



Civil Resolution Tribunal

Date Issued: March 21, 2025

Date Order Varied: May 2, 2025

File: AB-2023-004315

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Chiang v. ICBC*, 2025 BCCRT 366

BETWEEN:

PAULA KRYSTIN CHIANG

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH
COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. On May 6, 2021, the applicant, Paula Krystin Chiang, was injured in a motor vehicle accident. She claims permanent impairment compensation (PIC), income replacement benefits (IRB), and health care and rehabilitation benefits.
2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), says that Mrs. Chiang has not proven that she is entitled to PIC or IRB. It says it has paid for all of Mrs. Chiang's health care and rehabilitation costs. It says it needs supporting documentation to provide additional benefits.
3. Mrs. Chiang is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the CRT jurisdiction over the determination of entitlement to accident benefits.
5. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.

7. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

8. The issues in this dispute are:
 - a. Is Mrs. Chiang entitled to PIC?
 - b. Is Mrs. Chiang entitled to IRB?
 - c. Is Mrs. Chiang entitled to additional health care and rehabilitation benefits?

BACKGROUND, EVIDENCE, AND ANALYSIS

9. In a civil claim such as this, Mrs. Chiang, as the applicant, must prove her claims on a balance of probabilities, meaning “more likely than not”. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Background and Medical Evidence

10. As I noted above, Mrs. Chiang was in a motor vehicle accident on May 6, 2021. She was driving through an intersection when she collided with a tractor turning left. Mrs. Chiang went to the hospital. Photos taken after the accident show that the damage to Mrs. Chiang’s truck was significant.
11. On May 8, 2021, a general practitioner (GP), who I infer is not Mrs. Chiang’s regular GP, filled out an assessment report. Mrs. Chiang reported severe back pain and muscle aches. Her GP diagnosed her with a lower back ache, upper back spasm, musculoskeletal (MSK) pain, and left shoulder pain.

12. On July 7, 2021, Mrs. Chiang's regular GP filled out ICBC's standard medical report. The GP's assessment was that she had a diffuse MSK injury and diagnosed her with generalized muscle sprains.
13. On July 15, 2021, Mrs. Chiang's GP filled out ICBC's extended medical report. The GP referred to x-rays which showed that Mrs. Chiang suffered a wedge fracture at her T11 vertebra which was likely caused by the motor vehicle accident.
14. A CT scan dated April 5, 2022 showed that Mrs. Chiang's T11 vertebra had approximately 50% compression. An MRI dated January 6, 2023 showed that Mrs. Chiang had multilevel facet joint osteoarthritis, a small disc herniation at T8-9, and a 55% loss of T11 anterior vertebral height. An x-ray and CT scan dated March 8, 2023 confirmed these findings.
15. A letter from Mrs. Chiang's GP dated June 11, 2024, said that Mrs. Chiang has constant, severe back pain that has led to impairments in her daily life and work. A reassessment report from the GP on November 1, 2024, said Mrs. Chiang is working part time because of her pain and diagnosed her with chronic pain from her T11 compression fracture. The GP stated this was a permanent injury with no possibility of recovery.

Is Mrs. Chiang entitled to PIC?

16. *Insurance (Vehicle) Act* IVA section 129 says an insured is entitled to a lump sum payment if they suffer a permanent impairment because of an accident. PIC is calculated according to the *Permanent Impairment Regulation* (PIR). PIR section 10(1) says an impairment is "permanent" when, following a period of time sufficient for optimal tissue repair, the impairment has become static, has stabilized, or is unlikely to change significantly with further therapy. PIR section 10(2) says ICBC must not pay compensation until the impairment is permanent.
17. ICBC says Mrs. Chiang's injuries are not permanent. It relies on the initial GP's reports which say that Mrs. Chiang's condition is likely to improve with treatment.

However, these reports were written on the assumption that Mrs. Chiang's injuries were soft tissue strains and sprains. More recent medical evidence explains the extent of Mrs. Chiang's back injury. Mrs. Chiang suffered a T11 vertebral fracture and her GP's most recent letter says that her injuries are not expected to improve. So, I find that Mrs. Chiang's T11 vertebral fracture is permanent.

