

ONTARIO INSURANCE COMMISSION

BETWEEN:

VIRGINI MUBARAK

Applicant

and

GENERAL ACCIDENT ASSURANCE COMPANY OF CANADA

Insurer

DECISION

The Applicant, Virgini Mubarak, was injured in a motor vehicle accident on March 17, 1993. She applied for and received statutory accident benefits from the Insurer, payable under Ontario Regulation 672.¹ Weekly income benefits were terminated by the Insurer on July 17, 1994. The parties were unable to resolve their disputes through mediation and the Applicant applied for arbitration under the *Insurance Act*, R.S.O. 1990, c.l.8, as amended. The Applicant subsequently found other work, and by May 1, 1995, her income exceeded her weekly benefits.

The issues in this hearing are:

1. Is the Applicant entitled to weekly income benefits pursuant to section 12(1) of the *Schedule* for the period between July 17, 1994 and May 1, 1995?

The Applicant also claims interest on any amounts owing, and her expenses incurred in the hearing.

¹ Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule —Accidents Before January 1, 1994*. In this decision, the term "*Schedule*" will be used to refer to Regulation 672.

Result:

1. The Applicant is not entitled to weekly income benefits after July 17, 1994.
2. The Applicant is entitled to her expenses of the arbitration.

Hearing:

The hearing was held in North York, Ontario, on August 23, 24, and September 6, and 7, 1995, before me, Stewart M. McMahon.

Present at the Hearing:

Applicant:	Virgini Mubarak
Applicant's Representative:	Stanley Pasternak Barrister and Solicitor
Insurer's Representative:	Neil Colville-Reeves Barrister and Solicitor

Witnesses:

Five witnesses were called: The Applicant, Dr. Salva Gideon, Ms. Karen Westhaver, Dr. Poggemiller, and Ms. Sandra D'Souza

Exhibits:

7 exhibits were filed; they are listed in Schedule A.²

EVIDENCE and FINDINGS**Background**

Ms. Mubarak is 27 years old. She graduated from Ryerson Polytechnical Institute in the spring of 1992 with an honours degree in Aerospace Engineering. Because she was unable to find work in her chosen field, she began working at a discount store called "A Buck or Two" shortly after graduating. Ms. Mubarak testified that she took the job as a

² Only those documents specifically referred to by counsel and identified by tab numbers in Schedule A were treated as exhibits and considered by me.

temporary measure while she looked for work related to her aerospace training. It became apparent that looking for work in her field was a major focus in Ms. Mubarak's life, and that her inability to find suitable employment was a constant source of frustration and disappointment.

Ms. Mubarak was involved in a motor vehicle accident while on her way to work on March 17, 1993. Her vehicle struck the rear of a van. Ms. Mubarak testified that she struck her knees on the dash, and immediately felt sore and stiff in the neck and back. The police were not called, and she was able to drive from the accident scene to her place of work. Ms. Mubarak advised her employer that she was too sore to work, and then drove home. She returned to work the next day.

Because her symptoms did not subside, Ms. Mubarak saw her family physician, Dr. S. Gideon, two days later. Dr. Gideon diagnosed spasm in the trapezius and paraspinal muscles. She prescribed hot showers, back exercises, Myoflex rub and Tylenol extra strength. Her clinical note of the attendance contains the following significant reference "must work—putting up with pain".

Ms. Mubarak returned a few days later with continued complaints of low back pain. Palpation of the back muscles revealed spasm in the same muscle groups. Naprosyn and Flexeril were prescribed.

In the spring of 1993, shortly after the accident, the store where Ms. Mubarak worked was purchased by a partnership comprised of Mr. Salim Mubarak, who is Ms. Mubarak's father, and Ms. Hiyam Ahmed.

Ms. Mubarak began to see a chiropractor on July 13, 1993, after seeing a demonstration at the shopping mall. She saw him regularly in July and August and thereafter once or twice a month through to November.

Ms. Mubarak testified that because her father had purchased the store, she felt compelled to keep on working, and that she managed to do so with some difficulty during the summer and fall months. However as Christmas approached, she found that

the work was increasingly difficult to cope with, because of a significant increase in her hours and the amount of merchandise that had to be unpacked and displayed.

She returned to see Dr. Gideon on November 25, 1993. Dr. Gideon's clinical note reveals that Ms. Mubarak and the doctor discussed her work load and the fact that she was doing more and more lifting. Ms. Mubarak returned to Dr. Gideon's office on December 8, 1993 with continued complaints of fatigue and back pain. Dr. Gideon encouraged Ms. Mubarak to find alternate employment, if the physical demands of her job could not be reduced.

Ms. Mubarak spoke with her father who convinced her to remain at work over the Christmas rush. She eventually left work on January 8, 1994. After leaving work, she applied to the Insurer for weekly income benefits on the basis that she was substantially disabled. The Insurer paid these benefits until July 17, 1994, when they were terminated.

Ms. Mubarak claims that she continued to be disabled as a result of the motor vehicle accident on March 17, 1993, and is claiming a weekly income benefit pursuant to section 12(1) which provides,

The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident a weekly income benefit during the period in which the insured person suffers substantial inability to perform the essential tasks of his or her occupation or employment...

Essential Tasks

The first step in considering Ms. Mubarak's claim is to ascertain the essential tasks of her employment at the time of the accident.

I received evidence concerning the essential tasks of Ms. Mubarak's employment from Ms. Mubarak, and Ms. D'Souza, a rehabilitation coordinator hired by the Insurer. Both before and after the purchase of the store by Mr. Mubarak and Ms. Ahmed, the store was staffed in two shifts. The first shift started at 9:00 a.m. and finished in mid-afternoon, the second started in mid-afternoon and finished at closing. At the time of the

accident, Ms. Mubarak worked approximately 40 hours per week over a six day work week. She alternated between the two shifts. Monday to Thursday she worked alone, but on Friday evenings and Saturdays she had an assistant. She was paid a gross salary of \$400 per week. After Mr. Mubarak and Ms. Ahmed purchased the store, her hours and duties remained roughly the same, but she worked alone on Friday evenings. Ms. Mubarak stated that she did not work the same shift as the owners. Mr. Mubarak and Ms. Ahmed worked one shift together and Ms. Mubarak worked the other. Ms. Mubarak suggested that she frequently worked the day shift. The only references in the documentation are to the evening and weekend shifts, and I note that the motor vehicle accident happened in mid-afternoon while Ms. Mubarak was on her way to work. I find it more plausible that the owners generally worked the day shift and Ms. Mubarak worked the afternoon\evening shift and on Saturday.

Ms. Mubarak described herself as a store manager and identified her duties as follows: pre-opening cleaning, setting up the cash register, arranging the displays in the mall concourse, attending to customers, and receiving, unpacking and stocking merchandise. The pre-opening duties and the stocking of merchandise are the most physically demanding parts of the job, and most of the evidence I heard concerning Ms. Mubarak's difficulties concerned these tasks.

Ms. Mubarak testified that she received four or five shipments of merchandise per week. Most suppliers would deliver the shipments to the front or rear of the store. She stated that she was responsible for unpacking the merchandise and displaying it in the store, or stacking it in a storage room at the rear of the store. Ms. Mubarak testified that occasionally the drivers would refuse to unload heavy boxes, and she would have to unload them from the truck herself. According to Ms. Mubarak, the average weight of the boxes was 20 lbs, with the heaviest being in the order of 50 to 70 lbs. Ms. Mubarak had the use of a dolly for moving the heavier boxes. She stated that she spent approximately three to four hours per day unpacking, storing or displaying merchandise and that at least three times per week this involved rearranging heavy shelving. I note that after the accident when she complained that her back was sore, her father told her that moving the heavier boxes could be left to him.

Ms. Mubarak stated that as the Christmas rush approached, her workload increased substantially. She had to work up to 60 hours per week and received as many as 60 boxes of merchandise in a day.

Ms. Mubarak's evidence concerning her duties is generally corroborated by a statement given by her father to Ms. D'Souza.

Ms. D'Souza testified about a conversation she had with Ms. Hiyam Ahmed, the co-owner of the store. According to Ms. Ahmed, Ms. Mubarak was nothing more than a cashier who never worked alone, never had to enter the delivery trucks and did not do any heavy lifting. The Insurer did not call Ms. Ahmed to testify, despite the fact that she was served with a summons. This hearsay evidence is on a crucial point. It is in direct conflict with the *viva voce* evidence of Ms. Mubarak and has not been tested by cross-examination. In the circumstances, I afford it very little weight.

Ms. D'Souza testified that despite her conversation with Ms. Ahmed, she generally accepted Ms. Mubarak's statements concerning her job duties. However she noted that the amount of time Ms. Mubarak indicated she devoted to storing, unpacking and displaying merchandise appears inconsistent with the fact that she normally worked alone, and was responsible for attending to the customers. I agree. Moreover in general I found Ms. Mubarak to be an unreliable witness. Her evidence contained a number of inconsistencies that I note during the course of these reasons. I find that Ms. Mubarak exaggerated the physical demands of her job.

I accept that Ms. Mubarak was responsible for opening the store a couple of days per week, which involved about a half hour of physically active work, including moving around boxes of merchandise, setting up displays in the mall concourse, stocking shelves, and placing items on overhead pegs. I also accept that Ms. Mubarak would receive shipments of merchandise a couple of times per week, and that some arranging of this merchandise was necessary. However Ms. Mubarak's evidence that she spent three or four hours per day "merchandising" must be scrutinized in light of the fact that most of the time she worked alone and had to attend to customers. I find that it is more likely that most of the major "stocking" duties were being done by Mr. Mubarak or Ms.

Ahmed, who worked together, and that Ms. Mubarak's responsibility was limited to some restocking that would by necessity be done on an intermittent basis in between attending to customers. I also note that while some of the boxes were undoubtedly heavy, most of the individual pieces of merchandise to be unpacked and displayed were quite light.

Functional Capacity Evaluations and Rehabilitation Programs

As noted above, after Ms. Mubarak left work in January 1994, the Insurer retained Ms. D'Souza of Voc-Care to supervise her rehabilitation program. During her first meeting with Ms. Mubarak, Ms. D'Souza asked her to complete a functional capacity checklist by rating her ability to perform various physical tasks. Ms. Mubarak did not report any of the tasks as "impossible." Two tasks relating to lifting objects overhead were rated as "very difficult," and lifting objects of various weights to other levels was routinely rated as a task that could be done but with some pain.

Ms. D'Souza arranged for Ms. Mubarak to start an exercise program at a local gym and referred her to Goreway Physiotherapy and Rehabilitation Centre for a functional capacity assessment. The testing was conducted on March 18, 1994. The assessment confirmed deficits in lifting, but attributed them principally to weak abdominal muscles. The staff recommended refocusing Ms. Mubarak's gym program to work on strengthening her abdominal muscles, and cardiovascular development, along with enrollment in an aqua-fit program Ms. D'Souza reported that the staff at Goreway were of the opinion that Ms. Mubarak was "capable of resuming work on a part-time basis provided she is able to pace herself while completing the lifting and carrying demands of her employment."

Ms. D' Souza met with Ms. Mubarak in mid-March to discuss her rehabilitation program. She encouraged her to register for a five day a week aqua-fit program. During this period Ms. Mubarak was maintaining a very busy schedule and did not believe that she had the time to attend five classes per week. She agreed to attend three classes per week. In fact, she attended on average only twice per week and dropped out of the classes after a few weeks. Ms. Mubarak testified that she had a very active social life,

was looking for work in the aerospace industry and had secured a part-time job tutoring high school students in maths and sciences one or two days per week.

I am also satisfied that Ms. Mubarak was participating in Kung Fu classes. Shortly before the motor vehicle accident, Ms. Mubarak had joined a Kung Fu club and was taking traditional Kung Fu training. At the time of the accident, she was a novice or "white belt". Ms. Mubarak testified that as a result of the accident, she had to give up Kung Fu training but was able to participate in Tai Chi, a form of gentle exercise. There is a reference in Dr. Gideon's clinical note from the attendance immediately following the motor vehicle accident that indicates that Dr. Gideon advised Ms. Mubarak to stop the Kung Fu training, and I accept that she temporarily gave it up. Ms. Mubarak maintains that she had not returned to traditional Kung Fu training. I do not accept this evidence. A dozen or so membership agreements with the Kung Fu club were entered into evidence. None make any reference to Tai Chi training, and two dated March 1994, indicate that Ms. Mubarak had graduated to a "yellow belt." I am satisfied that after a brief hiatus following the accident Ms. Mubarak continued with her Kung Fu training.

The fact that Ms. Mubarak was maintaining such a busy schedule, including a part-time job and engaging in a physically demanding sport, suggests to me that she was well on the way to recovering from the effects of the motor vehicle accident by the spring of 1994.

