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Indexed as:  
C.K.B. (Re)

IN THE MATTER OF an appeal by C.K.B.  
AICAC File No. AC-96-37

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[1996] M.A.I.C.A.C.D. No. 34

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,  
and L. Goodspeed  
Heard: October 28 and December 16, 1996.  
Decision: December 19, 1996.  
(6 pp.)

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Issue(s):

- (i) Whether appellant entitled to I.R.I. for certain days when pain from m.v.a. injuries allegedly prevented work;
- (ii) calculation of I.R.I. for self-employed taxi driver - U.I. premiums to be omitted but C.P.P. contributions increased.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, ss. 81(1)(a), 81(2)(ii), 110(1) and 183(5).  
Regulation 39/94.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')  
represented by Joan McKelvey.  
C.K.B., the appellant, appeared in person.

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MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE  
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING  
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

#### REASONS FOR DECISION

[para1] This matter first came before us on Monday,  
October 28th, 1996. After hearing most of the evidence that  
was to be presented to us, we adjourned the hearing in order  
that inquiries might be made of [text deleted], to determine

the number of days between April 7th and June 30th of 1994 when C.K.B. was away from work due to his injuries. C.K.B. undertook to check his own records covering that same period and, in addition, Ms McKelvey undertook to pursue, with the department at M.P.I.C. responsible for calculating income replacement indemnity ('I.R.I.') the reason why, when making their calculations, they had deducted unemployment insurance premiums from C.K.B.'s gross yearly employment income, in light of the fact that, as a self-employed [text deleted], he was not eligible for unemployment insurance and was not required to pay those premiums. We shall deal with each of those deferred matters, later in these Reasons.

[para2] The basic facts relevant to C.K.B.'s appeal are simply stated. He had three concerns:

1. Firstly, although he had initially been classified for purposes for income replacement indemnity at Level 2 in the category '[text deleted]', he was subsequently reclassified by M.P.I.C. at Level 3, which gave rise to the need for an adjustment in the amount of his income replacement indemnity. That much had been agreed upon between C.K.B. and M.P.I.C. but, at the time when he first appeared before this Commission, a couple of months after that adjustment had been agreed upon, he had still not received the appropriate cheque. We indicated that this should be addressed forthwith and, by the time when we reconvened on December 16th, that problem had been remedied.
2. C.K.B. did receive income replacement for the period commencing seven days following his accident until the 7th of April 1994, when his I.R.I. payments were terminated upon the basis that he had recovered sufficiently to return to his former employment. It might be added that, at some point, his physiotherapy benefits were also terminated but, upon the advice of C.K.B.'s physician that C.K.B. still needed physiotherapy, were reinstated, and the physiotherapy payments are not the subject of his appeal. He does say, however, that there were twenty days in 1994, following the termination of his I.R.I. on April 7th, and one day (January 3rd) in 1995 when, due to pain stemming from his injuries sustained in the automobile accident, he was unable to work at all. It is for those twenty-one days that he now claims income replacement indemnity.
3. M.P.I.C., in calculating the amount of C.K.B.'s I.R.I., deducted hypothetical unemployment insurance premiums from his deemed gross yearly employment

income (G.Y.E.I.) calculated pursuant to Schedule C of Regulation 39/94. C.K.B. claimed, correctly, that he was self-employed and, therefore, neither eligible for unemployment insurance benefits nor required to make unemployment insurance contributions.

[para3] With respect to C.K.B.'s claim for I.R.I. for the twenty-one days allegedly missed from his work as a result of his accident, we were presented with evidence, partly in the form of internal memoranda prepared by M.P.I.C. investigators or employees and partly in the form of written statements signed by others, tending to show that C.K.B. was back [text deleted] on a full-time basis on April 7th of 1994, although he denied having done so. We do not believe that very much hangs or falls upon the question whether C.K.B. was or was not working on April 7th, despite the fact that, by his own admission, C.K.B. was certainly well enough to perform a number of errands that day, using his vehicle, and at least to pick up a couple of [text deleted] on his way home. He acknowledges quite freely that he was working most of the time from the date when his I.R.I. was terminated until the beginning of 1995. His evidence to us, and the statements that C.K.B. and others gave to the Adjuster, certainly give rise to a question of credibility but, in our view, it is not necessary for us to make any final determination of that question. The real question before us is whether there is sufficient evidence upon which we can reasonably conclude that C.K.B.'s accident of March 4th, 1994, prevented him from working upon the twenty-one dates that he listed for us.

[para4] It is noteworthy that, despite several requests for that same information made by M.P.I.C.'s Internal Review Officer, and despite the fact that, at our earlier hearing in October we, also, specifically asked C.K.B. for some clear evidence of the dates to which he referred, the Internal Review Officer never did receive the requested information and all that we have received is a handwritten list on one sheet of paper, all quite obviously written at the same time within a few days prior to the hearing. C.K.B. says that the dates shown on that list were extracted from a [text deleted] that he had left with his tax accountant, but gives no reason why the accountant would have needed that [text deleted] nor, if so, why the accountant would still need it and why it could not have been produced to us at the hearing. That might have gone some distance toward persuading us of what he was alleging, although it must be added that, again by C.K.B.'s own admission, a number of the days shown on his list are days when he probably would not have been working in any event. C.K.B.'s tax accountant, in response to an enquiry made subsequent to the hearing pursuant to Section 183(5) of the M.P.I.C. Act, tells us that he does not have, and does not recall ever having received, such a [text deleted]. As matters stand, we are not able to find, upon a balance of

probabilities, that C.K.B. was, in fact, precluded from his normal employment on the dates in question by reason of his automobile accident of March 4th, 1994. In this context therefore, we are obliged to confirm the decision of the Internal Review Officer.

[para5] In parenthesis, we note that there is a comment in the decision of the Internal Review Officer that may be open to misinterpretation. A statement to the effect that C.K.B. was "not completely disabled" might lead a reader to infer that total disability is a prerequisite to income replacement indemnity. Section 81(1) of the M.P.I.C. Act provides that

"a full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;..."

In other words, if, as a result of the accident, the victim is only able to work part-time, then the victim is entitled to I.R.I. to cover only those periods during which, as a result of the accident, he or she is unable to work.

[para6] Finally, there is the question of the unemployment insurance premiums that were deducted from C.K.B.'s deemed G.Y.E.I.. If a victim, being self-employed and, therefore, ineligible for unemployment insurance benefits, is not required to pay unemployment insurance premiums, then patently those premiums should not be deducted from his G.Y.E.I. We are not convinced that the increased Canada pension plan premiums for a self-employed victim would be exactly equal to the U.I. premiums that he is not required to pay. This question is, therefore, referred back to M.P.I.C. for an exact calculation of the deductions that ought to be made from C.K.B.'s deemed G.Y.E.I., upon the basis that he was self-employed at all material times. M.P.I.C. will then furnish C.K.B. and this Commission with a copy of its worksheet detailing how that calculation was arrived at and, if the end product differs from that contained in the revised calculation which showed total 'tax deductions' of [text deleted], the appropriate adjustment between the parties shall be made.

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