18. PIR Schedule sections 37(2)(b) and 39 together say that a T11 vertebral compression fracture with more than 50% loss of vertebral height, radiographical instability, and more than 5mm of slippage has a 6% permanent impairment rating.
19. The January 6, 2023 MRI report did not mention any slippage. Mrs. Chiang argues that MRIs do not show slippage. However, in a November 8, 2024 email to ICBC, the radiologist who interpreted the MRI said they did not mention slippage in their report because they did not observe any slippage in the MRI. Given the radiologist's clear statement that there was no observable slippage, I find that Mrs. Chiang does not meet the 5mm slippage criteria for PIC under PIR Schedule sections 37(2)(b) and 39.
20. With that said, I find that Mrs. Chiang's T11 vertebral fracture is a permanent impairment which is not listed in the PIR. I say this because other sections of the PIR Schedule that require minimum conditions also state expressly when a permanent impairment has a 0% rating if those conditions are not satisfied. For example, PIR Schedule section 12 says that an injury with minimal range of motion loss has a 0% permanent impairment rating. PIR Schedule section 39 has no similar column which says that a T11 vertebral fracture without slippage has a 0% permanent impairment rating. So, I find that a vertebral fracture without slippage is a distinct injury not listed in the PIR.
21. PIR section 5(1)(c) says that if an insured sustains a permanent impairment not described in the Schedule then the permanent impairment rating is calculated using other impairments described in the Schedule as a guide.

22. I find that the most analogous impairment is PIR Schedule section 39 item 2: a vertebral compression fracture with slippage but without instability with a loss of vertebral height from 25% to 50%. While Mrs. Chiang's T11 vertebral fracture does not have slippage, her MRI showed that she lost 55% of vertebral height which is more than this listed impairment requires. So, I find it reasonable to set a 2% permanent impairment rating for her T11 vertebral fracture under PIR section 5(1)(c).
23. PIR section 9 provides a formula for calculating PIC for non-catastrophic injuries where the permanent impairment rating is multiplied by \$167,465. 2% of \$167,465 is \$3,349.30, so I award Mrs. Chiang \$3,349.30 for PIC.
24. Finally, I note that the MRI says that Mrs. Chiang has a disc herniation at T8-9. A disc herniation is a permanent impairment under PIR Section schedule 41. However, Mrs. Chiang did not raise this injury in her Dispute Notice or submissions and none of Mrs. Chiang's treating practitioners commented on what caused this disc herniation. Nothing in this decision prevents Mrs. Chiang from claiming PIC for her disc herniation or any other permanent injury which she can prove was caused by the accident, subject to any applicable limitation period.

Is Mrs. Chiang entitled to IRB?

25. The IVA and the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRRB) set out an insured's entitlement to income replacement benefits.
26. Mrs. Chiang worked as a laboratory assistant prior to the accident. ICBC says she was receiving long term disability payments at the time of the accident because of an unrelated injury to her knee. While this is not confirmed anywhere in the evidence, Mrs. Chiang does not deny it. Mrs. Chiang told an ICBC adjuster on May 7, 2021, that she was supposed to return to work in mid-May, but this was delayed because of the May 6, 2021 accident.

27. Mrs. Chiang started a graduated return to work in November 2021 as a 0.72 full-time equivalent (FTE) laboratory assistant. Mrs. Chiang's GP recorded on November 15, 2021, that Mrs. Chiang's back seized while working and it took four days to recover. The GP also noted that Mrs. Chiang's work involved alternating between sitting and standing and that her most recent shift was better.
28. ICBC agrees that Mrs. Chiang was not able to work for a period after her accident because of her injuries. It paid Mrs. Chiang IRB from June 2 to October 28, 2021. ICBC classified Mrs. Chiang as a full-time earner, used her gross yearly employment income at \$41,274.20, accounted for tax and payroll deductions, and calculated her weekly IRB at \$580.76. ICBC then deducted the disability payments which Mrs. Chiang received and paid \$83.55 per week. Mrs. Chiang does not dispute ICBC's calculations and provided no evidence, such as tax returns or pay stubs, to show that her IRB payments should have been higher.
29. It is common ground that Mrs. Chiang reduced her hours in April 2023. Mrs. Chiang says she moved to a 0.5 FTE casual position. She admits that she did this initially because of unrelated family issues. However, she says that she could not continue to work longer hours because of her pain. Her submissions say that \$1,300,000 will cover her lost earnings to the age of 65, the loss of employer-paid benefits, and her husband's RRSP withdrawals done to support their family. She did not provide any explanation for how she calculated \$1,300,000.
30. ICBC says Mrs. Chiang reduced her hours for reasons unrelated to her injuries. It provided an internal note dated June 28, 2023 from one of its employees. The note references a conversation with Mrs. Chiang on April 18, 2023, which says Mrs. Chiang had "returned to function" in work and daily activities, though she still struggled with physically demanding tasks. ICBC prepared this note after it received a notification that Mrs. Chiang started this CRT Dispute Notice. I place no weight on ICBC's note because it is self-serving, it is unreliable because it was made over two months after the alleged conversation, and the statements in the note are not reflected anywhere else in the evidence.

