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Indexed as:
S.C.W. (Re)

IN THE MATTER OF an appeal by S.C.W.
AICAC File No.: AC-97-03
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[1997] M.A.I.C.A.C.D. No. 29
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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: August 18, 1997.
Decision: August 20, 1997.
(5 pp.)
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Issue(s):

1. Termination of IRI - whether victim capable of holding former employment;

2. Whether victim temporary or full-time earner;

3. Whether victim entitled to further 90 days IRI under Section 110(2)(b); and

4. Proper employment classification for victim after 180 days.

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Relevant Sections:
Manitoba Public Insurance Corporation Act, S.M. 1993, c. 36, ss. 70(1), 81, 84(1), 110(1) and (2).
Regulation 39/94, Schedule C, s. 17.
Regulation 37/94, s. 6.
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Appearances:
Manitoba Public Insurance Corporation ('MPIC') represented by Joan G. McKelvey.
The appellant, S.C.W., represented by Ellery Strell.
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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] The Appellant, S.C.W. was involved in a motor vehicle accident on July 2nd, 1995, which resulted in injury to his low back, his neck and his knee. He was, at the time, employed by [text deleted], for whom he had started working in May of that year.

[para2] S.C.W. received physiotherapy and chiropractic treatments until June 15th, 1996 and, as well, received income replacement indemnity ('IRI') of $[text deleted] every two weeks, commencing July 9th, 1995. MPIC terminated his IRI, effective June 7th of 1996, upon the basis that S.C.W. had regained his ability to hold the employment that he had held at the time of the accident. In this context, Section 110(1) of the Act is relevant, and we shall attach copies of this, and of all other relevant sections of the statute and regulations, as an appendix to these Reasons [Please see paper copy for appendix (approx. 9 pages)].

[para3] MPIC's decision to terminate his IRI benefits gave rise to three separate forms of appeal on the part of S.C.W.:

1. the Appellant's position is that, contrary to the finding of MPIC, he was not able, by June 7th of 1996, to perform the employment that he had held with [text deleted] at the time of his accident on July 9th of 1995;

2. the argument was also advanced on behalf of S.C.W. that he was, in any event, entitled to 90 days of additional IRI under the provisions of Section 110(2) of the Act; and

3. since, by virtue of the definition contained in Section 70(1) of the Act, S.C.W. was classified as a 'temporary earner', he was entitled to have an hypothetical employment determined for him under Section 84(1) of the Act, for the sole purpose of fixing the amount of continuing IRI to which he was entitled, from the 180th day of following his accident. MPIC assigned the category 'general labourer' to him, whereas the Appellant says that "My trade and job description is that of a mechanic".

[para4] With respect to the first part of S.C.W.'s appeal noted above, a careful reading of all of the medical, physiotherapy and chiropractic evidence and opinions made available to us persuades us that S.C.W. had, in fact, reached pre-accident status well before the date when MPIC terminated his IRI benefits and we are not disposed to alter the decision of the insurer's Acting Review Officer of October 3rd, 1996, with respect to that termination.

[para5] On the question raised in the second portion of his appeal - namely, whether S.C.W. is entitled to 90 days of IRI under Section 110(2)(b) of the Act, the answer is a very simple one: that section applies only to a full or part-time earner who lost his employment because of the accident. We find that S.C.W., having held his employment at [text deleted] for less than one year (see Regulation 37/94, Section 6) and, as well, being still in the probationary period of that employment, was neither a full-time nor a part-time earner within the meanings of those terms as defined in the Act, but was, rather, a 'temporary earner'; Section 110(2) is therefore inapplicable. The fact that he had completed forms of application for group insurance and related benefits does not, of itself, establish the permanence of his position, and the evidence of G.M. of a telephone conversation that he allegedly heard, wherein S.C.W. was promised his job after recovery from his injuries, lacked any semblance of credibility.

[para6] Turning, now, to the question whether the class of employment determined under Section 84 of the Act for S.C.W. by MPIC, to apply to the post-180-days period of his disability, we are of the view that, taking into account the regulations and the education, training, work experience and physical and intellectual abilities of the victim immediately before the accident (as we are required to do by Section 106(1) of the Act), S.C.W. is better fitted for the category of a motor vehicle mechanic and repairer at Level 1 of that classification, although that re-classification will not be of much help to him.

[para7] S.C.W., prior to moving to Manitoba via a short spell in Alberta, has spent most of his early years in British Columbia where he was a member of the Plumbers and Pipefitters' Union. The Building Trades Division of that union requires an apprenticeship board, whereas the Metal Work Division does not - or so the Appellant testified. As S.C.W. put it in cross-examination, "You start as a helper and after a couple of years you become classified as a journeyman pipefitter". This is not to say that no such apprenticeship training is available; S.C.W. had simply elected to forego it. He had been a member of the union since 1981, although he allowed his membership there to lapse when he started moving East in 1991. He had been engaged primarily in pipeline work of various kinds, although during the years from 1992 to 1995, both inclusive, he had spent much of his time receiving unemployment insurance (as it was then called) as well as recovering from injuries sustained in a 1993 motor vehicle accident. Part of that time, in 1993, was also spent working for [text deleted], setting up rides and doing sundry repair jobs including, but not limited to, the more unskilled tasks of a casual labourer. S.C.W. testified - and we have no reason to doubt his evidence on this point - that he has a

natural, mechanical ability, that he has always done all of the mechanical repairs to his own vehicles and that the employer for whom he was working at the time of his accident had classified him as a mechanic. Indeed, although that employer felt that S.C.W. had an attitudinal problem which may or may not have been the reason for S.C.W.'s loss of that employment, and although S.C.W. does not have journeyman's papers either as a pipefitter or as a mechanic, those qualifications are not required by the language of the regulations and the job description given to us both by S.C.W. and his former employer persuades us that he is more equitably described as a mechanic rather than as a mere labourer. However, we do not believe that the length or nature of his experience as a mechanic would qualify him for anything higher than Level 1, which contemplates a gross yearly income from employment of $[text deleted] and, since MPIC was paying him an IRI based upon a gross yearly income from employment of $[text deleted], we concur in the decision of MPIC's Acting Review Officer that the quantum of his IRI needs no adjustment.

DISPOSITION:

[para8] For the foregoing reasons, S.C.W.'s appeal must be dismissed.

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