

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-140**

PANEL: Mel Myers, Q.C., Chairman
Yvonne Tavares
F. Les Cox

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: May 18th, 2001

ISSUE(S):

- 1. Whether the Appellant was entitled to Income Replacement Indemnity benefits pursuant to Section 81(1)(a) of the Manitoba Public Insurance Corporation Act; and**
- 2. Whether the termination of Appellant's employment was as a result of injuries sustained in a motor vehicle accident.**

RELEVANT SECTIONS: Sections 81(1)(a) and 110(1)(a) of the Manitoba Public Insurance Corporation Act (the "Act").

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

The Appellant, [text deleted], has appealed a decision of MPIC's Internal Review Officer, dated October 18th, 2000, wherein the Internal Review Officer confirmed the adjuster's decision which terminated the Appellant's IRI benefits on January 24th, 2000.

The Appellant had been employed by [text deleted] and was involved in a motor vehicle accident on October 15th, 1999. As a result of that motor vehicle accident, he sustained certain injuries which prevented him from returning to work at [text deleted] and which entitled him to receive income replacement indemnity (“IRI”) benefits from MPIC pursuant to Section 81(1) of the Act.

A work site assessment and physical examination was conducted by physiotherapist, [text deleted], and occupational therapist, [text deleted], on November 18th, 1999, in order to assess the Appellant's physical condition and his job site. Their report indicated there were no significant physical impediments that would preclude the Appellant from returning to his occupational duties with [text deleted]. Assistive work station modifications were put in place to accommodate him upon his return. In particular, a bench was installed to alleviate some difficulties. Both therapists, [text deleted] and [text deleted], the Appellant's physician, agreed that the Appellant was able to return to work on December 6th, 1999.

On December 10th, 1999, MPIC wrote to the Appellant advising him that pursuant to Section 110(1)(a) of the Act, he was no longer entitled to income replacement indemnity benefits as of Dec 6th, 1999. Section 110(1)(a) states:

Events that end entitlement to IRI

110(1)(a) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

- (a) the victim is able to hold the employment that he or she held at the time of the accident.

The Appellant did not return to work on December 6th, 1999, due to an exacerbation of his motor vehicle accident related injuries. MPIC subsequently extended his IRI benefits to January 24th, 2000, when the Appellant was again medically cleared to return to work.

Unfortunately, a dispute arose between the Appellant and his employer in respect of the sufficiency of medical information which had been provided by the Appellant to his employer in respect of his absence from the workplace subsequent to December 6th, 1999. The Appellant and his employer were unable to resolve that dispute and as a result thereof, [text deleted] terminated the employment of the Appellant effective February 2nd, 2000.

Decision

The onus is upon the Appellant to establish on a balance of probabilities that he was unable to continue to work after January 24th, 2000, due to the injuries he sustained in the motor vehicle accident and as a result thereof, he was entitled to receive income replacement indemnity benefits subsequent to January 24th, 2000. The Commission has determined that the Appellant has not met the burden of proof that has been placed upon him and that there was clear and convincing medical evidence and the Appellant's own admission which clearly established that the Appellant was able to return to work after January 24th, 2000.

The Commission is satisfied that the failure of the Appellant to return to work after January 24th, 2000, was:

1. not due to the injuries arising out of the motor vehicle accident, but;

2. due to the dispute between his employer, [text deleted], and himself in respect of the sufficiency of medical information which the Appellant had provided the employer relating to his absence from work.

Accordingly, the Commission finds that pursuant to Section 110(1)(a) of the Act, MPIC was entitled to terminate the Appellant's income replacement indemnity benefits subsequent to January 24th, 2000.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date October 18th, 2000.

Dated at Winnipeg this 27th day of June, 2001.

MEL MYERS, Q.C.

YVONNE TAVARES

F. LES COX