31. The parties provided very little evidence on Mrs. Chiang's work and ability to work. The only medical evidence I have from 2023 are the two medical imaging reports, both ordered to provide an explanation for Mrs. Chiang's ongoing back pain. The GP's June 11, 2024 letter says that Mrs. Chiang's injuries are causing severe pain and impair her work and daily life.
32. Ordinarily, I would look at the GP's records for evidence about Mrs. Chiang's injuries. However, I do not have the GP's medical records after November 15, 2021. I do not fault Mrs. Chiang for not providing her medical records because she is self-represented and has no background in law. By contrast, ICBC is a sophisticated litigant and knows that these medical records are relevant.
33. IVA section 28.1 says Mrs. Chiang's health care practitioners are required to provide reports to ICBC about her injuries and prognosis. Mrs. Chiang also signed an authorization for ICBC to obtain her GP's medical records. ICBC has or could easily have obtained the GP's records after November 15, 2021. I draw an adverse inference against ICBC for failing to produce these records, meaning I assume that ICBC did not provide these records because it would not help its case.
34. Based on this adverse inference, Mrs. Chiang's 2023 medical imaging reports, and the GP's uncontradicted statements that Mrs. Chiang's back pain is ongoing and impairs her ability to work, I find that Mrs. Chiang was unable to continue working at a 0.72 FTE. Though Mrs. Chiang initially reduced her hours for reasons related to her family in April 2023, I find it reasonable to assume that these family reasons resolved within the month and Mrs. Chiang was working reduced hours from May 2023 onwards because of a relapse of her accident related-injuries.
35. IRRB section 9(1) sets out how to calculate IRB where an insured suffers a relapse within two years of receiving IRB. I do not have tax returns, pay stubs, or anything that could help me calculate Mrs. Chiang's IRB. So, I order ICBC to calculate Mrs. Chiang's IRB entitlement under IRRB section 9 beginning on May 1, 2023.

Is Mrs. Chiang entitled to additional health care and rehabilitation benefits?

36. IVA section 123 and section 19 of the *Enhanced Accident Benefits Regulation* together say that an insured is entitled to the payment or reimbursement of reasonable expenses incurred for health care services that are provided to facilitate the insured's recovery from bodily injury or to address a decline in the insured's physical or mental function because of their bodily injury.
37. ICBC has funded all of Mrs. Chiang's treatments to date. Mrs. Chiang provided no evidence or submissions to show that she incurred expenses for her health care and rehabilitation which were not covered by ICBC. As noted above, the onus is on Mrs. Chiang to prove her claim. I find that she has not done so and dismiss her claim for health care and rehabilitation benefits.
38. Nothing in this decision prevents Mrs. Chiang from claiming future health care and rehabilitation benefits for her accident-related injuries or filing an additional CRT claim for these benefits, subject to any applicable limitation period.

FEES, EXPENSES, AND INTEREST

39. Though ICBC must not pay PIC until the impairment is permanent, PIR section 10(3) says that ICBC must calculate and determine compensation as of the date of the accident. PIC is calculated through a set formula under the PIR. So, I find that PIC is a pecuniary award which attracts interest under the *Court Order Interest Act* (COIA) from the date of the accident. Mrs. Chiang is entitled to pre-judgment interest on the \$3,349.30 PIC award from May 6, 2021, the date of the accident to the date of this decision. This equals \$399.32.
40. The COIA also applies to Mrs. Chiang's unpaid IRB. I order ICBC to calculate the COIA interest payable to Mrs. Chiang and pay her this amount.
41. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Mrs. Chiang was largely successful in this dispute. So, I order ICBC to reimburse Mrs.

Chiang \$125 for her paid CRT fees. Neither party paid any dispute related expenses.

ORDERS

42. Within 75¹ days of the date of this decision, I order ICBC to:

- a. Calculate Mrs. Chiang's IRB from May 1, 2023, and reimburse her for any underpayment,
- b. Calculate the COIA interest owing on the IRB underpayment and pay Mrs. Chiang that amount,
- c. Pay Mrs. Chiang \$3,349.30 for PIC plus \$399.32 for COIA interest, and
- d. Reimburse Mrs. Chiang \$125 for her CRT fees.

43. Mrs. Chiang is entitled to post-judgment interest under the COIA.

44. I dismiss Mrs. Chiang's claim for healthcare and rehabilitation benefits.

45. This is a validated decision and order. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Peter Mennie, Tribunal Member

¹ ICBC requested additional time to calculate Mrs. Chiang's IRB. Mrs. Chiang did not oppose this request. Given the parties' agreement, I have varied the terms of the order under CRTA section 48(4).