Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF Appeals by [the Appellant]
AICAC File Nos.: AC-13-141, AC-14-201

PANEL:	**Pamela Reilly, Chairperson** **Janet Frohlich** **Sandra Oakley**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf;** **Manitoba Public Insurance Corporation ("MPIC") was represented by Mr. Anthony Lafontaine Guerra.**
HEARING DATE:	**May 18, 2021**
ISSUE(S):	**Whether the Appellant is entitled to PIPP benefits for symptoms involving her right leg, left wrist, and bilateral elbows.**
RELEVANT SECTIONS:	**Sections 70(1), 127(1) and 129(1) of The Manitoba Public Insurance Corporation Act ("MPIC Act") and Manitoba Regulation 41/94.**

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

Background:

The Appellant was involved in motor vehicle accidents dated May 14, 2004, December 14, 2007, February 14, 2009 and January 9, 2010 (the "MVAs"). She received Personal Injury Protection Plan ("PIPP") benefits in the form of chiropractic treatments and medical expenses for wrist splints (braces).

In October 2006, an MPIC Health Care Services ("HCS") consultant opined that the Appellant's right hand and wrist symptoms were causally connected to the May 14, 2004 MVA. Further, these symptoms may eventually lead to a residual permanent impairment ("PI"). However, any PI assessment should wait until the Appellant's treatment had been completed. Accordingly, in April 2009, MPIC arranged for the Appellant to meet with an occupational therapist for a PI assessment.

The PI assessment was completed on April 30, 2009 and forwarded to another MPIC HCS consultant for review. This August 6, 2009 review relied upon the prior finding of a causal relationship between the MVA and the wrist/forearm injury, but found no causal relationship between the MVA and a loss of range of motion of the Appellant's bilateral elbows. The review and opinions resulted in a PI award decision in favour of the Appellant, dated September 1, 2009, for right wrist and forearm loss of range of motion, and right wrist sensory deficit.

The Appellant made subsequent PIPP claims for other symptoms. In its Internal Review Decision ("IRD") dated November 8, 2013 MPIC determined that the Appellant was not entitled to PIPP benefits for her right leg and left wrist on the basis that these symptoms were not causally related to any of her MVAs. In its IRD dated October 21, 2014, MPIC determined that the Appellant was not entitled to PIPP benefits for her right elbow on the basis that these symptoms were not causally related to any of her MVAs. The Appellant appealed both of these IRDs to the Commission.

Prior to setting a hearing, Case Management discussions and document review revealed that the Appellant had filed an Application for Review dated August 12, 2010 (no MPIC decision was referenced in the Application), which incidentally referred to her left elbow. This Application had, apparently, never been formally resolved with an IRD. The parties agreed that the Appellant's left elbow issue would bypass the IRD process and be included in this appeal.

Issue:

Is the Appellant entitled to further PIPP benefits for her right leg, left wrist and bilateral elbow symptoms? Underlying this question is whether these symptoms are causally related to any of the MVAs.

Decision:

The panel finds that the Appellant has not proven, on a balance of probabilities, that her right leg, left wrist and bilateral elbow symptoms are causally related to the MVAs, thereby entitling her to further PIPP benefits. The appeals are dismissed.

Appellant testimony

The Appellant testified that she was currently [age] and that she suffered from a pre-existing fibromyalgia condition, which had been diagnosed when she was approximately [age]. She testified that during each of her four MVAs, she was the driver and lone occupant of her vehicle.

The 2004 MVA (MVA #1) was caused by another driver rear-ending her vehicle. She said that in each of her collisions, her hands were on the steering wheel and she "eventually got carpal tunnel syndrome." She testified that she never before had wrist complaints, or they were minimal, as proven by her medical records which do not document such complaints. She said that "after every MVA it [her wrist symptoms] started to amplify".

She explained that she suffered a "hyper-extension" injury of her wrists in each MVA, and implied that this led to her carpal tunnel syndrome diagnosis. She said that she experienced an ankle injury caused by her foot being on the brake during one or more collision. She testified, "Most of my complaints were in the 2009 MVA" (i.e. MVA #3).

She felt strongly that her doctor examined and assessed both her left and right wrists after MVA #1. She did not dispute that after MVA #1 there were no records of left wrist complaints, but pointed out that she had no control over what her doctor put in her medical record. She said that her medical records prior to MVA #1, including her 1993 medical records in support of her fibromyalgia CPP disability, did not disclose her

current pain complaints. She said that this was sufficient evidence to prove that the MVAs caused her current complaints.

The Appellant acknowledged that a physiotherapist visited her home in April 2009 and assessed her right wrist range of motion ("ROM"). At that time, the Appellant requested that the physiotherapist also assess her right elbow ROM, saying that her right elbow symptoms had been documented since MVA #1. (This April 2009 assessment ultimately resulted in a September 1, 2009 Permanent Impairment ("PI") award from MPIC related to the Appellant's right wrist and forearm.)

The Appellant testified that after MVA #1, she had some left wrist pain but because she is not left handed, she did not complain. However, after multiple accidents her left wrist pain was magnified. She said that after MVA #1, MPIC funded braces/splints for both her left and right wrists. The Appellant next testified that she suffered from a swollen and discoloured ankle, which is documented by her chiropractor, and that MPIC also funded her ankle brace expense. She argued that by paying these expenses, MPIC thereby acknowledged that her wrist and ankle injuries were caused by the MVAs. (She did not specify which ankle, and this complaint is not part of this appeal.) She pointed out that her chiropractor requested that MPIC consider her left wrist impairment in the same fashion that it considered her right wrist.

In response to panel questions, the Appellant testified that her bilateral wrist and right ankle braces included night-time and day-time braces, and had all been funded by MPIC since her first MVA in 2004. She said that the braces wear out and MPIC provided replacements for her right wrist but, somewhat contradictorily, said MPIC denied her replacements for her left wrist. She thought that MPIC first funded her right ankle brace in 2010. She testified to other medical expenses being paid by MPIC, such as a back rest, support stockings and 'bio-freeze' medication.

The Appellant emphasized that she provided her CPP records, which showed that she never experienced her current pain complaints before the MVAs, and she felt that her fibromyalgia was being unfairly blamed for her current symptoms. Further, she was

ultimately diagnosed with carpal tunnel syndrome and Raynaud's disease, which she attributed to "nerve damage" from the hyperextension injuries she experienced in each MVA.

Appellant Cross-Examination and Documents

In cross-examination, the Appellant confirmed that she completed [high school diploma]. She had 11 years' employment as a [text deleted] and [text deleted], until 1991. In December 1991, she experienced knee pain that was severe enough to render her unable to walk for a month. Although her pain lessened, she nonetheless described it as "excruciating." She attempted, but was unable, to sustain her return to work. She was diagnosed with fibromyalgia, which had apparently progressed from an initial diagnosis of chronic myofascial pain syndrome.