Ms. Mubarak had been taking flying lessons for a number of years and in the spring of 1994, she was scheduled to take a Civil Aviation Medical Examination. During the course of the examination, Ms. Mubarak was asked to complete a questionnaire concerning her general health. One of the questions asked if she was receiving "a pension or compensation for injury." Ms. Mubarak answered in the negative despite the fact that she was receiving weekly income benefits from the Insurer based on her disability as a result of the accident. She was also asked if she had been treated for "musculo skeletal disorders." Ms. Mubarak answered in the negative, despite the fact that she had received treatment for muscle spasm in her back. Ms. Mubarak's attempt to "explain away" the answer by suggesting that the examining doctor told her the

question was restricted to congenital defects was contradicted by the examining doctor who was called to testify before me. Ms. Mubarak passed the examination. Counsel for the Insurer argued that this was evidence that Ms. Mubarak's injuries were completely resolved. Dr. Poggemiller, who conducted the examination, testified that her physical examination would not have revealed any deficits in lifting or evidence of muscle spasm if such had existed. In light of this admission, I am not satisfied the passing grade on the medical is proof that Ms. Mubarak was no longer disabled. However Ms. Mubarak's dishonesty in answering the questionnaire seriously affects my assessment of her credibility.

I also note that Ms. Mubarak was less than forthright with respect to her flying activities post-accident. She testified in chief that because of her injuries, she had only flown once since the accident. Ms. Mubarak's "log book" was entered into evidence. It reveals that Ms. Mubarak made ten flights between March 28, and August 29, 1993. Her explanation that she did not consider most of the entries "flights" because she was listed as the "2nd pilot / student" rather than "the pilot" makes no sense in light of the fact that she was a student pilot at the time, and only serves to further undermine her credibility.

After the Goreway assessment, Ms. D'Souza met with Dr. Gideon who suggested that the assessment was inadequate in that it did not measure Ms. Mubarak's ability to perform repetitive tasks. Ms. D'Souza therefore arranged for a two-day Functional Capacity Evaluation on June 6 and 7, 1994, at the Canadian Back Institute.

The testing had a number of components. The most important ones were; (a) lifting weights on a one time basis, (b) lifting weights on a repetitive basis and (c) a work simulation. On the one time "maximal" lifting test, Ms. Mubarak demonstrated an average capability of between 40 and 60 lbs. depending upon the height of the lift. On the repetitive lifting, the average was between 30 and 40 lbs. depending upon the height. On the work simulation Ms. Mubarak demonstrated the ability to lift weights ranging from five to 20 lbs. on a repetitive basis for one and a half to two hours.

The battery of tests was repeated on the next day. Ms. Mubarak showed no significant change in ability over the two days. She reported an increase in low back pain during the work simulation on the first day, but not on the second.

Based on this testing, the staff of the Canadian Back Institute concluded:

Ms. Mubarak is capable of returning to her position as a store manager. She is capable of performing full hours and duties provided she is not required to perform repetitive lifting and bending for more than 1½ to 2 hours.

On June 8, Ms. Mubarak phoned Karen Westhaver of the Canadian Back Institute to report an increase in muscle soreness which she related to the testing procedures. She also phoned Ms. D'Souza to report that she was in "extreme pain."

Ms. Mubarak also saw Dr. Gideon on June 8, at which time she complained that she was having a "hard time coping with the negative comments from rehab." Dr. Gideon testified that her patient complained of being sore and that the rehabilitation staff had not accounted for her pain when they told her that she was fit to go back to work. Dr. Gideon provided a sample of Norflex for her back and booked a follow-up appointment for June 16, 1994. The follow-up was booked because of the doctor's concerns about depression.

Dr. Gideon's note of June 16, 1994 states:

feeling much better-less depressed took Norflex for few days 3-4 days-
feeling better-less pain has also been taking easy and less work
restarting the gym on Monday

Dr. Gideon testified that the reference in the clinical note to "feeling much better" was limited to the psychological aspect of her patient's health. However the note clearly states "took Norflex for a few days...feeling better-less pain." I also remark that Ms. D'Souza met with Dr. Gideon on June 29. As was usual Ms. D'Souza followed up with a letter summarizing the meeting, which she invited Dr. Gideon to sign and return if it accurately reflected their discussions. Dr. Gideon signed and returned the letter, which states in part:

Ms. Mubarak last attended your office on June 16, 1994, at which time you noted the client's symptoms had resolved, and she noted there was less pain and that she "felt better, both emotionally and physically."

I am satisfied that after taking the sample of Norflex for a few days, the flareup in Ms. Mubarak's symptoms brought on by the testing quickly resolved

During the meeting between Dr. Gideon and Ms. D'Souza, Dr. Gideon expressed her disagreement with the conclusions reached by the staff at the Canadian Back Institute. She stated that the Institute's opinion was flawed because the evaluators failed to follow up with Ms. Mubarak in the days following the testing to ascertain if she was in any pain. Ms. Westhaver of the Canadian Back Institute acknowledged that the testing is not designed to measure pain, and that the focus is on physical capacity. It was Dr. Gideon's opinion that Ms. Mubarak was not fit to return to any type of work that required repetitive lifting or bending, and that she required further treatment, which she believed ought to be self-directed.

In assessing Dr. Gideon's evidence, I note that she had a tendency to become an advocate for her patient and would emphasize different aspects of the patient's condition, depending upon the audience. For example, at the time Ms. Mubarak left the store, she was bothered by an allergic reaction to the perfumes that were being sold. In her testimony before me Dr. Gideon characterized those allergies as insignificant and dismissed any suggestion that they played a role in her advice to Ms. Mubarak to find alternate employment. However when Dr. Gideon was completing a UIC form, she noted that Ms. Mubarak suffered from severe environmental allergies. More importantly Dr. Gideon's opinion that Ms. Mubarak was not fit to return to her job at the store was based on an incomplete understanding of Ms. Mubarak's duties. Dr. Gideon thought that Ms. Mubarak was responsible for most of the heavy work herself. I also note that Dr. Gideon's original recommendation to Ms. Mubarak was to find alternate work if the physical demands could not be reduced. With the passing of the Christmas season, those demands would in fact have been reduced to levels that Ms. Mubarak had demonstrated she was capable of coping with.

I prefer the evidence from the two functional capacity evaluations, and in particular the testing done by the Canadian Back Institute. This testing analysed most of Ms. Mubarak's job requirements and found that in most cases, Ms. Mubarak was capable of carrying them out.

In response to Dr. Gideon's suggestion that Ms. Mubarak would benefit from a self-directed exercise program, Ms. D'Souza arranged for Deana Mercier, a personal trainer, to meet with Ms. Mubarak to assist in the design of a personal exercise program.

In mid-July Ms. Mubarak travelled to Calgary with her Kung Fu club. The extent of her physical activities is a little unclear, however I am satisfied that at a minimum, she went on two extended walks with the club, and another on her own while the main group engaged in a hike into the mountains that Ms. Mubarak did not feel she was up to, because of pain in her knees.

By mid-July Ms. Mubarak was also increasing her hours at the tutorial centre and was now working on Saturdays and one or two shifts during the week. Apart from dealing with merchandise, the physical demands of the tutoring job and working at the store are comparable. Both involved extended hours standing while dealing with the public. It is worth noting that Ms. Mubarak testified that the standing aggravated her back symptoms, but that she was able to cope.

The extent of Ms. Mubarak's physical activity and the speed with which she recuperated after the Canadian Back Institute testing is inconsistent with her portrait of herself as a disabled individual.

On July 17, the Insurer terminated Ms. Mubarak's weekly benefits, relying on the Canadian Back Institute report.

On August 5, 1994, Ms. Mubarak attended at Dr. Gideon's office, whose clinical note for that date states:

Back is 60% better but at times with exertion and use of back-5 min gardening or housekeeping-back pain x2 days thereafter On exam/ mild spasm

On August 10, 1994, Ms. D'Souza closed her file in accordance with instructions from the Insurer, which thereafter dealt directly with Ms. Mubarak with respect to her continuing supplementary medical and rehabilitation benefits.

On cross-examination, Ms. D'Souza admitted that she disagreed with the Insurer's termination of her retainer. Ms. Mubarak's solicitor suggested that this admission on Ms. D'Souza's part is evidence that the Insurer's own representative concluded that Ms. Mubarak was still disabled in mid-July. I disagree. Ms. D'Souza's admission must be seen in the context of her evidence as a whole. Ms. Mubarak undoubtedly still had some physical limitations, and Ms. D'Souza had earlier expressed concern about her ability to follow through with unsupervised rehabilitation programs. In Ms. D'Souza's report to the Insurer dated June 30, 1994, she clearly indicates her agreement with the conclusion that Ms. Mubarak was fit to return to work. I see Ms. D'Souza's admission as evidence that Ms. Mubarak could benefit from further rehabilitation, and that the program ought to be supervised, rather than an admission that she remained unfit to return to work.

Shortly after Ms. D'Souza's retainer was cancelled, Ms. Mubarak dropped out of the exercise program designed by Deana Mercier. Ms. Mubarak testified that she felt that the Insurer was imposing on her time, making her attend for tests and treatments that were ineffective. It is clear that by the late summer and early fall, Ms. Mubarak's attention was focused on activities other than her rehabilitation. She was continuing to look for work in the aerospace industry and by September, she was working at the tutoring centre five days per week.

In November of 1994 she saw Dr. Gideon for a tuberculosis skin test. No mention is made in the doctor's notes of any complaints of back pain.

In May of 1995, Ms. Mubarak was appointed the manager of the tutoring centre, at which point her post-accident income outstripped her weekly income benefit. Ms. Mubarak claims that she continues to be disabled from completing the essential tasks of her prior employment, but is not advancing a claim for benefits beyond May of 1995 because the amount of any benefit would be offset by her post-accident income.

Conclusions

In considering whether Ms. Mubarak has met the onus of establishing entitlement to further weekly income benefits, it must be borne in mind that the test is a substantial inability to perform the essential tasks of her occupation or employment. I am satisfied that at the time the Insurer terminated benefits in mid-July, Ms. Mubarak would have been capable of performing all but the heaviest tasks, associated with working at a "dollar store." As noted earlier, I do not believe that she would be required to do much heavy work other than during the Christmas rush. While focusing on the nature of the job other than during the Christmas rush, I do not mean to infer that if a job has cyclical variations in its demands, that the periods of high demand should be ignored. In this case, however, I am not satisfied that Ms. Mubarak might have been capable of carrying out her job duties in August 1994, but would have been unable to cope with the Christmas rush that would follow in November and December.

I also note that when she complained about her back, her father indicated that moving the heaviest boxes could be left to him. Arbitrators have held in a number of decisions that where an applicant has a degree of flexibility in arranging work schedules or tasks, this must be taken into account. See for example *Eric Simpson and Royal Insurance Company of Canada*, April 6, 1994, OIC File No. A-003863 (under appeal), and *Konstantinos Bertsouklis and Liberty Mutual Fire Insurance Company*, June 28, 1995, OIC File No. A-006499 (under appeal).

Most of the other physical tasks would of necessity be spread out over the day, and I am satisfied that Ms. Mubarak could have coped with them.

Ms. Mubarak testified that shortly after she left work in January, her father replaced her, and that her position was no longer available. I am satisfied that even if it had been available, Ms. Mubarak had no intention of returning to it. Ms. Mubarak had no interest in the job and she no longer needed it for financial reasons, because she had secured a position at the tutoring centre.

In reaching this conclusion, I accept that in mid-July Ms. Mubarak's back was still sore on occasion. I also accept that if Ms. Mubarak had returned to her former job, the pain would have been exacerbated. But it is well established that the *Schedule* does not compensate for pain, unless it is so extensive as to be debilitating. After considering all of the evidence, I am not satisfied that as of the date the Insurer cut off benefits in mid-July Ms. Mubarak was debilitated by her pain or was otherwise substantially unable to perform the essential tasks of her employment.

Expenses

In this case Ms. Mubarak's application was supported by her family physician, and I do not find that it was so unreasonable as to be frivolous, and I exercise my discretion to award Ms. Mubarak her expenses of the arbitration. I note in passing that the dispute resolution process provided by the Commission is designed to be a more affordable and expeditious process than the traditional court process. Because of Ms. Mubarak's post-accident income, even if I had awarded benefits to May of 1994, the total sum would not have been great and certainly was not enough to justify the four days of hearing that were expended on this matter. However the length of the hearing can not be attributed to one party or the other and accordingly Ms. Mubarak is entitled to the expenses of the four days of hearing plus preparation time. If the parties are unable to resolve the question of expenses, either party may apply to have them assessed.

Order:

1. Ms. Mubarak is not entitled to any further weekly income benefits.
2. Ms. Mubarak is entitled to her expenses incurred in respect to the arbitration.

Stewart McMahon
Arbitrator

January 19, 1996
Date

SCHEDULE A

Exhibits:

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| Exhibit 1 | Applicant's Medical Brief (Tabs 1, 2, 5 and 6) |
| Exhibit 2 | Supplementary Document Brief (Tabs 1-11, 16, 19-28, 31-36) |
| Exhibit 3 | Schematic of "The Muscular System" |
| Exhibit 4 | Excerpt from the Applicant's flight log |
| Exhibit 5 | Letter to the Applicant from the Canadian Back Institute, dated May 6, 1994, with attachments |
| Exhibit 6 | Curriculum Vitae of Sandra D'Souza |
| Exhibit 7 | Civil Aviation Medical Examination Report |