

The Appellant consulted a chiropractor, [text deleted], on November 7th, 1996 and was diagnosed as having a Whiplash Associated Disorder Type II (WAD 2) injury and was advised to work but only with modified duties. [Appellant's chiropractor] recommended a series of adjustments three times a week for a period of time and that he attend the [rehab clinic] for reconditioning.

He missed the first six days of work due to his injuries. In January, 1997 the Appellant advised his Adjuster that he did not think the chiropractic treatments were helping him recover and wanted an alternate form of treatment. About the same time [Appellant's chiropractor] advised the Adjuster that the Appellant was in need of reconditioning and that he had contacted [rehab clinic] to see if they would take the Appellant as a client and recommended that MPIC pay for this program. MPIC concurred and [rehab clinic] did an assessment and recommended an eight week program to work on the areas of his cervical and lumbar spine.

[The Appellant] started at the [rehab clinic] in late January, 1996 and was given a number of exercises to help his recovery. He advises that sometime during March 3rd to the 10th he noticed a small welt in the vicinity of his belly button but didn't think anything about it until March 14th when, after showering, he noticed a large round protrusion at the edge of his belly button. He immediately called his family doctor but he could not see him for three weeks. He then called [rehab clinic] to advise them of his predicament and was advised that he could attend their walkin clinic that day and a doctor would see him right away.

He attended the clinic and saw [Appellant's doctor] on March 14th who diagnosed his problem

as a "umbilical hernia" and was advised to stop his workouts at [rehab clinic] until the hernia was treated surgically. He was referred to [Appellant's surgeon] who operated on him on April 10th and corrected the problem. He was off work till June 2nd, 1996 a period of eight weeks. Part of his job as a courier driver required him to lift large parcels up to 70 pounds and he had to carry them up long flights of stairs and he could not perform this job until he was fully recovered from the surgery. He wants MPIC to pay him income replacement indemnity ('IRI') for these eight weeks.

From the date of the accident through to March 14th, 1996 the Appellant missed approximately 40 days of work due to his injuries. MPIC paid the Appellant for this lost time. While working, [the Appellant] had to take an hour or two off on certain business days to attend his reconditioning program and chiropractic treatments. He advises that he could not schedule these visits outside of his working day and as a result had to take time off during his working day. His total lost time is 122.5 hours and he wants MPIC to pay IRI for this lost time.

THE ISSUES:

The Appellant's position is that the loss of work due to the hernia operation was as a direct result of the automobile accident. His contention is that the hernia developed as a result of his reconditioning program at [rehab clinic] that he was taking as a result of his auto accident. Unfortunately the evidence produced at the hearing does not support the Appellant's contention.

He gave evidence that he had fallen on ice while making a delivery in late February. He landed on his back and advised that he had internal problems, was "stiff as hell next day" and went to work the next day even though he hurt all over. Within a day or two he had another fall but this time he did the "splits" and caught himself before he fell to the ground. He advised that he was sore on his side, over his kidneys and his back and neck hurt. He also complained of pain through out his abdomen.

[The Appellant's] evidence at the hearing was that some time between March 3rd and the 10th he noticed a small raised welt near his belly button but did not pay any attention to it. The information provide by [Appellant's doctor] is that "I saw [the Appellant] on March 14th, 1997 with regards to abdominal discomfort related to a bulge in his abdomen. This began 3 weeks prior to this". This would mean that the bulge began in the last week of February, 1997. [Appellant's surgeon] reports "I saw [the Appellant] initially on March 19th, 1997 at the referral of [Appellant's doctor]. Two weeks prior to seeing me, while he took a shower after his regular exercise he noticed a tender peri-umbilical hernia". This would place it around March 4th, 1997.

[Text deleted], Director of the [rehab clinic], notes in his letter of March 19th, 1997 that "On February 24th, 1997 [the Appellant] related that he had fallen on the ice twice in the previous week". He goes on to state "On March 3rd, 1997 [the Appellant] indicated that he had a sore left side and missed the last two sessions due his injuries from having fallen on the ice".

We were provided with [the Appellant's] daily workout sheets at [rehab clinic] and they show that he missed two sessions on February 21st and 24th. These same sheets indicated that on his

return on March 3rd to the 10th [the Appellant] returned to the same level and frequency of exercise that he had been doing on February 19th.

The evidence produced at the hearing indicates that on a balance of probabilities the hernia developed as a result of one or both of the falls he had while working during the last week of February, 1997 and not as a result of his workouts at [rehab clinic] Am. Therefore we cannot award [the Appellant] IRI for the eight weeks he missed work as a result of his surgery as the time lost was not as a result of the auto accident.

The second part of [the Appellant's] claim must also fail. We have ruled earlier in the [text deleted] Case that the Act does not permit IRI benefits to be paid to a person who takes off part of his or her working day to attend for medical treatment arising out of an auto accident. Section 81 only permits IRI to be paid to someone who is unable to work full-time because of an automobile accident. Unfortunately the wording in the Act does not permit payment to individuals who are working full-time but have to miss a few hours of work to attend for medical or remedial treatment.

DISPOSITION:

For the reasons stated above we dismiss the appeal and confirm the decision of the Acting Review Officer dated September 10th, 1997.

Dated at Winnipeg this 15th day of April 1998

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED