



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by J.R.H.
AICAC File No.: AC-04-38**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Ms Wendy Sol

APPEARANCES: The Appellant, J.R.H., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Morley Hoffman.

HEARING DATE: March 2, 2005

ISSUE(S):

- 1. Entitlement to Lump Sum Student Indemnity;**
- 2. Entitlement to Reimbursement of Expenses for recurrency flight training.**

RELEVANT SECTIONS: Section 88 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 40.1 of Manitoba Regulation 40/94.

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, J.R.H., was involved in a motor vehicle accident on June 4, 2001, when his vehicle was rear-ended, while stopped waiting to make a left turn. The Appellant's vehicle was pushed forward through the oncoming lane and into the ditch on the other side of the roadway. As a result of this motor vehicle accident, the Appellant sustained whiplash injuries and cervical, lumbar and shoulder strains. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing two separate Internal Review decisions, dated January 26, 2004 and August 24, 2004, with regards to the following issues:

1. Entitlement to a lump sum student indemnity; and
2. Entitlement to reimbursement of expenses incurred for recurrency flight training.

1. Entitlement to lump sum student indemnity

At the time of the motor vehicle accident, the Appellant was a student at [text deleted], enrolled in an Aviation Management Course.

Subsections 88(1) and 88(2) of the MPIC Act provide as follows:

Student entitled to fixed indemnity

88(1) A student is entitled to an indemnity for the time that he or she is unable because of the accident to begin or to continue his or her current studies, and the entitlement ceases on the day that is scheduled, at the time of the accident, for the completion of the current studies.

Amount of indemnity

88(2) The indemnity referred to in subsection (1) is

- (a) \$6,300. for each school year not completed at the secondary level;
- (b) \$6,300. for each term not completed at the post-secondary level, to a maximum of \$12,600. per year.

The Internal Review decision of January 26, 2004 determined that the Appellant did not qualify for a lump sum student indemnity, because the available medical information did not confirm that he was prohibited from flying from June 4, 2001 to September 7, 2001. As a result, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review.

At the hearing of this matter, the Appellant submitted that the accident delayed his flight training

for three (3) months. He maintains that as a result of the motor vehicle accident, he was prevented from completing a term of his current studies, and accordingly, he submits that he is entitled to receive a lump sum student indemnity.

At the hearing, the Appellant testified that he was unable to continue with his flight training from June 4, 2001 to September 7, 2001, due to a combination of the medication he was taking for his injuries and his physical condition. He explained that since he was not able to fully flex his back, he could not reach and manipulate the throttle and the main controls of an aircraft through every possible position which might be required in the course of a flight. He also advised that the medications which he was taking, including Vioxx, Arthrotec and Tylenol with Codeine gave him trouble sleeping, which left him tired. The Appellant testified that pilot fatigue would be a direct disqualifier from flying.

In support of his position, the Appellant also referred to an Aeronautical Information Publication from Transport Canada which provides that:

3.0 MEDICAL INFORMATION

3.1 General Health

A healthy pilot is as essential to a safe flight as a mechanically sound aircraft. There is no precise regulation which tells airmen whether they are fit to fly and there is no pre-flight inspection to ensure fitness. The individual, therefore, must make the decision based on common sense and training prior to each flight. While flying an aircraft, a pilot must have no condition which impairs alertness, reaction time or decision making ability. Persons with conditions which could result in sudden or subtle incapacitation, such as epilepsy, heart disease, uncontrolled diabetes, mellitus, or diabetes requiring insulin or oral hypoglycemic agents, cannot be medically certified according to CAR 424. Conditions such as anemia, acute infection or peptic ulcers are temporarily disqualifying.

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3.12 Drugs

Self-medication, or taking medicine in any form immediately before or while flying, can be hazardous. Simple remedies, such as antihistamines, cough and

cold mixtures, laxatives, tranquilizers and appetite suppressants, may seriously impair the judgement and co-ordination needed by the pilot. The condition for which the medicine is required may itself reduce a pilot's efficiency to a dangerous level, even though the symptoms are masked by medicine. Unless cleared by an aviation medical examiner, pilots should not fly under the influence of prescription or over-the-counter drugs any more than they should fly under the influence of alcohol.

Certain drugs have been associated with aircraft accidents in the recent past. The most common of these are antihistamines (widely prescribed for hayfever and other allergies, and contained in many cold and cough remedies), tranquilizers (prescribed for nervous conditions, hypertension and other conditions) and appetite reducing drugs such as amphetamines. Barbiturates, nerve tonics or pills prescribed for digestive and other disorders may produce a marked depression of mental alertness.

As a result, the Appellant submits that it was up to his personal discretion as to whether or not he was fit to fly. Further, he maintains that due to the effects of the motor vehicle accident, he was not fit to fly during the period June 4, 2001 to September 7, 2001. Accordingly, he submits that he is entitled to receipt of the lump sum student indemnity.

