

Chronic Pain and the MIG

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The issue as to what continues removal from the *Minor Injury Guideline* (“MIG”) continues to be one of the most common issues I deal with at the Licence Appeal Tribunal. This is particularly the case when the claim involves an apparent chronic pain diagnosis.

The MIG establishes a framework for the treatment of minor injuries in a statutory accident benefits claim. Medical and rehabilitation benefits for predominantly minor injuries are limited to \$3,500, although a claimant may escape the MIG if he or she can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery under the MIG.

The claimant has the onus of establishing entitlement to coverage beyond the \$3,500 cap on a balance of probabilities.

The issue of chronic pain and when that diagnosis constitutes a removal from the MIG was the central issue in the recent case of [*G.B.C. v The Co-Operators Insurance Company*](#), 2020 CanLII 47504.

Facts

The claimant was injured in an accident in August 2017 and sought various benefits from Co-operators. The insurer denied the cost of examinations in dispute on the basis that the claimant sustained injuries that are treatable within the MIG.

The claimant took the position that his chronic pain and psychological impairments took him outside the MIG.

The claimant relied on a Disability Certificate identifying his impairments as including various strains and sprains to his body, headaches, suspected lumbar and other intervertebral disc disorders with radiculopathy and psychological issues. He also relied on a report from a physiatrist diagnosing him with chronic pain.

Decision

The Tribunal found that, on a review of the medical documentation, there was limited evidence that the claimant sustained physical injuries as a result of the accident that warrant treatment beyond the MIG.

The Tribunal noted that the physical impairments listed within the Disability Certificate, including mainly sprain and strain type injuries, fall squarely within the definition of a minor injury in the *Schedule*. The Treatment and Assessment Plans that followed reproduced these same minor injuries.

While the claimant stated in reply that there is voluminous medical evidence of a pre-existing condition that justifies removal from the MIG, the Tribunal noted that the reference to headaches in the claimant's physiatry report "falls well-short of the compelling medical evidence standard required for removal under s. 18(2)."

The Tribunal clarified that the applicant may escape the MIG "where there is evidence of functional impairment caused by consistently severe or debilitating pain as a result of the accident."

For this, the claimant relied on the report of the physiatrist, which diagnosed chronic pain. The report opines that the claimant suffers chronic pain because he had not healed within the expected time frame and "he is one of the 10-15% of 'unfortunate patients' whose soft-tissue injuries never completely heal."

On this point, the Tribunal found that "pain is not chronic pain justifying removal from the MIG if it only occurs 3-4 times per week at a moderate severity, as the report indicates." The Tribunal then goes on to critique the physiatry assessment:

To be frank, where Dr. Wong's report was completed over two years post-accident in December 2019, where G.B.C. was able to return to work in March 2018, where he stopped attending for physical treatments entirely in July 2018, where there is no evidence that he continues taking pain medication (other than Advil) or was prescribed same, where his OHIP summary reveals a single post-accident doctor visit in September 2017, where the s. 44 reports found no impairments and where he has not submitted any evidence of continuous or corroborating visits to his family physician to document his pain complaints and functional limitations from same, I find Dr. Wong's conclusion that G.B.C. is one of the rare individuals whose soft-tissue injuries never heal to be tenuous and unsupported by the medical evidence.

The Tribunal then discussed the insurer's evidence and noted a preference for the s.44 physiatry report of Dr. Ko, which found that the claimant sustained a sprain and strain type injury as a result of the accident. The Tribunal's preference of this evidence was rooted in the fact that it was completed a year prior to the report of Dr. Wong when the claimant was still attending treatment and just before he returned to work.

The Tribunal ultimately found as follows: "on Dr. Ko's opinion, the lack of contemporaneous medical evidence supporting his complaints, the fact that [the claimant] has not demonstrated functional impairment or debilitating pain and that he ceased physical treatment for his pain less than one year after the accident and that he still has funds remaining in the MIG, [the Tribunal is] not prepared to accept that his pain warrants removal from the MIG at this time."

The Tribunal also dismissed the claimant's argument that his psychological impairments as a result of the accident warrant treatment outside of the MIG.

On this issue, the Tribunal noted that the claimant "has not produced any evidence—a medical opinion, a clinical note or referral, treatment records, an OHIP record, an affidavit, *etc.*—evidencing a visit for psychological or emotional symptoms in the two years between these two OCF-18's [Treatment and Assessment Plans] or, really, at any point post-accident to support further investigation." Similar to the physical impairments analysis, the Tribunal favoured the s.44 report of the insurer.

Takeaway

The onus is on the claimant to prove that the accident-related impairments warrant treatment outside the MIG. As is all too common with many of these claims, it is insufficient to simply deliver a report regarding a general diagnosis of chronic pain and/or a psychological condition without providing evidence as to why this actually takes the claimant outside of the MIG.

A diagnosis of chronic pain or even reference to a pre-existing condition is not an automatic removal from the MIG. The claimant has the onus to demonstrate why the particular diagnosis removes the claimant from the MIG. The surrounding medical evidence and the claimant's functional abilities need to be examined.