

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-00-82**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C., Chairman  
Ms. Yvonne Tavares  
Mr. Colon C. Settle, Q.C.

**APPEARANCES:** The Appellant, [text deleted], was represented by [Appellant's representative]; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey.

**HEARING DATE:** November 7<sup>th</sup>, 2000

**ISSUE:** Whether Appellant's Income Replacement Indemnity ('IRI') terminated prematurely.

**RELEVANT SECTIONS:** Section 110(1)(a) of the MPIC Act and Sections 6 and 8 of Manitoba Regulation No. 37/94.

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.**

## **Reasons For Decision**

On January 7<sup>th</sup>, 1999, [the Appellant's] [text deleted] vehicle was stopped at a red light when it was struck from behind by a [text deleted]. The impact pushed [the Appellant's] car into the back of a bus that was stopped in front of him.

Most of the relevant facts, medical and otherwise, are contained in the eight-page decision rendered on March 14<sup>th</sup>, 2000, by [text deleted], the Internal Review Officer for Manitoba Public

Insurance Corporation, of which a copy is annexed hereto. The only issue before us is the one that [MPIC's Internal Review Officer] was called upon to decide, namely whether [the Appellant's] Income Replacement Indemnity ('IRI') was terminated prematurely by MPIC's case manager, as of April 2<sup>nd</sup>, 1999. In light of [MPIC's Internal Review Officer's] careful analysis of the medical evidence, it is unnecessary for this Commission to reproduce the same information in these reasons. We believe it to be sufficient that we indicate, here, the medical assessments and reports that constitute the principal pillars supporting our decision.

- [Text deleted], [the Appellant's] chiropractor, whose report of February 18<sup>th</sup>, 1999, (transmitted through his assistant) indicates that he expected [the Appellant] to return to work on March 1<sup>st</sup> of that year.
- The detailed, independent assessment performed by [text deleted], chiropractor, on March 23<sup>rd</sup>, 1999, wherein he offers the opinion that

.....based on the physical findings, I would believe that [the Appellant] is able to immediately return to work on a full time basis with the job tasks as described in [Appellant's occupational therapist's] job demands analysis report. To the best of my determination, [the Appellant's] disabilities are more related to the aforementioned psychosocial factors than to physical limitations. As such, treatment with the physiotherapist should continue for the short term in support of his return to work...I would think that with a further four weeks of treatment subsequent to [the Appellant's] return to work, that he would attain a satisfactory level of recovery and sufficient empowerment to allow a discharge to self-management.

In fact, the evidence indicates that [the Appellant] continued to receive physiotherapy until April 21<sup>st</sup>, 1999.

- The Job Demands Analysis prepared on March 15<sup>th</sup>, 1999, by [text deleted], occupational therapist, classifying the physical demands of the job of a distributor dismantler as Medium Work, of which the critical physical demands were:
  - infrequent handling of up to 30 pounds
  - constant handling of up to four pounds

- squatting or bending down to bin; this aspect of the job can be modified to eliminate squatting or bending
  - constant standing, or walking for short distances
- Report of [Appellant's doctor], bearing date June 9<sup>th</sup>, 1999, and addressed to [the Appellant's] then solicitor. [Appellant's doctor] has been looking after [the Appellant] since May 18<sup>th</sup>, 1999. His report concludes

My findings suggest that this man's backache is quite genuine, but he can hold a job which does not require heavy lifting, pushing or pulling. Unfortunately, his current back situation has jeopardized his chances of further job hunting.

At the time of his accident, [the Appellant] had only been employed by [text deleted] as a dismantler of used distributors since November 11<sup>th</sup>, 1998. He was, therefore, still on probation and lost his job because, after returning to work on March 1<sup>st</sup>, 1999, he left the job site after one hour due, he said, to the fact that he was in too much pain to continue. The same thing apparently happened on the following day, when he only stayed at work for about two hours before going home.

It is clear from a careful review of the entire file that [the Appellant] has been less than cooperative with many of those who have been trying to help him, and that he may well have been able to return to work by the date when his IRI was terminated on April 2<sup>nd</sup>. However, we prefer to give [the Appellant] the benefit of whatever doubt exists, by accepting the opinion of [Appellant's doctor] that [the Appellant's] physical condition had been restored to the point at which he was able to hold his former job by June 9<sup>th</sup>, 1999. [Appellant's doctor's] report of that date speaks of [the Appellant's] ability to hold "a job which does not require heavy lifting, pushing or pulling", and this fits the physical demands analysis prepared by [Appellant's occupational therapist]. The unfortunate fact is that, by that date, [the Appellant] had lost his

former job and, being properly classified as a 'temporary earner' within the meaning of Sections 70(1) of the MPIC Act and 6 of Manitoba Regulation No. 37/94, is not entitled to continued IRI as a result of that job loss under Section 110(2).

Copies of the several statutory provisions referred to above are annexed to these Reasons, immediately following the copy of the Internal Review Officer's decision.

Finally, we have to comment that, although we were provided at the hearing of [the Appellant's] appeal with a copy of a sickness certificate signed by [Appellant's doctor] and dated October 29<sup>th</sup>, 1999, stating that "this man is not yet ready to go back to work", no other particulars are given and we are not able to conclude, upon any reasonable balance of probabilities, that any inability to return to work on October 29<sup>th</sup>, 1999, on the part of [the Appellant] can be causally related to his motor vehicle accident of January 7<sup>th</sup>, 1999. By the same token, although [the Appellant] appears to have been adversely affected for quite some time by psychosocial factors, there is insufficient evidence before us from which we can ascribe his psychological condition to his motor vehicle accident.

**Disposition:**

[The Appellant] is entitled to the reinstatement of his Income Replacement Indemnity from April 3<sup>rd</sup>, 1999, to June 9<sup>th</sup>, 1999, both inclusive, with interest thereon at the statutory rate.

Dated at Winnipeg this 27<sup>th</sup> day of November, 2000.

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**J. F. REEH TAYLOR, Q.C.**

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**YVONNE TAVARES**

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**COLON C. SETTLE, Q.C.**