



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by T.H.
AICAC File No.: AC-05-05**

PANEL: Ms Laura Diamond, Chairperson
Dr. Patrick Doyle
Mr. Paul Johnston

APPEARANCES: The Appellant, T.H., was represented by Mr. Derek Cullen;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Dean Scaletta.

HEARING DATE: October 12, 2005

ISSUE(S): Was the two-year determination of the Appellant into the
position of University Teacher proper

RELEVANT SECTIONS: Sections 107 and 109 of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Schedule C, Section 4, of
Manitoba Regulation 39/94 and Table of Classes of
Employment, Section 5

**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, T.H., was injured in a motor vehicle accident on October 3, 1998. As a result of her injuries, she was unable to continue in her employment as a critical care nurse.

However, the Appellant was capable of working in a different occupation. While working as a critical care nurse she had also been involved in training programs for the nursing students at the hospital. Following the accident, the Appellant completed her Masters of Nursing Degree and was hired as a full-time Lecturer, in the (text deleted), at (text deleted). The evidence showed

that her employment commenced August 1, 2004 at a salary of \$(text deleted) per annum. As per the (text deleted) ('BUFA') Collective Agreement, which expired March 31, 2005, the salary range for the Lecturer rank was \$41,626. to \$52,582. with nine (9) increment levels of \$1,217. each.

The Appellant's case manager completed a Two-Year Determination for the insured. Such a determination occurs after the second anniversary date of the accident, for a victim of an accident who is able to work, but unable, because of the accident to hold their former employment. Then, the corporation may determine a new employment for the claimant.

The determined employment identified for the Appellant was as a "University Teacher", pursuant to Classification #2711 under Schedule C of Manitoba Regulation P215-M.R. 39/94. The average gross yearly employment income for a person in a starting position (Level 1) as a "University Teacher" in Manitoba was \$61,246. (2004).

The Appellant requested an internal review of this determination.

Internal Review Decision

An Internal Review Officer for MPIC denied the Appellant's Application for Review on October 15, 2004. The Internal Review Officer relied upon a National Occupation Classification ('NOC') description for "University Professors":

. . . I note under the heading University Professors in the NOC that examples of titles classified in this unit group is also University Lecturer which is the position you now hold at (text deleted). You also stated that under Main Duties that you did all of these duties but you did not direct research programs of graduate students and advise on research matters. I do note that under Main Duties it is stated "University Professors perform some or all of the following duties." As you stated you perform all of these duties but one, so you qualify under University Lecturer.

You also pointed out that under Employment requirements you do not have a Doctorate degree in the field of Specialization. However, you were able to get this job with a Masters in your field of Specialization and you are a University Lecturer.

As we discussed at your Internal Review Hearing, the NOC is merely a guideline, and you have not been classified as a University Professor under the NOC, but rather you have been classified as a University Teacher under Schedule C of the Manitoba Public Insurance Regulations. It is my decision that you do meet all of the qualifications of University Teacher and that this is the correct determination for you.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submissions

In a memorandum to Lewis Montroy, dated July 6, 2004, Stu Ford, the Appellant's senior case manager, reviewed the Appellant's work history and upcoming position at (text deleted). He identified two (2) possible classifications under Schedule C into which this new position might fit, based on his recommendation that MPIC complete the two (2) year determination for her as a "University Professor" Level I.

Based on her being hired as a full-time Lecturer at (text deleted), I am recommending we complete a 2 Year Determination for her as a "University Professor", Level I. It is N.O.C. code #4121 which I believe equates to #2711 or #2719 under our Schedule C. Her current G.Y.E.I. for I.R.I. purposes is \$(text deleted). The Schedule C, Level I income for code #2711 is \$59,041.00 and for code #2719 is \$16,025.00.

Mr. Ford's supervisor, Mr. Montroy, wrote on July 14, 2004 approving a two (2) year determined employment as a lecturer. He indicated:

I'm reluctant to consider a determined employment of "University Professor" until she demonstrates she qualifies.