The Appellant conceded that her fibromyalgia pain had progressed to her lower back, shoulder and neck, and she experienced tingling to her arm and fingers. However, she distinguished her fibromyalgia symptoms from 30 years ago, stating she "went to bed feeling well, but woke up the next morning and I just collapsed." She reiterated that her current complaints have nothing to do with her fibromyalgia but are related to her MVAs. She said, "The car accidents amplified my fibromyalgia", her reason being that she did not previously have a chronic, swollen and sore ankle, carpal tunnel or Raynaud's syndrome; "All these complaints started after these car accidents."

In response to MPIC Counsel's questions, the Appellant confirmed that in 1993 she exhibited at least 12 tender points indicative of fibromyalgia. She experienced (and continues to experience) pain in her legs and knees which she attributes to changes in the weather. The Appellant confirmed that she was unable to return to even modified work duties because of her fibromyalgia. She applied for and has received Canada Pension Plan Disability income since approximately 1993. In describing her condition, she confirmed that she is not bed ridden but stated, "Every day is a mystery when I get up."

MPIC Counsel asked about her May 14, 2004 MVA (MVA #1). The Appellant responded that while stopped at a red light, she was rear-ended at high speed, with both hands on the steering wheel. An ambulance attended but she declined going to the hospital saying, “I have fibromyalgia, what are they going to do?” She confirmed that in 2002 (pre-MVAs), when she first started treatment with her chiropractor, [text deleted], she experienced fibromyalgia trigger points in her back and neck. She pointed out how [chiropractor] had later documented that both of her hands were on the steering wheel. She agreed she suffered from chronic pain but said that the force of the collision amplified her fibromyalgia pain.

MPIC Counsel referred the Appellant to the Primary Health Care Report of [chiropractor] dated May 17, 2004 and pointed out that his report of symptoms resulting from the collision, did not indicate wrist/hand pain for either wrist/hand. The Appellant responded that she did not have the same pain and injuries in her left wrist, because she is not left hand dominant, so her left wrist wasn’t a major complaint. She could not explain why her wrist/hand symptoms were not checked off in [chiropractor]’s report, but said they should have been. She agreed that the report was correct in not checking off the knee/leg pain symptoms, saying, “The leg and ankle pain started giving me issues in 2009 and 2010, after the repetitive accidents. I believe it was the third accident that gave me the complaints…I have today”. She agreed that the hip/thigh pain symptoms were correctly checked.

In [chiropractor]’s narrative report dated May 31, 2004, MPIC Counsel pointed out the wording, which lists her MVA related symptoms as “…significant increase in neck pain and headaches, in addition to mid and lower back pain…visual changes.” The Appellant said that her bilateral wrist and elbow complaints should have been included.

MPIC Counsel referred to the Appellant’s first post-MVA appointment with her physician on May 19, 2004, which did not record complaints about her wrist or elbows. The Appellant pointed out that the record shows her using a right wrist splint at night for carpal tunnel syndrome, which she said was prescribed by her doctor. She again questioned why she was being asked to explain her doctor’s notes. (The chairperson

clarified that the Appellant was not being asked to explain her doctor's notes. However, if there appeared to be inconsistencies between her testimony and medical records, it was fair that she be given an opportunity to review the medical record and respond. The hearing was adjourned for a ten minute recess.)

The Appellant agreed that during a May 25, 2004 conversation with MPIC she did not raise the issue of any wrist or elbow complaints. She confirmed the Primary Health Care Report of her May 26, 2004 examination, which documented right elbow/wrist pain saying, "Yes, because symptoms don't just appear right away." She also agreed that there were no complaints of left elbow/wrist pain, saying, "Correct, because I am not left hand dominant and the symptoms did not appear right away – they did not interfere with me." She said the left side symptoms started to interfere in "possibly 2007", but in 2010 for sure because she began to receive a cortisone shot in her left arm to relieve pain. She said, "If it was not giving me an initial problem where I was noticing it, I would not have brought it up…So, that's why I did not include my left hand, left wrist or left elbow in the initial car accident."

MPIC Counsel reviewed the Appellant's September 2005 physician chart notes, which documented worsening right hand numbness and her left hand going limp. She was referred to neurologist, [text deleted] for further electrodiagnostic testing to determine the appropriateness of carpal tunnel surgery for her right wrist. [Neurologist]'s May 11, 2006 report documented that, "the patient reports that she experiences symptoms principally in her right hand, and experiences only minimal symptoms in the left hand." The Appellant agreed that, based upon the test results, [neurologist] did not consider the carpal tunnel release surgery to be warranted. He suggested that her family physician continue with wrist splinting to manage her symptoms. The Appellant said that based upon [neurologist]'s recommendations she received a day brace for her right wrist from the [hospital].

The Appellant agreed with the MPIC file note dated June 20, 2006 in which she advised her case manager that "she injured her right wrist and hand" in the 2004 MVA. In relation to her left wrist, the Appellant again testified, as follows:

> "Correct, because it wasn't giving me a daily issue like it was with my right, at the time. Like is said…because it wasn't affecting my daily life, I didn't include it, but after multiple car accidents, that's when I included it. I'm not going to complain about something that's not there."

The Appellant confirmed her physician's diagnosis in a September 29, 2006 report, which queried whether the Appellant had right Carpal Tunnel Syndrome (CTS), and concluded that the diagnosis was "most consistent with a soft tissue injury to the right wrist…" The Appellant agreed that on October 23, 2006, her physician referred her to an occupational therapist ("OT") for a custom splint for her right wrist. (She apologized for incorrectly recalling that the splint was prescribed in 2004).

The Appellant agreed with the November 17, 2006 OT's written comment to [physician #1] advising that the Appellant had also asked for a left wrist brace, and further confirmed that [physician #1] had not prescribed a left wrist brace. The Appellant explained that her request for a left wrist brace was based upon her understanding that [neurologist], who performed the nerve conduction tests, had recommended that she have bilateral wrist braces. (Note: [neurologist] states in his May 11, 2006 report, page 3, "She should be managed in an ongoing fashion for the present with dorsal wrist splinting that should be prescribed under the auspices of her attending family physician.")

MPIC Counsel referred to [physician #1]'s medical note dated April 19, 2007, which appeared to be the first reference to left and right wrist pain, and which prescribed a "splint for daytime use". The Appellant agreed this was the first prescription from her doctor for a daytime brace but said that [neurologist] had prescribed a nighttime brace. The same medical note recorded "right wrist pain is interfering with ADLs (activities of daily living)" with which the Appellant agreed stating, as follows:

> "Right, because I'm right hand dominant - - because the more repetitive motion that I do during the day - - and symptoms amplify…I can differentiate my fibromyalgia pain from my car accident pain, so I know the difference, and I never had the hand pain prior to my accident…so it all depends on the motion or activity. Just like my fibro pain, if I do minimal - - when I'm having a good day, I'll overdue it and then I pay, so it's all - - it all varies."

MPIC reviewed the Appellant's various medical appointments with Sport Medicine physician, [text deleted], who focused his assessment on her right wrist, despite the Appellant mentioning to her case manager three weeks earlier that she may ask her doctor about the problems she was also having with her left hand. (The Appellant agreed with the accuracy of the case manager's comment.) She explained not mentioning her left wrist to [sport medicine physician], as follows:

> "My left wrist wasn't giving me issues. My issue started in 2010, more chronic, so if it's not bothering me that day, it's not noted. So, if I'm having minimal [sic] because I'm not using the left hand because it's not aggravated, I'm focusing on the issue that's happening on the day…If it's not mentioned that day, it's because it's not giving me a problem."

