

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by E.T.
AICAC File No.: AC-98-04**

PANEL: Mr. Charles T. Birt Q.C. Chairperson
Mrs. Lila Goodspeed
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Keith Addison
E.T., the appellant, appeared in person

HEARING DATE: May 19, 1998 at 1:00 P.M.

ISSUES: Is the Appellant entitled to further income
replacement indemnity after September 15, 1997.

RELEVANT SECTIONS: Section 110 (1) c) and Section 106 (2) of the MPIC Act.

**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

THE FACTS:

E.T. was involved in a Motor Vehicle Accident July 3, 1997. He sustained injuries to his right knee and left arm including his elbow, biceps and shoulder. The only issue under consideration for this appeal was whether or not the biceps muscles in his left arm had sufficiently recovered that he could return to his pre-accident work activities by the time his Income Replacement Indemnity (IRI) had been terminated on September 15, 1997.

E.T. made his livelihood from owning and operating rental premises, the restoration and sale of homes and describes himself as a self employed carpenter. MPIC classified E.T. as a "level 3"

labourer at a yearly income of \$ [text deleted] and the Corporation based their IRI payments on this sum. E.T. does not contest that classification.

E.T. consulted his chiropractor, Dr. Morin for treatment of his injuries. Dr. Morin, in his initial health care report dated August 26, 1997 and sent to MPIC advising that E.T. could not work as of that date as he needed both arms for his work but he would probably be able to return to work on September 15, 1997.

E.T. was referred by Dr. Pam, his family physician, to Dr. Sharif, an orthopaedic surgeon and he saw him on July 16 and August 18, 1997. In a response to a request for a medical report on the Appellant's condition Dr. Sharif reported on September 8, 1997 that on his first visit he had a satisfactory range of motion of his shoulders, elbows and wrists. He also observed that E.T.'s "triceps, biceps and supinators of the upper limbs were present and equal on the right and left sides".

Dr. Sharif reported that after the Appellant was re-examined on August 18, 1997 "his musculoskeletal examination was found to be similar to the previous evaluation with no significant new changes". He also advised that of this date E.T. could return to work whenever he had the opportunity.

Based on the medical evidence of the Appellant's two Doctors MPIC terminated E.T.'s IRI as of

September 15, 1997.

THE ISSUE: The issue is whether MPIC was justified in terminating the Appellant's IRI as of September 15, 1997.

The Act sets out the basis on which MPIC may terminate IRI benefits in Section 110 (1) of the MPIC Act which states:

Events that end entitlement to I.R.I.

110 (1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

c) The victim is able to hold an employment determined for the victim under section 106.

Section 106 (2) reads as follows:

Type of employment

106 (2) An employment determined by the corporation must be an employment that the victim could have held on a regular and full time basis or, where that would not have been possible, on a part time basis immediately before the accident”.

At the hearing the Appellant did not offer any medical evidence to the Commission that was new. He did not provide evidence that he had been offered any work after September 15, 1997, until October 17, 1997 that he had to refuse because of his condition. The Commission heard the Appellant’s testimony that the first work he was able to obtain was October 18, 1997.

It was noted at the hearing that the Appellant is right handed, while the disabling injury was to the left biceps. The Appellant admitted he knew of the back to work dates recommended by Dr. Morin and Dr. Sharif but never challenged those dates with either doctor.

E.T. obtained part of his income by doing carpentry jobs for his friends and clients. When he sustained his injuries he was not able to do any of the jobs that were offered to him. He did not get a job until October 18, 1997 and then received a total of three separate jobs over the ensuing month. His left biceps gave him problems on these jobs and he needed help if he had any heavy lifting to do but in all other aspects he was capable of doing his regular carpentry work.

What E.T. wants MPIC to compensate him for is the period from September 15, 1997 to October 17, 1997 when he was not offered any work. The Act requires MPIC to help return an individual, who has suffered injuries in a car accident, to their pre-accident condition, if it is at all possible. To this end they are provided with rehabilitation programs and, as in this case, paid IRI for the period the person lost income because of his injuries.

The medical evidence indicated that E.T. had returned to his pre-accident status by September 15, 1997. Thus MPIC had met its statutory obligation to E.T. by that date and was justified in terminating his IRI benefits on September 15, 1997. There is no provision in the Act requiring MPIC to pay him for lost income merely because there was no work available. Therefore the Appellant's appeal is denied.

DISPOSITION:

Therefore the Appeal is dismissed and the acting review officer's decision of December 12, 1997 is confirmed.

Dated at Winnipeg this 29th Day of June, 1998.

MR. CHARLES T. BIRT, Q.C.

LILA GOODSPEED

MR. F. LES COX