of opinion evidence from an expert positing (or refuting) a causal link is not, therefore, determinative of causation (e.g. *Snell*, at pp. 330 and 335). It is open to a trier of fact to consider, as this Tribunal considered, other evidence ... causation can be inferred – even in the face of inconclusive or contrary expert evidence – from other evidence, including merely circumstantial evidence. ... it ... depends on how the trier of fact, in the exercise of his or her own judgment, chooses to weigh the evidence. ...

In any event, [MPIC's medical consultant] was not the only medical expert to provide evidence. As noted above, the Appellant's surgeon, [text deleted], provided a report dated May 26, 2014, which states, in part, as follows:

From the history that I had taken on two separate occasions, it appears that she did not have any pain prior to her accident, and as such I do believe that this is likely secondary to her automobile injury.

[Appellant's surgeon] also provided a report dated January 19, 2016, which states, in part, as follows:

In response to the balance of probabilities, it is unknown whether or not her scapholunate ligament injury is caused by a motor vehicle accident. She discussed with me she had no pain prior to her injury and did develop ongoing chronic pain, which progressively got worse following this. Based on her history, one would assume that it is likely a motor vehicle accident resulted in a wrist injury. She did not demonstrate signs of advanced scapholunate collapse or arthrosis suggesting that her scapholunate ligament tear was long-standing for more than 5 or 10 years.

As a result, I would think that this injury was certainly within the timeframe of her motor vehicle accident, but I could not tell you for sure whether or not it was causally related.

[Appellant's surgeon] is an orthopedic specialist at the [text deleted] Clinic who specializes in hand surgery. The panel has weighed his evidence against [MPIC's medical consultant's] forensic assessment. [MPIC's medical consultant] acknowledged that he has never diagnosed this type of

ligament tear in his practise, whereas [Appellant's surgeon] is an expert in this area and had the opportunity of personally examining the Appellant on several occasions, obtaining her medical history and assessing her credibility, and we have therefore given greater weight to the evidence of [Appellant's surgeon].

[Appellant's surgeon], who examined and performed surgery on the Appellant's wrist, was clear in stating that the Appellant's wrist did not objectively demonstrate signs of long-standing advanced scapholunate collapse or arthrosis. This would refute [MPIC's medical consultant's] suggestion that the Appellant's left wrist complaints arose due to degenerative causes. [Appellant's surgeon] was also consistent in stating that it is likely that the Appellant's ligament tears were caused by the MVA, although he did state that "I could not tell you for sure whether or not it was causally related".

We acknowledge [Appellant's surgeon's] proviso, that although "it is likely a motor vehicle accident resulted in a wrist injury", he is not able to say "for sure". The panel notes, however, that the Commission is not required to determine causation with scientific certainty. In this regard, we have noted the comments of the Supreme Court of Canada in *Athey v. Leonati*, [1996] 3 SCR 458, where the Court confirmed its earlier decision in *Snell v. Farrell*, [1990] 2 SCR 311. The Court in *Athey*, referring to its earlier decision, stated at paragraph 16:

The causation test is not to be applied too rigidly. Causation need not be determined by scientific precision; ... and as was quoted by Sopinka J. at p. 328, it is "essentially a practical question of fact which can best be answered by ordinary common sense".

The panel finds that, applying the threshold test of a balance of probabilities, rather than a test of scientific certainty, based on the Appellant's evidence, the documented reports of her left wrist complaints and the evidence of [Appellant's surgeon], the Appellant has met the onus upon her to

establish a causal connection between the MVA and her left wrist symptoms. Consequently, we find that the Appellant is entitled to PIPP benefits with respect to her left wrist symptoms.

Disposition:

Accordingly, the Appellant's appeal is allowed and the Internal Review decision dated February 9, 2015, is therefore rescinded.

The Appellant shall therefore be entitled to PIPP benefits with respect to her left wrist symptoms in connection with the MVA of May 23, 2010. The matter is hereby returned to MPIC's case manager, for a determination as to the amount of those benefits.

The Appellant shall be entitled to interest upon the monies due to her by reason of the foregoing decision, in accordance with section 163 of the MPIC Act.

The Commission shall retain jurisdiction in this matter and if the parties are unable to agree on the amount of compensation, either party may refer this issue back to the Commission for final determination.

Dated at Winnipeg this 19th day of June, 2019.

JACQUELINE FREEDMAN

DR. LORNA TURNBULL

DR. CHANDULAL SHAH