The Appellant agreed with the MPIC file note recorded after her December 14, 2007 MVA (MVA #2) that she had "sharp pain in her neck and [had] aggravated her whiplash". MPIC counsel reviewed the medical notes from her physicians [text deleted] and chiropractor [text deleted] which all recorded MVA related symptoms and diagnoses of chronic neck pain, headaches, exacerbation of right wrist pain, cervical muscle strain and past history of fibromyalgia-type/chronic pain. The Appellant confirmed that the numerous medical records did not document left wrist, right leg, right elbow or right ankle complaints; only right wrist. She reiterated that she only talked about complaints that were bothering her at the time of the visit or for which she had been scheduled.

Dealing with the medical records after MVA #3 (February 14, 2009), the Appellant agreed with [physician #1]'s diagnoses of acute or chronic wrist strain and cervical muscle strain. She also agreed with her chiropractor's [text deleted] diagnoses of cervicogenic headaches, thoracic rib strain, lumbar strain, and "sprain/strain injury hands/wrists hyperextension injury holding steering wheel at impact."

On March 31, 2009 [chiropractor] noted that the Appellant reported, among other things, numbness and weakness in "the wrist" with decreased sensation, worse on the right side of her hand and occasionally to her forearm. Further, [physician #1]'s chart notes, dated April 28, 2009, recorded ROM measurements. The Appellant's left wrist flexion and extension measurements were each 80º. Her right wrist flexion measured at 45º,

and right wrist extension measured at 80º. [Physician #1] assessed bilateral wrist strain. The Appellant did not dispute these measurements or findings.

The same day on which the above measurements were taken by [physician #1] (April 28, 2009), an OT visited the Appellant in her home and provided the following wrist ROM measurements:

Left	Wrist Movement	Right
57 º	Flexion	16 º
53 º	Extension	42 º
25 º	Ulnar Deviation	24 º
18 º	Radial Deviation	22 º

The Appellant did not dispute this record and again agreed with the OT's comment that the Appellant had also requested elbow range of motion measurements, despite no request for this measurement from [physician #1]. The Appellant explained the circumstances and her request to the OT, as follows:

> "If I didn't mention it to [physician #1] she's not going to document it. If my elbows are not bothering me – but noted prior, a few times. So, if I went to see [text deleted] and it wasn't giving me an issue, it wasn't going to be noted. So, with the occupational therapist, so, you might as well check the ROM and then if there's an issue I can bring it up with my doctor. I want to learn, and I know what my fibromyalgia is like. It was just for my own personal satisfaction because of my prior complaints."

MPIC questioned the Appellant about a May 21, 2009 electrodiagnostic assessment by [electrodiagnostic specialist], which investigated possible carpal tunnel syndrome based upon symptoms of chronic wrist pain and hand paresthesia (again, presumably the right wrist/hand). The Appellant agreed with [electrodiagnostic specialist]'s statement that she had been symptom free for one year until the most recent MVA (i.e. MVA #3, February 14, 2009). The report also referred to bilateral pain over her "lateral epicondyles" (i.e. elbows), more involving the left than the right side. The Appellant said that she had previously received three cortisone shots that totally relieved her elbow pain.

[Electrodiagnostic specialist] concluded there was some electrical evidence of carpal tunnel syndrome on the right side, however considering that the Appellant's symptoms had not responded to splinting over the past four years he doubted that carpal tunnel syndrome 'was at play here.' He noted that he had seen similar symptoms in patients with Raynaud's phenomenon, which is caused by "vasospasm" rather than fixed nerve dysfunction and suspected this was the case with the Appellant. The Appellant responded that this was the first time she had been "diagnosed with Raynaud's" and said it was related to the hyper-extension of her wrists during the MVAs.

MPIC Counsel referred the Appellant to a December 8, 2009 chart note which documented groin pain amplified since the February 2009 MVA and questioned why this became an issue almost a year post MVA. The Appellant said she had complained about this pain before. She thought that it was caused by her foot being on the brake during the rear end collision in which she was "jolted" and "pushed forward". She conceded it could be "a womanly thing and not connected to the accident," although she noticed the increased pain after the impact.

MPIC Counsel referred to [chiropractor]'s January 12, 2010 chiropractor report (three days post January 9, 2010, MVA #4). The Appellant agreed with the diagnoses of whiplash, cervicogenic headaches, thoracic sprain, CT spine and lumbar strain with a pending diagnosis for increased right 5th finger numbness. During her subsequent appointment with [physician #1] on March 10, 2010 the Appellant agreed that her MVA related complaints involved a swollen dorsal left wrist and tingling from behind her right knee to her toes. The Appellant explained that the swollen left wrist was the same area as her right wrist, and after MVA #4 she experienced bad sciatica pain which was relieved with chiropractic treatment. The Appellant confirmed that [physician #1] did not physically examine her on March 10th but simply documented information reported by the Appellant.

MPIC Counsel referred the Appellant to the April 27, 2010 medical note by [sport medicine physician] in which he assessed "non-specific ankle pain in the context of

chronic benign pain syndrome". The Appellant expressed surprise and stated that she was "under the impression that this [ankle pain] was caused by the MVA."

In response to MPIC Counsel's questions about her claims that she suffers Raynaud's disease and nerve damage in her left hand as a result of a MVA related hyper-extension injury, the Appellant confirmed that her belief is not based on nerve conduction studies but on the basis that she cannot hold up her wrists. The Appellant said this represents nerve damage. She further stated that "Raynaud's is also a nerve issue." In further response, the Appellant confirmed the August 18, 2010 MPIC File Note in which she attributed left wrist and right leg symptoms to her 2004 MVA (MVA #1), but also confirmed that these symptoms only started to bother her "more recently" (meaning August 2010).

In response to questions about a September 13, 2010 chart note from physician, [text deleted], the Appellant said that she did not really understand the chart note regarding her bilateral wrists and right leg. [Sport medicine physician] recorded "no major deformity or positioning of the wrist" and stated "range of motion was full, however painful." (The record was not clear whether this was a bilateral examination of the wrists although it does state that "strength appeared to be 5/[sic] bilaterally." [Sport medicine physician]'s assessment reads: "Chronic non-specific forearm pain. Chronic lower leg pain, right side since 2009, query some venous insufficiency.")

MPIC Counsel questioned the Appellant about a letter from [physician #1], dated November 1, 2010, in which the doctor states, "…Her main complaints since the original 2004 MVA have been regarding the right wrist. I do not believe any right leg symptoms are related to the MVA's." The Appellant took issue with [physician #1]'s conclusion and emphasized how she was "jolted" during each MVA while her foot was on the brake. The Appellant stated that [chiropractor] agreed with her opinion about causation. She pointed out that the scarring, swelling and skin discolouration was not there previously, as can be seen from her 1993 medical records, and that the Commission should favour [chiropractor]'s opinion over [physician #1]'s. The Appellant pointed out that MPIC must

have also agreed that the MVAs caused her right ankle and leg injuries because it funded her ankle brace and support stocking expenses.