On August 4, 2004, the case manager wrote to the Appellant regarding the two (2) year determination. He stated:

The occupation we determined for you was identified by using the **National Occupations Classification Code (N.O.C.) #4121, “University Lecturer”**. This information is then transferred over to **The Manitoba Public Insurance, Schedule C, of Manitoba Regulation, P215-M.R. 39/94**. The applicable corresponding occupation in Schedule C was identified as **#2711, University Teachers**. The average Gross Yearly Employment Income for a person in a starting position (Level 1) as a **University Teacher** in Manitoba is \$61,246.00 (2004).

In this letter, the case manager did not address Mr. Montroy’s concerns regarding the Appellant’s lack of qualifications as a University Professor. Rather, he continued to apply the NOC Classification #4121 of University Professor for a University Lecturer, identifying this as a corresponding occupation to #2711 “University Teachers” under Schedule C. No mention was made or analysis conducted, in this letter, regarding the previously referenced Classification #2719 “University Teaching and Related Occupations, n.e.c.”

The Internal Review Officer’s decision of October 15, 2004 did not contain an analysis regarding the possibility of the Appellant’s position falling into the #2719 (“University Teaching and Related Occupations, n.e.c.”) classification. Rather, the Internal Review Officer reviewed the case manager’s determination of the Appellant as a University Teacher under Schedule C #2711 (“University Teachers”), using the NOC classification for University Professors as a guideline, and noting that the Appellant had not been classified as a University Professor but rather as a University Teacher.

A review of the NOC classification for University Professor does include “Lecturer, University” as an example of titles classified in this unit group. It also notes:

University Professors teach courses to undergraduate and graduate students and conduct research at universities and degree-granting colleges. University Professors who are heads of departments are included in this unit group.

The Appellant, during her testimony, reviewed this classification description. She noted that she performs many of the duties listed therein, including the preparation and delivery of lectures to students, the preparation, administration and grading of exams, laboratory assignments and reports, and serving on faculty committees.

However, she also noted that there are many of these duties which she does not perform. Although she teaches undergraduate students, she does not teach graduate students and does not direct research programs of graduate students and advise on research matters. She does not conduct research in a field of specialization and publish findings in scholarly journals or books. In her view, since she only has a masters degree, she is not qualified to perform these duties. As well, she noted that she does not provide professional consultative services to government industry and private individuals.

Perhaps most importantly, the Appellant noted that she does not meet the employment requirements set out for University Professors. Although she possesses a license or professional accreditation in her field, she does not possess a doctorate degree in the field of specialization required.

Counsel for MPIC submitted that although in his view, a University Professor would be classified under class #2711 "University Teacher" in Schedule C, that classification is not restricted to University Professors. He argued that the Appellant could in fact become an assistant professor in due course, even without a doctorate degree.

The evidence of the Appellant and the evidence contained in a letter from B.B., Human Resources Officer with the (text deleted), dated June 2, 2005 indicated that the Appellant could not become an associate professor without a doctorate, although she could attain the rank of assistant professor with a masters degree or equivalent of five (5) post-masters or equivalent years of relevant service.

However, counsel for the Appellant argued that without the doctorate qualification, she certainly could not fit into the N.O.C. classification #4121 of University Professor, and could not fit into the classification of “University Teacher” which, he submitted, was meant to apply to positions which were similar to or more in the realm of the University Professor. The salary scales attached to Schedule C classification #2711 (“University Teacher”), ranging between \$61,000 and \$100,000 supported this contention, he submitted. Rather, he argued, the Appellant should more appropriately be classified into what he called the “catch-all” classification of “University Teacher and Related Occupations, n.e.c.”. This classification, he noted, bore a salary scale between \$16,000 and \$36,000 which is more commensurate with the salary which the Appellant earns and can earn as a University Lecturer under the BUFA Collective Bargaining Agreement.

Statutory Provisions

New determination after second anniversary of accident

107 From the second anniversary date of an accident, the corporation may determine an employment for a victim of the accident who is able to work but who is unable because of the accident to hold the employment referred to in section 81 (full time or additional employment) or section 82 (more remunerative employment), or determined under section 106.

Considerations under section 107 or 108

109(1) In determining an employment under section 107 or 108, the corporation shall consider the following:

(a) the education, training, work experience and physical and intellectual abilities of the victim at the time of the determination;

- (b) any knowledge or skill acquired by the victim in a rehabilitation program approved under this Part;
- (c) the regulations.

Type of employment

109(2) An employment determined by the corporation must be

- (a) normally available in the region in which the victim resides; and
- (b) employment that the victim is able to hold on a regular and full-time basis or, where that is not possible, on a part-time basis.

Manitoba Regulation 39/94

Schedule C

Classes of Employment

Table

4. In the Table,

- (a) “n.e.c.” means not elsewhere classified;

Table of Classes of Employment

5. TEACHING AND RELATED OCCUPATIONS

University Teachers	51,394	67,795	84,077
University Teaching and Related Occupations, (n.e.c.)	13,950	30,557	39,076

Decision

The panel has reviewed the evidence and the submissions of counsel and finds that the analysis conducted by the claims manager and the Internal Review Officer, in relying as it did on the N.O.C. classification description #4121 of University Professor, failed to properly consider the factors set out in Section 107 and 109 of the MPIC Act.

MPIC was obligated, in determining an employment for the Appellant, to consider, under Section 109(1), the education, training, work experience and physical and intellectual abilities of

the victim at the time of the determination as well as any knowledge or skill acquired by the victim in a rehabilitation program. The employment determined, according to Section 109(2), must be employment that the victim is able to hold.

The panel finds that the categories of University Professor in N.O.C. #4121 and of “University Teachers” require greater qualifications and abilities than the Appellant possessed at the time of the two (2) year determination. The panel finds that “University Teachers” is similar to and a more appropriate classification for positions which require a higher level of education and training, such as a University Professor, than “University Teaching and Related Occupations, n.e.c.” The panel is of the view that the position of University Lecturer held by the Appellant, as described by the Appellant and by the correspondence from (text deleted), is more similar, in terms of education, training and duties, to the lower classified category of “University Teaching and Related Occupations, n.e.c.”

In relying as they did upon the National Occupation Classification #4121 for University Professors, the case manager and Internal Review Officer failed to give sufficient consideration to the classification of “University Teaching and Related Occupations, n.e.c.” And, as noted above, the panel is of the view that N.O.C. classification #4121 “University Professor” (focusing as it does upon teaching courses to undergraduate and graduate students, conducting research at universities and degree granting colleges, as well as the requirement for a doctorate degree in the field of specialization), is not an appropriate guideline for the position of University Lecturer which the Appellant holds. Accordingly, the panel is also of the view that the occupation which MPIC viewed as the applicable corresponding occupation in Schedule C was not an appropriate determination of the Appellant’s occupation.

For these reasons, the Commission finds that MPIC was in error in determining the two (2) year employment of the Appellant as a University Teacher. It relied too heavily on NOC Classification #4121 for guidance, and failed to consider all of the relevant factors set out in Section 107 and 109 of the MPIC Act.

The Commission determines that the Appellant has established, on the balance of probabilities, for the reasons outlined herein, that on a consideration of all of the relevant factors, pursuant to Section 107 and 109 of the MPIC Act, the two (2) year employment determined for the Appellant should be that of “University Teaching and Related Occupations, n.e.c.”

As a result, the Appellant’s appeal is allowed and the Internal Review Officer’s decision dated October 15, 2004 is therefore rescinded. The Appellant shall be entitled to IRI benefits in accordance with a two-year (2) determination of “University Teaching and Related Occupations, n.e.c.”, with interest pursuant to Section 163 of the MPIC Act added to that amount. The matter of the calculation of these benefits is referred back to the Appellant’s case manager for determination.

Dated at Winnipeg this 2nd day of November, 2005.

LAURA DIAMOND

DR. PATRICK DOYLE

PAUL JOHNSTON