Counsel for MPIC submits that there is no objective evidence that the Appellant was unable to pilot a flight after July 9, 2001. He argues that there is a lack of medical evidence confirming the Appellant's inflexibility, or the side effects of the medications which the Appellant was taking, which would have disqualified the Appellant from flying an aircraft during the relevant period.

Additionally, counsel for MPIC submits that no school term was prevented from completion within the meaning of ss. 88(2)(b) of the MPIC Act. He insists that the summer time is a period to take advantage of the lack of a school term in order to accumulate flying hours. Therefore, counsel for MPIC submits that the appeal should be dismissed and the Internal Review decision dated January 26, 2004 confirmed.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that, on a balance of probabilities, the Appellant was prevented from continuing his studies within the meaning of ss. 88(1) of the MPIC Act due to the motor vehicle accident of June 4, 2001. As a result, we find that the Appellant is entitled to a lump sum student indemnity pursuant to ss. 88(2)(b) of the MPIC Act.

The Commission found that the Appellant testified in a truthful and forthright manner and consequently, we accept his testimony that he did not feel capable of flying a plane during the period June 4, 2001 to September 7, 2001 (except for July 9, 2001), due to the combined effects of his physical injuries and the medications he was taking. We also note that the Appellant was an enthusiastic student, near the top of his class at the time of the motor vehicle accident. We find that he was a keen student in the Aviation Management Program, eager to fulfill his flying requirements. As such, we find that the Appellant would have flown during the period in question if he had been capable. No other explanation was provided for his failure to continue accumulating flying time during the period in question and the Commission finds that, on a balance of probabilities, the Appellant was not capable of flying during this period due to the effects of the motor vehicle accident.

With regards to MPIC's argument that the summer months did not qualify as a term within the meaning of ss. 88(2)(b), we note the syllabus outline of the Aviation Management Program provides that Term 3 of the program ran from April 12, 2001 to July 22, 2001. While class instruction at [text deleted] may have been completed for the summer, the syllabus clearly contemplates that students will utilize the summer months of June and July (and August if required) to complete their flight requirements prior to the commencement of the fall term. Accordingly, we find that the period in question, during which the Appellant was unable to

continue his flight training did form part of the school term for the Aviation Management Program.

The evidence before the Commission also established that as of June 1, 2001, the Appellant had completed section 76. Pursuant to the syllabus outline of the Aviation Management Program, it was contemplated that students would have completed section 132 during the week of July 22, 2001. Due to the Appellant's inability to fly throughout the summer months, he was unable to complete the flight requirements set out in the course syllabus. Although this did not have the effect of prejudicing his overall performance in the Aviation Management Program, we find that nevertheless the Appellant did not complete the term as originally contemplated by the course syllabus.

Lastly, we find that the Appellant is entitled to a lump sum student indemnity in the amount of \$6,300.00 (as indexed to the date of the accident in accordance with the provisions of the MPIC Act) pursuant to ss. 88(2)(b) of the MPIC Act. Although counsel for MPIC urged the Commission to apply ss. 88(3) of the MPIC Act and pro-rate the amount of the indemnity, we find that ss. 88(3) does not apply to the post-secondary level of studies. Subsection 88(3) provides as follows:

Pro-rating where secondary school year divided

88(3) In a case where a school year at the secondary level is divided into semesters or terms, a pro-rated amount of the indemnity set out in clause (2)(a) is payable for each semester or term not completed, to a maximum of \$6,300. for each school year not completed.

Subsection 88(3) refers to secondary school and the language of that subsection clearly contemplates pro-rating the indemnity where a semester or term of "a school year at the secondary level" is not completed. No similar provision exists in the legislation respecting the

post-secondary level of studies. Accordingly, we find that the Appellant is entitled to an indemnity of \$6,300.00 (as indexed to the date of the accident in accordance with the provisions of the MPIC Act) together with interest on such sum pursuant to Section 163 of the MPIC Act.

2. Entitlement to reimbursement of recurrency flight training

Subsection 40.1(2) and (3) of Manitoba Regulation 40/94 provides as follows:

Reimbursement of tuition fees

40.1(2) The corporation shall pay an expense incurred for tuition fees paid for a course

- (a) that is part of the current studies of a victim who is a student; and
- (b) for which the victim is unable to obtain credit as a result of the accident.

Exception

40.1(3) A person who receives a lump sum indemnity under section 88 of the Act shall not be entitled to reimbursement of tuition fees under subsection (2).

The Commission having found that the Appellant is entitled to a lump sum indemnity under Section 88 of the MPIC Act, finds that the Appellant is not entitled to reimbursement of the tuition fees paid for recurrency flight training between September 17, 2001 and September 24, 2001, in accordance with ss. 40.1(3) of Manitoba Regulation 40/94. Accordingly, the Appellant's appeal from the Internal Review decision dated August 24, 2004 is hereby dismissed.

Dated at Winnipeg this 19th day of April, 2005.

YVONNE TAVARES

DR. PATRICK DOYLE

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