MPIC Counsel asked the Appellant to comment on a December 21, 2010 letter from [sport medicine physician] to MPIC in which MPIC asked [sport medicine physician] to report his "diagnoses" of the Appellant's "current signs/symptoms." This letter, summarizing tests and diagnostic studies from May 14, 2004 to the date of the letter, did not mention any diagnosis of left wrist pain. The Appellant responded that left wrist pain was not mentioned because, "…on that visit it was not giving me an issue so not discussed." (NOTE: The letter generally stated on page one that, "It appears that the claimant's motor vehicle accidents typically aggravates her pre-existing symptoms and aggravate/worsen her chronic benign pain syndrome.")

The Appellant disagreed with an MPIC file note, which recorded that her left side complaints were not related to her MVAs. The Appellant explained that it was this file note, and the negative attitude of this particular case manager that caused her such frustration, saying, "This is why I stopped reading my file and I just go off my head - - I know what I've submitted." (At this point the Appellant expressed that she was fatigued and not sure if she could continue to the end of the hearing. She was offered an adjournment but declined, stating she wished to complete the hearing.)

In April 2014, the Appellant requested that [chiropractor] provide opinions in support of her claim for permanent impairment ("PI") benefits for her left wrist and/or right leg and ankle, and right elbow. In September 2014, the Appellant retained an OT to provide a follow-up assessment to determine potential PI benefits related to her "right leg, left wrist and left forearm", and "additionally…her left and right elbows." When asked what changed between April and September 2014 to cause her to now include a claim for her left elbow (not just her right) the Appellant explained, as follows:

> "I can't tell you how pain works. It might be me overusing [the elbow] to make the pain worse. I can't tell you what I did to cause a flair up. The pain on that day could have been excruciating where I can't even lift my arm, and the next day it could be fine, but I've been complaining since the beginning."

The Appellant confirmed that she was relying on the resulting Permanent Impairment report from OT [text deleted], dated November 5, 2014 in support of her claim for PI benefits.

Appellant closing submissions:

In her closing remarks, the Appellant acknowledged that the November 5, 2014 OT report showed improvements over some of the ROM figures found in the 2009 report, but argued this improvement was the result of her hard work in physical therapy. Irrespective of the improvement, she said "I just can't get rid of the pain."

She submitted that [chiropractor] is CEO of the chiropractic board. She referenced his October 1, 2010 letter to MPIC in which he stated that her left wrist should be treated the same as her right. Although the Appellant did not refer the panel to the specific page, the panel noted [chiropractor]'s comment at page three, as follows:

> … It would seem prudent that with similar multiple hyperextension injuries occurring in the four MVA's that [the Appellant's] left wrist should be evaluated in similar fashion as per the evaluation of her right wrist impairment.

The Appellant submitted that there was sufficient evidence to prove that her complaints were caused by her MVAs. She submitted that her left sided symptoms took longer to appear because she is right hand dominant and she was doing more repetitive movement on the right. She experiences pain on her left side if she gets fatigued.

The Appellant submitted that her medical records prior to the accidents did not mention any of the symptoms that she has experienced since the MVAs. She reiterated that MPI had paid for braces, a pillow, and her therapy, but now seemed to be blaming all of her symptoms on her fibromyalgia. She submitted that MPIC's consultant, [text deleted], "said my wrists were the result of my motor vehicle accident but to hold off for more information."

MPIC closing submissions:

MPIC Counsel submitted that a careful review of the timeline leads to a straightforward understanding of the issues. In particular, the timeline demonstrates that there is no

temporal relationship between the Appellant's complaints and the MVAs and therefore, no causal relationship. Secondarily, MPIC submitted that the Appellant's pain complaints do not qualify for permanent impairment benefits. The relevant sections of the MPIC Act are section 70(1) which deals with causation, and sections 127(1) and 129 which deal with a lump sum payment for permanent impairments as assessed in accordance with the schedule of impairments set out in Regulation 41/94.

Right leg symptoms

MPIC Counsel pointed out that the Primary Health Care Report submitted by the Appellant's chiropractor, [text deleted], two days after MVA #1 did not document any knee, leg, ankle or foot pain, and his subsequent report documents neck pain, headaches, and pain in mid and lower back. Similarly, the Appellant's general practitioner [physician #1] documented right cervical muscle strain with possible right-sided carpal tunnel syndrome but no leg injury or pain. Counsel submitted that after MVA #3, [chiropractor] reported the Appellant experiencing pain in her "hip/glute" but did not provide a diagnosis nor did he identify a mechanism for this injury. Further, after MVA #3, while there are notes in both [physician #1] and [chiropractor]'s records of knee pain or groin pain, these appear ten months post MVA #3. No medical diagnoses are provided by the doctors for these complaints.

After MVA #4, there are no specific notes of leg pain, although there are references to swelling behind the Appellant's right knee, and a tingling sensation from her right knee to her toes. The Appellant was also assessed for right ankle pain and her physician [sport medicine physician] noted the Appellant's reports of some tenderness, but found full range of motion with no crepitus or swelling. MPIC Counsel pointed out that it was in August 2010 (six months post MVA #4) that the Appellant contacted her Case Manager to request PI benefits for her right leg, ankle and hip. Although the Appellant complained to her Case Manager about knee pain, the Appellant made it clear at the hearing that she is not claiming benefits for her knee pain as she admitted that her fibromyalgia caused this pain. Counsel pointed out inconsistencies in the Appellant's reports about which MVA caused or aggravated her various pain symptoms. Counsel submitted that although [sport medicine physician] assessed a non-specific ankle pain in the context of

chronic benign pain syndrome, which appeared to be aggravated by the MVAs, he did not identify a permanent impairment.

Further, although the Appellant's OT Permanent Impairment Assessment (November 5, 2014) identified a potential disfigurement on the Appellant's right shin, and discolouration on the right ankle, there are no documented injuries to the Appellant's right shin or ankle following any of the MVAs. MPIC Counsel submitted that on balance, there is insufficient evidence to support any connection between the right leg complaints and the MVAs.

Right and Left elbow symptoms

In reviewing the medical records, MPIC Counsel noted that after MVA #1 the Appellant reported right-sided elbow/forearm pain that apparently pre-existed the MVA, but was worse since that collision.

After MVA #3 (February 14, 2009) there is a reference to left and right elbow symptoms from [physician #1]'s exam of February 18th, but no diagnosis in relation to the elbows. Similarly, there are no elbow symptoms recorded by [chiropractor] in this time period. MPIC retained an OT to assess whether the Appellant suffered a permanent impairment for her right wrist. At that appointment, the Appellant requested, and the OT conducted, an assessment of the Appellant's elbows.

