

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by A.D.
AICAC File No.: AC-97-20**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed.

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by
Ms Joan McKelvey
the Appellant, A.D., appeared on his own behalf

HEARING DATE: June 15th, 1998

ISSUES: 1. Whether Appellant entitled to extension of time for
commencing appeal;
2. Whether employment determined for Appellant by MPIC,
180 post-accident, was justified.

RELEVANT SECTIONS: Sections 86(1), 106 and 174 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

It should be noted, at the outset, that A.D. successfully appealed to this Commission an earlier decision of MPIC's Internal Review Officer whereby he had been denied income replacement indemnity for a period commencing on the 181st day following his motor vehicle accident. This Commission ordered, on April 29th, 1997, that A.D. was entitled to have an employment determined for him as of October 15th, 1996, pursuant to Sections 86(1) and 106(1) of the MPIC Act, and was then entitled to receive income replacement from October 15th, 1996 to January 31st of 1997, with interest at the usual rate. That order of April 29th, 1997 went on to say that, if A.D. "claims

entitlement to income replacement indemnity for any period after January 31st, 1997, and if the parties are unable to agree upon a termination date, this Commission remains seized of the matter so that, upon the application of either party, the question of an appropriate termination date may be referred back to us for final decision".

Subsequent discussions between A.D. and representatives of the insurer apparently resulted in disagreement on two points, namely: the nature of the employment that MPIC determined for the Appellant as of October 15th, 1996; and the appropriate termination date.

The question of the proper termination date of A.D.'s income replacement indemnity is not yet properly before us since, despite the wording of this Commission's decision of April 29th, 1997, no decision from MPIC has apparently been forthcoming and A.D. has not, therefore asked this Commission to reconsider it. We must add that he did start to raise that question at the hearing of his appeal on June 15th, 1998, but we had to point out to him that counsel for MPIC, as well as members of the Commission themselves, were taken by surprise since this was the first indication that we had been given of his intent to raise that question. It was not before us and we could not deal with it. If A.D. wishes the Commission to address that question - that is to say, the date to which income replacement should properly have been paid to him - and if he has not had a satisfactory response from MPIC, all that he needs to do is to write to this Commission and ask us to hold a formal hearing to deal with the matter.

We turn, now, to the Notice of Appeal filed by A.D. on April 15th, 1998, in which he disputes the

amount of income replacement paid to him by MPIC and, by necessary implication, therefore disputes the classification of security guard that had been determined for him by MPIC's Adjuster and confirmed by decision of MPIC's Internal Review Officer on September 15th, 1997. He wants to be classified as a machinist, whereas MPIC classified him as a security guard.

This Commission had advised A.D. that, although his Notice of Appeal had been filed long after the statutory, 90-day deadline had expired, it would be prepared to hear his appeal because, since his mother tongue is French, he might have been confused by the information given to him. However, when that aspect of the matter was explored at the beginning of the hearing of his appeal, it became clear that:

- (a) he had been given a copy of this Commission's brochure in French, spelling out very clearly the 90-day time limit within which a Notice of Appeal must be filed;
- (b) the decision letter of MPIC's Internal Review Officer has been sent to him by registered mail in English and then translated into French and delivered to him by courier - the Internal Review decision clearly spells out that he had 90 days from its date within which to file his Notice of Appeal; and
- (c) in any event, in his own curriculum vitae he describes himself as fluent in English, French and other languages, effectively negating the likelihood of misunderstanding or confusion on his part.

When asked the reason for the seven month delay in launching his appeal, A.D. said, firstly, that he had been waiting to obtain an additional medical report. When it was pointed out to him that a

medical report would have no bearing at all upon a job classification designated for him by MPIC, A.D. then said that he had experienced difficulty in contacting Mr. Tom Strutt, MPIC's Internal Review Officer. That, of course, had equally little bearing upon his tardiness in filing a Notice of Appeal from Mr. Strutt's decision. He could offer no other explanation.

This Commission has, since its inception, been ready - some might argue too ready - to use its discretion to extend statutory deadlines, but we have always required at least some semblance of a plausible reason for doing so. A.D. could offer no such reason and, since his appeal was filed four months late, we felt obliged to tell him that we were not prepared to hear it and that, therefore, his appeal would have to be dismissed.

It is, perhaps, worth noting that A.D. responded to that decision by picking up a china cup, half filled with coffee, and hurling it against the counsel table where it shattered into a myriad fragments and sprayed coffee around the floor of the hearing room - a form of argument which, needless to say, the Commission did not find very persuasive. In fact, A.D. had to be forcibly removed from the Commission's premises before further violence could occur. It might be added that the Commission was not unduly surprised since there was evidence on the file that, when a representative of MPIC had attended at A.D.'s home to advise him of the insurer's original decision, A.D. had smashed his fist against his own table and, in the process, had shattered a bracelet that he was wearing.

Nothing has been provided to us by A.D. to persuade us that the time for hearing his appeal should be extended, and that appeal is therefore dismissed.

Dated at Winnipeg this 18th day of June 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED