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Indexed as:  
T.P. (Re)

IN THE MATTER OF an appeal by T.P.  
AICAC File No.: AC-97-135

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[1999] M.A.I.C.A.C.D. No. 6

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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: January 11, 1999.  
Decision: March 31, 1999.  
(19 paras.)

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Issue:

Did the Appellant have a valid reason for not attending a  
program of modified work duties?

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993,  
c. 36 ('the Act'), s. 160.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Joan McKelvey.

The appellant represented by Richard W. Schwartz.

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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

THE FACTS:

[para1] The Appellant was driving his family Astro Van on  
September 14th 1996 when he had to come to a full stop behind  
a vehicle stopped for a pedestrian corridor on Roblin Blvd.  
Another car rear-ended his vehicle causing it considerable  
damage; the force of the accident broke the driver's seat.  
Following the accident T.P. consulted his family physician,  
Dr. Renouf of the Assiniboine Clinic who, in a report dated

September 23rd, 1996, stated that T.P. had suffered cervical myalgia and a back strain. Dr. Renouf described his injury as a Type 2 Whiplash Associated Disorder (WAD 2).

[para2] At the time of the accident T.P. was employed with [text deleted] as a mail courier driving a truck and working 5.5 hours per day for a total of 27.5 hours per week. Dr. Renouf told him to stay off work and arranged for him to attend a physiotherapy program.

[para3] Dr. Renouf sent an Occupational Fitness Assessment to the Appellant's employer dated October 29th advising that he could not attend work due to problems with his neck and lower back. There was a space in the report to indicate if the Appellant was suffering from any shoulder problems but that area was left blank.

[para4] In a report to MPIC dated September 30th, 1997 Dr. Renouf advised the Appellant had been in two previous auto accidents which caused recurring problems to his neck, shoulder and back and that he had received extensive physiotherapy, attended the Pain Clinic and been seen by rehabilitation specialists for these problems. He also advised that he had seen the Appellant on July 12th, 1996 because he had exacerbated his right shoulder while throwing a light ball the previous weekend. He felt T.P. had developed a possible rotator cuff tendinitis or tear and prescribed Naproxyn. Dr. Renouf again saw T.P. on August 20th because of persistent irritation in the right shoulder; he diagnosed rotator cuff tendinitis in his right shoulder and sent T.P. to the Pan Am Sport Injury Clinic for treatment. There on August 28th, 1996 he saw Dr. Michael MacKay on August 28th, 1996 who advised T.P. that he was suffering from a chronic cervical strain with some secondary muscle imbalance. Dr. MacKay recommended that he get into a reconditioning program in order to get a set of exercises for his shoulder and neck muscles.

[para5] Dr. Renouf referred the Appellant to the Ness Physiotherapy Clinic where he was evaluated by Tamara McRitchie, B.M.R.P.T. She reported on November 7th, 1996 that he has problems with the lumbar and cervical areas of his spine and had a right rotator cuff muscle strain. She developed a treatment program that she felt would resolve T.P.'s problems within about eight weeks of treatment. T.P. immediately started working with Ms McRitchie on her exercise program.

[para6] In a report dated November 27th, 1996 to MPIC Dr. Renouf stated that T.P.'s "specific diagnosis is cervical and lumbar myalgia secondary to MVA" but there is no reference to his suffering from any right shoulder problems. He went on to state that T.P. was unable to work at his current job and that he would be reassessed for modified duties in early January

1997.

[para7] In late January 1997 the Adjuster handling T.P.'s case contacted his employer, [text deleted], and learned that they have a light work program and would be willing to place T.P. in it with the hope that it would help him return to his full time job. An outline of this program was sent to Tamara McRitchie on January 29th, 1997 asking for her comments. On February 7th she responded to the Adjuster stating she believed T.P. could handle the modified work program but he would have to avoid heavy lifting, overhead activities and excessive repetition.

[para8] The job description was also faxed to Dr. Renouf on February 6th , 1997 asking for his comments.

[para9] On February 10th, 1997 after several attempts the Adjuster was able to get in touch with T.P. and outline to him the modified work program he had arranged for him at [text deleted]. T.P. told the Adjuster that he had been through these modified duties before and the repetitive movements would aggravate his shoulder. The Adjuster advised T.P. that his physiotherapist had agreed that he could do this type of work with the aforementioned restrictions. T.P. responded that Ms McRitchie seemed to be telling the Adjuster one thing and him another. To check on this statement the Adjuster called Ms McRitchie later that day and she reiterated her position that the Appellant could return to work doing the modified duties. She advised she would put something in writing to Dr. Renouf.

[para10] Ms McRitchie sent a fax to Dr. Renouf on February 13th, 1997 which read:

MPI adjuster contacted me recently re: RTW - I expressed concerns about overhead work, lifting & excess repetition. He told me that [text deleted] would work around restrictions & had modified duties for [T.P.]. Subsequently I've learned that [T.P.] has done this previously & ltd success. Your input appreciated. We will continue to focus on posture & strengthening,..... Do you think another ortho consult would be beneficial?

[para11] On February 13th, 1997 the Adjuster delivered a letter to T.P. confirming their conversation of February 10th and in it he outlined when and where the Appellant was to start work. He was also warned that if he failed to attend the job without valid reasons his benefits could be terminated. The Adjuster contacted T.P. later that day to discuss his letter and was told by T.P. that he had seen Dr. Renouf that day and the doctor told him not to return to work. He also told the Adjuster that Ms McRitchie told him not to

do repetitive activity. He then told the Adjuster he would not attend the modified work program.

[para12] The Adjuster then spoke with Ms McRitchie on February 17th, 1997 to see what she had told the Appellant and she assured him that she had not told T.P. to stay away from the program but just the opposite - i.e. that he could do the modified duties and how would he know he could not do them until he tried them. The Adjuster attempted to reach of Dr. Renouf several times but without any success and, on February 24th, 1997, wrote to the Appellant advising him that MPIC was terminating his benefits because he did not have any valid reasons for not attending the modified work program at [text deleted].

[para13] Neither the Adjuster nor the physiotherapist heard from Dr. Renouf until March 5th, 1997. He returned Ms McRitchie's original fax to her with the following note on the bottom "March 5/97 Tamara please continue physio for 1 month further if not improved - will attempt consult Dr. P. Macdonald".

[para14] In a handwritten note dated March 5th Dr. Renouf states "Have attempted to contact Mr. Brisco (ans. Machine x 3) re above patient. Should continue to be covered by autopac benefits". There is no reference in either of these communications about the question he had been asked, namely, whether T.P. could handle the modified return to work program.

#### THE ISSUE:

[para15] The question we have to answer is whether or not T.P. had a valid reason for not attending the modified work program arranged for by MPIC at [text deleted].

[para16] T.P. believes that he had valid reason based on the belief that Dr. Renouf and Ms McRitchie told him not to take the job at the [text deleted]. Unfortunately the evidence does not support T.P.'s contention. All of Ms McRitchie's written and oral information to the Adjuster states that T.P. could and should try the modified work program.

[para17] Dr. Renouf's evidence does not support T.P.'s contention either. Dr. Renouf did say in his report of September 25th, 1997 that on November 27th, 1996 he felt T.P.'s return to work at that time was premature. In all other correspondence with MPIC, Dr. Renouf fails to say that he advised T.P. not to start or try the modified work program at [text deleted]. In fact he is silent in all of his communications on this issue that goes to the heart of this Appeal.

[para18] T.P. may have felt he was not ready to return to the modified work program in February 1997 but we do not find this a valid reason. Had T.P. attended the job and found he could not do it then he would have had a valid reason for not continuing. His belief that he could not do it without some supporting medical or other evidence does not constitute a valid reason. It follows that T.P. did not have a valid reason for refusing to attend the modified work program and therefore his appeal must fail.

DISPOSITION:

[para19] The Acting Review Officer's decision of October 20th, 1997 is therefore confirmed.

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