



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by G.M.
AICAC File No.: AC-03-165**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Paul Johnston
Ms. Barbara Miller

APPEARANCES: The Appellant, G.M., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms. Dianne Pemkowski.

HEARING DATE: August 24, 2004

ISSUE(S):

1. Whether the Appellant has the ability to hold the determined employment.
2. Entitlement to reinstatement of Income Replacement Indemnity benefits in December 2002 due to a relapse.
3. Entitlement to a Permanent Impairment benefit for right shoulder impingement syndrome.
4. The applicability of Section 33 of The Public Utilities Board Act to the Appellant's Personal Injury Protection Plan claim.
5. Entitlement to Income Replacement Indemnity benefits based on inability to work due to emotional issues.

RELEVANT SECTIONS: Sections 107, 110(1)(d), 117(1) and 127 of The Manitoba Public Insurance Corporation Act (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 Appellant was involved in a motor vehicle accident on November 6, 1996. As a result of the injuries sustained in that accident, the Appellant became entitled to Personal Injury Protection

Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The issues which arise in this appeal are:

1. Whether the Appellant has the ability to hold the determined employment.
2. Entitlement to reinstatement of Income Replacement Indemnity benefits in December 2002 due to a relapse.
3. Entitlement to a Permanent Impairment benefit for right shoulder impingement syndrome.
4. The applicability of Section 33 of The Public Utilities Board Act to the Appellant's Personal Injury Protection Plan claim.
5. Entitlement to Income Replacement Indemnity benefits based on inability to work due to emotional issues.

1. Whether the Appellant has the ability to hold the determined employment

The case manager's decision dated October 16, 2001 assessed the Appellant's employability and his residual earning capacity for the purposes of the two-year determination process pursuant to Section 107 of the MPIC Act. The case manager determined that the best employment option for the Appellant was that of a carpentry foreman.

The Internal Review Officer in his decision dated October 16, 2003, upheld the case manager's decision. The Internal Review Officer found that there was ample evidence on the Appellant's file supporting his ability to perform the duties of a carpentry foreman.

Upon a careful review of all of the evidence, both oral and documentary, the Commission finds that there is ample evidence on the Appellant's file supporting his ability to perform the duties of a carpentry foreman. Despite the Appellant's perception that he cannot perform the determined employment, the available evidence indicates that:

1. The Appellant has the transferable skills required to perform the duties of a carpentry foreman;
2. The Appellant's family doctor, Dr. Badenhorst, concluded that the Appellant was

physically able to perform the duties of a carpentry foreman;

3. The Appellant worked as a carpentry foreman for his daughter for approximately two years from 2000 to 2002; and
4. There is no evidence before the Commission that there aren't any jobs for carpentry foremen available in the region in which the Appellant resides.

Accordingly, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated October 16, 2003.

2. Entitlement to reinstatement of Income Replacement Indemnity benefits in December 2002 due to a relapse

In his decision dated October 16, 2003, the Internal Review Officer found that there was ample evidence supporting the decision of the case manager to refuse the Appellant's request for reinstatement of his Income Replacement Indemnity ('IRI') benefits in December 2002, based on a relapse. The Internal Review Officer therefore dismissed the Appellant's Application for Review and confirmed the case manager's decision.

Upon a careful review of all of the evidence, both oral and documentary, the Commission finds that there is ample evidence on the Appellant's file supporting the Appellant's ability to work in December 2002, and accordingly, there is no entitlement to IRI based on a relapse due to emotional or physical issues. The available evidence includes:

1. Dr. El-Khatib's opinion, set out in his report dated April 1, 2003, that the Appellant's emotional difficulties were related to family issues and his employment status. These were long standing issues which were not related to the motor vehicle accident.
2. Dr. Badenhorst's report (which was prepared in response to the case manager's

request of March 28, 2003) which indicates that the Appellant was physically capable of performing the duties of a carpentry foreman on a full-time basis.

3. The Appellant was employed with [text deleted] as a crew foreman in 2002 and was therefore capable of working.
4. Dr. Huebert's examination note of April 17, 2003, which advises that the Appellant was at work and that he should continue at work.

As a result, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated October 16, 2003.

3. Entitlement to a Permanent Impairment benefit for right shoulder impingement syndrome

In his decision dated October 16, 2003, the Internal Review Officer accepted Dr. M. Cosman's opinion that the evidence on the Appellant's file did not establish a causal relationship between the accident and the Appellant's right shoulder impingement syndrome. The Internal Review Officer therefore dismissed the Appellant's Application for Review and confirmed the case manager's decision.

Upon a careful review of all of the evidence, both oral and documentary, the Commission finds that the Appellant has not established, on a balance of probabilities, that his right shoulder impingement syndrome was caused by the motor vehicle accident of November 6, 1996. The Appellant presented no medical evidence at the hearing of the appeal to connect his right shoulder impingement syndrome to the motor vehicle accident of November 6, 1996. Accordingly, the Commission accepts Dr. Cosman's opinion that "the medical information on file does not substantiate a cause and effect relationship between the early January 1998 finding

of a right shoulder impingement syndrome and the November 1996 motor vehicle accident”.

As a result, the Commission dismisses the Appellant’s appeal and confirms the decision of MPIC’s Internal Review Officer dated October 16, 2003.

4. The Applicability of Section 33 of The Public Utilities Board Act to the Appellant’s Personal Injury Protection Plan claim

As indicated by the Internal Review Officer in his decision dated October 16, 2003, Section 33 of The Public Utilities Board Act has no application to the Appellant’s PIPP claim. Therefore, the Commission dismisses the Appellant’s appeal and confirms the decision of MPIC’s Internal Review Officer dated October 16, 2003.

5. Entitlement to Income Replacement Indemnity benefits based on inability to work due to emotional issues

In his decision dated June 18, 2004, the Internal Review Officer found that there was ample evidence supporting the case manager’s decision rejecting the Appellant’s claim for IRI benefits based on an alleged inability to work due to emotional issues. The Internal Review Officer conducted a thorough review of the current medical evidence on the Appellant’s file and concluded that the Appellant was not disabled from working on account of emotional issues. The Internal Review Officer therefore dismissed the Appellant’s Application for Review and confirmed the case manager’s decision.

Upon a careful review of all of the evidence, both oral and documentary, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was unable to hold employment due to emotional issues arising as a result of his motor vehicle accident of

November 6, 1996. Rather, the Commission accepts the analysis conducted by the Internal Review Officer in his decision dated June 18, 2004 and finds that there is no medical evidence on the Appellant's file indicating that the Appellant could not work because of his emotional problems, or that these emotional problems were related to the motor vehicle accident of November 6, 1996.

Therefore, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated June 18, 2004.

Dated at Winnipeg this 4th day of October, 2004.

YVONNE TAVARES

PAUL JOHNSTON

BARBARA MILLER