MPIC Counsel referenced the Appellant's August 2010 Application for Review, which stated (in relation to her left hand) that she experienced numbness and tingling from her elbow to her finger tips. She believed that these were Raynaud's symptoms, which resulted from her hands being on the steering wheel when she was rear-ended, and therefore caused a hyperextension injury to her wrists and elbows. Counsel submitted that between 2009 (when the Appellant requested that the OT retained by MPIC assess both elbows), and September 2014 (when she retained her own OT to assess her elbows), the Appellant had never sought PI benefits for her left elbow. And while there did appear to be some reduction in the ROM for her elbows, there was no medical documentation between August 2010 and September 2014 to support a causal

connection between the ROM loss and the MVAs. The Appellant has therefore not established, on balance, that the MVAs caused the right and left elbow injury.

Left wrist symptoms

MPIC Counsel submitted that the Appellant's claim for PI benefits for her left wrist is based upon her assumption that, since MPIC paid her PI benefits for her right wrist, it should pay benefits for her left. However, this is a misunderstanding of how MPIC determines benefits and in this case, the medical evidence dictates a different result for each wrist.

MPIC Counsel again reviewed the relevant medical records and submitted that the Appellant focused on her right hand/wrist symptoms, reported minimal symptoms in her left hand, and the testing of her left wrist was essentially normal. When the Appellant's physician sent her to be fitted with a custom right wrist splint, the Appellant made her own request for a left wrist splint, without her physician's knowledge. MPIC Counsel submitted that the panel should infer that the Appellant's physician did not consider the Appellant to have any issue with her left wrist. Although there are subsequent references to left wrist pain, the assessments, referrals and x-rays all deal with the right wrist. After the second MVA on December 14, 2007, the Appellant's physician noted left and right wrist/hand pain, but only diagnosed an exacerbation of chronic right wrist strain.

After MVA #3 on February 14, 2009, [chiropractor] and [physician #1] documented bilateral wrist symptoms with a diagnosis of wrist strain. MPIC Counsel referred to the wrist ROM measurements conducted by both [physician #1] and an OT on April 28, 2009. He submitted that there is a dramatic difference in the measurements, whereby the OT measurements are significantly lower than those of [physician #1]. This discrepancy is not sufficiently explained. Counsel further pointed out that on May 1st, [sport medicine physician] examined the Appellant and focused on her right fourth finger.

MPIC submitted that the first chart note of left wrist symptoms is dated March 10, 2010 (Note: MVA #4 occurred January 2, 2010), which is not the result of [physician #1]'s objective examination but rather, the subjective complaint of the Appellant. On August 16, 2010 the Appellant reported a 'loss of sensation' in her left wrist as opposed to experiencing pain. MPIC Counsel reviewed the various medical reports and submitted that [chiropractor] reported in August 2010 that the Appellant's wrist pain was 'not yet determined', and in October 2010 further testing was required of her left wrist. Finally [physician #1] in November 2010 noted that the Appellant suffered bilateral mechanical wrist pain but her main complaint since the 2004 MVA had been her right wrist pain.

MPIC Counsel submitted that the Appellant's complaints of left wrist pain and nerve damage caused by MVA #1 (May 14, 2004) are not supported by the medical evidence. He submitted that for the left wrist, there are no nerve conduction studies showing abnormalities, and no diagnosis of carpal tunnel syndrome. [Sport medicine physician] assessed the Appellant's left wrist in September 2010 (nine months post MVA #4) and found no range of motion losses. Therefore, MPIC Counsel submitted that any losses identified in the November 5, 2014 OT assessment of the Appellant's left wrist range of motion cannot relate to the MVAs.

Finally, MPIC Counsel referred to the various Health Care Services reviews and opinions about causation. MPIC consultant, [text deleted], in her report dated December 4, 2012 concluded that there was no temporal link between the Appellant's right leg pain and the MVAs.

[MPIC's HCS medical consultant]'s August 4, 2009 review concluded that the medical documentation at that time did not contain persistent complaints of left wrist and forearm pain, and did not support a causal relationship between the bilateral elbow ROM losses. In [MPIC's HCS medical consultant]'s September 6, 2013 report, she pointed out that there were no objective signs of measureable deficits of the left wrist unlike what had been found for the right wrist. The left wrist symptoms were infrequent and there was no identified pathology to determine the cause of left wrist symptoms. Further, [physician

#1] did not link the left wrist complaints to the MVAs despite being aware of the Appellant's complaints.

[MPIC's HCS medical consultant]'s September 22, 2014 report found no temporal relationship between the Appellant's more recent complaints of right elbow symptoms and the history of MVAs. She pointed out that the left elbow and wrist MRI requested by [sport medicine physician] showed no abnormalities. Further, no assessment of the right elbow was conducted, which complaints appeared to be temporally unrelated to the MVAs, in any event.

Counsel submitted that in her August 8, 2019 report, [MPIC's HCS medical consultant] discussed the 18 designated pain regions used to diagnose fibromyalgia. The 18 pain regions consist of nine, paired, bilateral anatomical points. Two of these paired points are the left and right lateral elbows. [MPIC's HCS medical consultant] challenged the comment of [sport medicine physician] that the MVAs aggravated the Appellant's pre-existing chronic pain by pointing out that [sport medicine physician] offered no objective evidence in support of his conclusion and in particular, did not include the left elbow pain region as being symptomatic. [MPIC's HCS medical consultant] concluded that on balance, the medical evidence did not support a causal relationship between the Appellant's left elbow condition and the MVA history.

MPIC Counsel concluded that the Appellant had not discharged her onus of proving on a balance of probabilities that the Internal Review Decisions should be overturned, and submitted that the Appellant's appeals should be dismissed.

The panel questioned Counsel about whether MPIC had, in fact, paid for the Appellant's wrist braces, and if so, what was MPIC's response to the Appellant's position that such provision is an acknowledgment of causation. Counsel referred to the August 18, 2010 File Note (about which the Appellant was cross-examined), which confirmed that the cost of a left wrist brace was approved on August 18, 2010. Nonetheless, Counsel emphasized that unlike her right sided symptoms, the question of causation had not

been determined nor was it supported by the medical evidence. He submitted that MPIC would not seek reimbursement for the unsubstantiated cost.

(The panel noted the last paragraph of the August 18, 2010 File Note in which the Case Manager advised the Appellant that updated medical documentation would be requested from her care providers. The Case Manager recorded, as follows:

> … I advised that once all information [was] recieved [sic], [MPIC] can then forward all her files to our Health Care Services Team for review in order to determine if there is [sic] further entitlements. I advised that this process can take a long time… She understood this from her previous claims.

Legislation:

The applicable sections of the MPIC Act and Regulations are as follows:

> **Definitions**
> **70(1)** In this Part,
> **"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, . . .
>
> **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.
>
> **Evaluation of permanent impairment under schedule**
> **129(1)** The corporation shall evaluate a permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

Substantive Issues:

Is the Appellant entitled to further PIPP benefits for her right leg, left wrist and bilateral elbow symptoms? Fundamentally, are these symptoms causally related to the MVAs?

Discussion:

Credibility and reliability

The panel found the Appellant credible. She acknowledged her pre-existing and long standing diagnosis of fibromyalgia, and endeavoured to objectively explain the

difference between her pain symptoms. The panel acknowledged that the hearing was stressful for the Appellant and caused her fatigue. She, nonetheless, appeared to try her best to focus and to answer questions. She did not exaggerate or embellish her testimony. The Appellant reasonably admitted when she could not recall events that occurred years ago. MPIC did not raise any concerns about the Appellant's credibility.

The panel noted the Appellant's admission that reading her file caused her stress. Her relationship with her case manager had broken down, which led her to avoid reading her file. She therefore had not reviewed her file documents to refresh her memory. Memory fades with the passage of time, and the panel had concerns about the reliability of the Appellant's testimony surrounding the timing and sequence of certain events. The panel therefore relied more heavily on the documentary evidence.

Analysis

The panel believed the Appellant's testimony about her chronic wrist, leg and bilateral elbow pain. However, the question is whether her various pain symptoms are causally related, on a balance of probabilities, to any or all of her MVAs. Further, the panel agrees with MPIC Counsel that pain symptoms are not considered a permanent impairment within the PIPP of the MPIC Act, and therefore if there is causation, the Appellant must prove, on balance, that the MVAs caused a permanent impairment in any of her complaint areas.

The Appellant testified that she suffered a hyperextension type injury in each MVA resulting from her hands being on the steering wheel during each impact, and that this mechanism led to her bilateral wrist and bilateral elbow pain symptoms. She testified that the position of her right foot on the brake during the MVAs led to the pain in her ankle, knee, and leg and hip, although she is only claiming benefits related to "right leg pain."

She pointed to the fact that MPIC accepted her right wrist injury, had provided her with braces for both her right and left wrists, her right ankle, and ultimately provided PI

benefits for her right wrist and forearm. Therefore, she believed that MPIC tacitly accepted her claims, and should pay her PI benefits. She said that she didn't understand why no one was listening to her doctors, and she relied, in particular, upon the statements made by [chiropractor] and [sport medicine physician] in their medical reports to MPIC.

The panel reviewed and considered the Appellant's various physician reports, chart notes, and the medical opinions to determine whether, on a balance of probabilities, any or all of the MVAs caused a permanent impairment. None of the doctors were called to testify or be cross-examined. We have taken the chart notes and reports at face value.

Left/right wrist and MVA #1

The panel noted that after the Appellant's May 14, 2004 MVA (MVA #1), her physician, [text deleted], examined her on May 26, 2004 and noted her right wrist/hand symptoms were "worse since collision". The Appellant's Case Manager, in a file note dated June 20, 2006, confirmed with [physician #2] that "there was an injury to the right wrist and hand area". The Appellant's physician, [physician #1] also opined in her report dated September 29, 2006 that some of the Appellant's right wrist symptoms are probably related to the injury sustained in the 2004 MVA. MPIC consultant, [text deleted], reviewed the Appellant's file and also opined that the Appellant's right hand and wrist symptoms were probably caused by the 2004 MVA.

There was a clear finding of causation between MVA #1 and a right wrist injury. Once causation was established, MPIC sent the Appellant for a permanent impairment (PI) assessment by an OT to assess range of motion ("ROM"), muscle wasting and sensation in her right wrist. At that time, the Appellant requested the OT also assess her elbows. The OT provided a report of the assessment results to MPIC, which then forwarded the OT report and the Appellant's file to MPIC Consultant, [MPIC's HCS medical consultant], who reviewed the material to consider a PI award.

In her report dated August 4, 2009, [MPIC's HCS medical consultant] thought it probable that the Appellant's measured loss of right wrist ROM related "indirectly to

collision-related chronic right wrist pain" and recommended that the Appellant receive an impairment award for the ROM losses pertaining to her right wrist flexion/extension. [MPIC's HCS medical consultant] noted that the Appellant's records showed complaints of right wrist pain that included the forearm and therefore, an impairment benefit was warranted for her reduced forearm range of motion (i.e. supination and pronation). [MPIC's HCS medical consultant] noted that the radial and ulnar deviation measurements did not meet the criteria for a PI award.

[MPIC's HCS medical consultant] pointed out that, unlike the right wrist, there was no documented persistent complaints of corresponding left wrist and forearm pain and no causally evident basis to consider loss of left wrist or forearm ROM. [MPIC's HCS medical consultant] also concluded that there was no causal relationship between the Appellant's bilateral elbow complaints and the 2004 MVA, stating that "factors other than the motor vehicle collision likely explain the [Appellant's] bilateral loss of elbow range of motion."

The process described above involved reported complaints temporally related to a MVA, which were documented by the Appellant's medical caregivers. This supported a finding of causation leading to a referral for PI measurements. Those measurements of the causally related injury ultimately resulted in MPIC's determination of a PI award for loss of ROM. The same medical presentation does not exist in relation to the Appellant's left wrist, right leg or bilateral elbows complaints particularly because these complaints are not temporally connected to the MVAs.

Left wrist and right leg

The Appellant testified that she is right hand dominant and therefore her left sided complaints did not develop immediately after her MVAs to the same extent as her right sided complaints. She said that this explained why many medical reports did not immediately document her left wrist symptoms, or later documented, "only minimal symptoms in the left hand" ([neurologist]'s Neurodiagnostics report of tests conducted May 11, 2006, two years post MVA #1).

The Appellant's first MVA was May 14, 2004 (MVA #1) and her fourth MVA was January 9, 2010 (MVA #4). MPIC Consultant, [text deleted], provided three separate written medical opinions pertaining to the Appellant's left wrist and right leg symptoms. These are dated December 4, 2012 ("First Opinion"), September 6, 2013 ("Second Opinion") and September 20, 2018 ("Third Opinion").

MPIC requested the First Opinion specific to causation between the Appellant's left wrist or right leg symptoms and her January 9, 2010 MVA. The First Opinion concluded there was no causal relationship. MPIC requested the Second Opinion to opine on whether any of the MVAs caused the left wrist or right leg symptoms, and the Third Opinion requested that [MPIC's HCS medical consultant] consider new medical information from the Appellant's physician, [sport medicine physician]. Neither of the Second or Third Opinions found a causal relationship between the Appellant's left wrist or right leg symptoms and her MVAs.

In her **First Opinion**, [MPIC's HCS medical consultant] considered [chiropractor]'s examination dated January 12, 2010 (post MVA #2 of Jan. 9, 2010). [MPIC's HCS medical consultant] stated, as follows:

> There was no documented record of left wrist or right leg symptoms and no documented record of either of these two regions being examined for musculoskeletal signs. There were no diagnoses provided for either of the two body regions at issue.

[MPIC's HCS medical consultant] noted that, on March 17, 2010, Athletic Therapist [text deleted] (same office as [chiropractor]) had documented symptoms of numbness and tingling "into hands" as well as swelling to the wrists and knees. However, the ultimate diagnosis was recorded as "whiplash/spasm." Further, as of April 27, 2010, [sport medicine physician], had not documented left wrist symptoms or right leg complaints for the Appellant. The Appellant first reported right leg pain to [sport medicine physician] on September 13, 2010, at which time he prescribed a right leg pressure stocking to address his diagnosis of right venous insufficiency.

[MPIC's HCS medical consultant] therefore concluded in her **First Opinion**, as follows:

> There is an absence of documented support that the [Appellant] sustained a right leg injury as a result of the January 9, 2010 motor

> vehicle collision. Similarly, a temporal or causal relationship between left wrist symptoms and the January 2010 motor vehicle collision has not been established based on review of the medical documentation. In the absence of a causal relationship, the issue of ratable impairment is not relevant.

In her **Second Opinion**, [MPIC's HCS medical consultant] stated that she reviewed "All documents reflecting all four claims…" [MPIC's HCS medical consultant] noted that after the 2004 MVA (MVA #1), the Appellant was examined by physician [physician #2] on May 26, 2004 which resulted in objective and measureable deficits in the right wrist, further noting that the left wrist signs "were normal."

There are no medical records from either [physician #1] or [chiropractor], after the first two MVAs (May 14, 2004 and December 14, 2007), which document left wrist or right leg symptoms or pathology. After MVA #3 (February 14, 2009), [MPIC's HCS medical consultant] noted that [physician #1] recorded symptoms and physical signs for "bilateral wrist/hand tenderness" which was being managed with wrist splints.

[MPIC's HCS medical consultant] also noted that on February 20, 2009, [chiropractor], documented symptoms of swollen wrists and fingers, and diagnosed "sp/st [sprain/stain] injury (hands/wrists hyperextension injury holding steering wheel at impact)". In relation to these findings, [MPIC's HCS medical consultant] commented at page 5 of her **Second Opinion**, as follows:

> Over the years leading up to the January 9, 2010 motor vehicle collision, there is infrequent reference to left wrist symptoms and/or infrequent reference to wrist "strains" to account for wrist symptoms. Unlike for the right wrist, objective signs indicating loss of motion, loss of strength or loss of function were absent for the left wrist.

[MPIC's HCS medical consultant] noted that neither [chiropractor] nor [physician #1] documented any symptoms or findings related to the Appellant's right leg. More specifically, in her letter to MPIC, dated November 1, 2010 (after all MVAs) [physician #1] had stated that, "[The Appellant's] main complaints since the original 2004 MVA have been regarding the right wrist. I do not believe any right leg symptoms are related to the MVA's." [MPIC's HCS medical consultant] pointed out that despite the Appellant's

reports of progressively worsening left wrist symptoms, [physician #1] did not link these symptoms to any of the Appellant's MVAs.

In considering [MPIC's HCS medical consultant]'s opinions, the panel reviewed [sport medicine physician]'s medical note dated September 13, 2010 (i.e. nine months past MVA #4, January 9, 2010), which appears to be a follow-up examination to provide information about the Appellant's "bilateral wrists and right leg". The second page of the note states, as follows:

> Right leg and ankle painful mid calf and downwards since 2009, starting at the motor vehicle accident of 2009. Worsening since 2010 MVA.
>
> Also some complaints of paresthesia 3rd through 5th fingers mostly on the right hand. Possible diagnosis of venous insufficiency through leg as per Family MD. Has a background history "fibromyalgia"/chronic pain.
>
> On examination today, no major deformity or positioning of the wrist. Range of motion was full, however painful [end?] range… Right leg and ankle showed perhaps some mild swelling, 1+ with full range of motion…
>
> ASSESSMENT: Chronic non-specific forearm pain. Chronic lower leg pain, right side since 2009, query some venous insufficiency.
>
> PLAN: Trial of pressure stocking…

[MPIC's HCS medical consultant] acknowledged in her **Second Opinion** that the Appellant reported subjective left wrist pain symptoms after her February 14, 2009 and January 9, 2010 MVAs. However, [MPIC's HCS medical consultant] concluded that the medical documentation did not support, on a balance of probabilities that a significant left wrist pathology resulted from any of the four MVAs. She also concluded that "a causal relationship between the Appellant's right leg "condition" and the motor vehicle collisions is improbable."

The Appellant requested that [sport medicine physician] "provide a brief update and review concerning 3 areas of ongoing pain complaints in relation to [her] previous motor vehicle accidents." [Sport medicine physician]'s June 11, 2018 response addressed the Appellant's complaint areas related to 1) "right wrist, forearm and elbow"; 2) "left wrist forearm and elbow"; and, 3) "right ankle, shin, foot". [Sport medicine physician] stated

that he first assessed the Appellant in 2007. (Note: The Appellant's right wrist and forearm are not part of this appeal as the Appellant has previously been assessed and received these PI benefits. Also, [sport medicine physician]'s first assessment is three years after MVA #1).

Commenting on area 1 above, the panel noted that [sport medicine physician] diagnosed non-specific chronic wrist pain. Importantly, [sport medicine physician] stated that "starting in about 2012" (i.e., three years post MVA #4), the Appellant had "epicondylar pain, which has been treated by occasional tennis elbow bracing and local corticosteroid injections." He noted that as of June 2018, the Appellant continued to present with ongoing swelling and discolouration around her right wrist "with decreased functional use in terms of limitation to repetitive lifting, gripping and pulling through the wrist". [Sport medicine physician] stated, as follows"

> … She will, secondary to her symptoms, have injections to the right elbow in terms of lateral epicondylar pain.
>
> This presentation appears to be secondary to the previous motor vehicle accidents… and possible aggravation of her (pre-existing to MVA) chronic systemic pain complaints.

The panel noted the three year gap between the 2009 MVA and the right epicondylar (i.e. elbow) pain. While [sport medicine physician] states that the Appellant's symptoms 'appear' to be secondary to her MVAs, the panel finds that this statement does not connote a <u>probable</u> causal relationship between the Appellant's right elbow pain and her MVAs.

Commenting on area 2, the Appellant's left wrist, forearm and elbow, [sport medicine physician] stated that the Appellant had left wrist complaints since 2004 and her pain increased with each MVA, resulting in intervention around 2009 to 2011. (The panel noted that [sport medicine physician] started treating the Appellant in 2007). He confirmed that the Appellant had less swelling and/or discolouration and less intense pain radiation to the forearm, as compared to the right wrist/forearm, with occasional radiation towards the left lateral elbow. [Sport medicine physician] concluded, as follows:

> To date, concerning the left wrist, forearm and elbow, she does have ongoing pain, slightly reduced range of motion and decreased repetitive use secondary to her hyperextension injuries as a result of her numerous motor vehicle accidents.

The panel also noted [sport medicine physician]'s letter to MPIC dated December 21, 2010 (11 months post MVA #4) in which [sport medicine physician] made no mention of bilateral elbow symptoms. He diagnosed the Appellant's chronic right ankle pain, chronic recurrent neck pain and mechanical back pain "all in the context of a chronic benign pain syndrome 'fibromyalgia'" and said, "It appears that the claimant's motor vehicle accidents typically aggravates [sic] her pre-existing symptoms and aggravate/worsen her chronic benign pain syndrome".

Finally, in his June 11, 2018 letter, [sport medicine physician] commented upon area 3, the Appellant's right ankle, shin and foot complaints. The panel noted that this appeal involves "right leg complaints" but has considered these comments, nonetheless. [Sport medicine physician] comments, as follows:

> At the time of the writer's review in 2010, [the Appellant's] complaints were more consistent with chronic right ankle pain of a non-specific nature.
>
> …
> She continues to have pain since the afore-mentioned MVAs with her presentation consistent since that time.

The panel noted that [sport medicine physician]'s statements do not causally relate these complaints, on a balance or probabilities, to any of the Appellant's MVAs.

MPIC requested that [MPIC's HCS medical consultant] review [sport medicine physician]'s June 11, 2018 letter and opine on whether the Appellant's left wrist and right leg complaints were causally related, specifically, to her first MVA of May 14, 2004. This resulted in [MPIC's HCS medical consultant]'s **Third Opinion.** She reiterated a large portion of her **Second Opinion** which pointed out the lack of temporal link between complaints about left wrist and right leg pain. [MPIC's HCS medical consultant] stated that [sport medicine physician]'s letter did not provide additional evidence that would alter her opinion. She reiterated that causation between the Appellant's left wrist

and right leg condition and her MVAs had not been established on a balance of probabilities.

Right elbow

MPIC requested that [MPIC's HCS medical consultant] review the Appellant's file and provide an opinion about whether the Appellant's left and/or right elbow complaints were causally related to any of the Appellant's MVAs. [MPIC's HCS medical consultant] submitted an opinion about the right elbow, dated September 22, 2014 ("Right Elbow Opinion") and about the left elbow dated August 8, 2019 ("Left Elbow Opinion").

The Appellant stated in her August 12, 2010 Application For Review, and testified at the hearing, that she suffered nerve damage as a result of hyperextension injury to her "wrists and elbows", which was caused while holding the steering wheel during rear-end impacts. The panel noted that none of the narrative reports of [sport medicine physician], [chiropractor] or [physician #1] document right elbow complaints in relation to the four MVAs.

In her Right Elbow Opinion, [MPIC's HCS medical consultant] noted that [sport medicine physician] referred the Appellant for a right elbow MRI, which occurred on August 4, 2013. There does not appear to be a corresponding chart note from [sport medicine physician] indicating the date of the referral. The imaging report from August 4, 2013 indicated that the referral was for "chronic lateral epicondylosis" (i.e. 'tennis elbow') and stated, as follows:

> MRI RIGHT ELBOW
>
> Very minor edema is present over the lateral epicondyle consistent with epicondylosis. No tendon tear is seen.
>
> The collateral ligaments are normal. There is no excessive joint fluid hyaline cartilage is normal.
>
> IMPRESSION:
> Mild lateral epicondylosis.

[MPIC's HCS medical consultant] concluded at page 2 of her Right Elbow Opinion, as follows:

> There is no temporal relationship between what is indicated to be relatively recent development of a right elbow condition and the [Appellant's] cited history of MVC's. There is no causal relationship between the development of a recent right elbow condition and the [Appellant's] cited history of MVC's based on current available medical documentation.
>
> In summary, there is no probable causal relationship between the indicated diagnosis of chronic right lateral elbow eipcondylosis [sic] and the [Appellant's] cited MVC history.

Left elbow

In [MPIC's HCS medical consultant]'s Left Elbow Opinion, she reviewed the Appellant's entire file to establish what symptoms she reported within a few weeks of her MVAs (i.e. the "acute period") in an attempt to establish whether one or more collision mechanisms could have reasonably resulted in an injury to the Appellant's left elbow. [MPIC's HCS medical consultant] noted that [physician #1]'s Primary Health Care Report, following her examination of February 18, 2009, checked the box for "bilateral elbow/forearm symptoms", but did not document specific symptoms or an elbow diagnosis.

[MPIC's HCS medical consultant] pointed out that [chiropractor] recorded numbness and tingling from the Appellant's left elbow to her left fingertips but made no reference to left elbow symptoms. [MPIC's HCS medical consultant] considered [sport medicine physician]'s December 21, 2010 report to MPIC, which spoke primarily of the Appellant's left wrist symptoms. As referred to above, [sport medicine physician] commented that the Appellant's MVAs aggravated and worsened her pre-existing chronic benign pain syndrome. [MPIC's HCS medical consultant] considered [sport medicine physician]'s subsequent June 11, 2018 report in which he commented that the Appellant's "left wrist, forearm and elbow" pain was "secondary to her hyperextensions injuries as a result of the numerous motor vehicle accidents".

[MPIC's HCS medical consultant] pointed out that [sport medicine physician] did not provide any objective assessment data specifically related to the left elbow, nor did he

provide evidence to support his conclusion that the MVAs aggravated the Appellant's pre-existing chronic pain symptoms. [MPIC's HCS medical consultant] further noted that the February 19, 2014 MRI results for the Appellant's left elbow were normal.

In relation to the Appellant's left elbow and causation, [MPIC's HCS medical consultant] concluded, as follows:

> The scant documentation relating to left elbow symptoms and the absence of documented left elbow pathology, evident from this current review, leads to conclusion [sic] that, on balance, [the Appellant's] left elbow was not notably compromised by any of the four MVCs.
>
> …
>
> I have taken the motor vehicle collision mechanisms into consideration and cannot appreciate that elbow hyperextension would result from the collision mechanisms described. It is appreciated that holding onto a steering wheel too tightly could cause temporary muscular elbow pain or that, potentially, there could be direct impact on either elbow from the vehicle interior, but elbow symptoms – with one cited exception [of bilateral elbow symptoms], were not documented in the acute period post any MVC at issue; nor were objective signs documented – for any of the four MVCs at issue, suggesting elbow tissue trauma.
>
> In summary and on balance, a causal relationship between left elbow condition and MVC history at issue, is not supported, based on evidence reviewed.

Panel Findings:

As noted above, the panel found the Appellant credible. However, given her understandable memory lapses and her frank comment that she did not pay much attention to the indexed file of medical records, the panel did not rely on the Appellant's recollections of her medical complaints and diagnoses. The panel found inconsistencies in the Appellant's reports of symptoms and therefore relied primarily upon the indexed file of medical records and opinions.

The panel found that the underlying facts upon which [MPIC's HCS medical consultant] based her opinions were accurate, and therefore we found that her opinions were reliable and carried weight. None of the Appellant's doctors document a probable link between the Appellant's MVAs and her symptoms at issue in this appeal.

The panel found that while the Appellant's physicians occasionally linked some of her pain symptoms to her MVAs, the panel agreed with [MPIC's HCS medical consultant] that, unlike the assessment with the right wrist/forearm, there was no temporal connection, and there are no objective findings to support a probable causal connection between the Appellant's complaints and her MVAs.

The panel does not disagree with the Appellant that her symptoms occurred sometime after one or more MVAs. However, simply because one event follows another, this does not prove on a balance of probabilities, that the preceding event caused the subsequent symptoms. There must be a temporal link between the events, with some objective physical findings and diagnoses in order for the panel to find causation.

Disposition

The panel finds that the Appellant has not proven on a balance of probabilities that her right leg, left wrist and bilateral elbow symptoms are causally related to any of her MVAs. The Appeals are therefore dismissed and the Internal Review Decisions of November 8, 2013 and October 21, 2014 are confirmed.

Dated at Winnipeg this 27th day of July, 2021.

PAM REILLY

JANET FROHLICH

SANDRA OAKLEY