



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-02-114**

**PANEL:** Ms. Yvonne Tavares, Chairperson  
Dr. Patrick Doyle  
Mr. Bill Joyce

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

**HEARING DATE:** March 10, 2004

**ISSUE(S):** Whether classification of employment appropriate.

**RELEVANT SECTIONS:** Sections 107 and 109 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Schedule C of Manitoba Regulation 39/94.

**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

The Appellant, [text deleted], was involved in a motor vehicle accident on December 4, 1995. Prior to the accident, the Appellant was employed as a custodian on a full-time basis with the [text deleted]. As a result of the injuries which the Appellant sustained in the motor vehicle accident, he was unable to resume his pre-accident position as [text deleted] on a full-time basis. Accordingly, MPIC completed a two year determination of employment for the Appellant pursuant to Section 107 of the MPIC Act. Section 107 of the MPIC Act provides that:

**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.

In a decision dated May 8, 2002, MPIC's case manager advised the Appellant as follows:

In your case, you are unable to hold your past employment as a [text deleted], therefore we have done the two year determination. The determination is done taking into account the educational assistance and training provided to you through the [text deleted] and sponsored by Manitoba Public Insurance.

Based on the medical information and vocational consultant's report, you have been determined capable of holding employment as a Computer Support Technician. The occupation of a Computer Support Technician was then identified using the National Occupational Classifications code 8535, which is matched with electronic and related equipment installing and repairing occupations as the closest occupation under Schedule C. According to our Schedule C 2002, the salary for a Level 1 Computer Technician is \$30,074.00 per year.

Once you have been determined, you have one year to locate the employment, in accordance with Section 110(1)(d) of the Manitoba Public Insurance Corporation Act.

During this one year period, job search assistance will be available to assist you in locating employment in the determined field. Manitoba Public Insurance has assigned [text deleted], a Vocational Rehabilitation Consultant with [vocational rehab consulting company] to assist you. The two year determination takes effect May 7, 2002.

The Appellant disagreed with his classification of employment and sought an internal review of the case manager's decision. The Internal Review Officer, in his decision dated July 19, 2002, determined that the Appellant had been properly classified pursuant to Schedule C and dismissed the Application for Review.

The Appellant has now appealed from the Internal Review decision to this Commission. The issue which requires determination in this appeal is whether the Appellant's determined employment was properly classified pursuant to Schedule C of Manitoba Regulation 39/94.

Counsel for the Appellant submits that the appropriate classification for the Appellant is the Electronic and Related Equipment Fabricating and Assembling Occupations category provided for in Section 17 Product Fabricating, Assembling and Repairing Occupations of Schedule C of Manitoba Regulation 39/94. He maintains that the Microcomputer Systems Technician (“MST”) course which the Appellant completed, prepared him for an entry-level position within the information technology field. Counsel for the Appellant insists that the MST course prepares its graduates for basic assembly of computers, providing them with the skills necessary to accomplish unsophisticated hardware repairs, which amounts to replacement of damaged components, and troubleshooting of basic computer problems. He claims that as an MST, the Appellant does not have the skills necessary to undertake repairs to systems, networks or software repairs. Counsel for the Appellant submits that the category of employment which MPIC has classified the Appellant under, requires more advanced training than that which the Appellant has received to date.

Counsel for the Appellant maintains that the fabricating and assembly position, which has a lower average salary in Schedule C is a more appropriate classification, given the Appellant’s training in an entry level position. In this respect, counsel for the Appellant relies upon the testimony of [text deleted], who is a placement officer with Winnipeg Technical College and upon [placement officer’s] letter dated February 5, 2004, wherein [placement officer] opined that:

As noted earlier, there is no direct fit in Schedule C for graduates of this program. Although I am hesitant to identify a classification in this Schedule because it does not use the system currently in use in our profession, the closest fit that I would consider is *Electronic and Related Equipment Fabricating and Assembling Occupations* listed under 17, PRODUCT FABRICATING, ASSEMBLING AND REPAIRING OCCUPATIONS. I would not consider any of the ‘Electrical’ classifications appropriate as computers are not considered to be electrical equipment. They are more related to the electronic

equipment listed above.

The classification of *Electronic and Related Equipment Installing and Repairing Occupations* is also not appropriate for graduates of this program. This classification is more suitable for graduates of our Network Support Technician program who are considered to possess more credentials in the information technology industry and, as such, command a higher starting salary. The prerequisites for this program include the skills developed in our Microcomputer Systems Technician program and is often taken by these graduates as a more advanced level of training in the Information Technology Field.

In practical terms, the classification in Schedule C identified as *Electronic and Related Equipment Fabricating and Assembling Occupations* could be assigned to individuals trained to Level I (i.e. grads of our Microcomputer Systems Technician program) and *Electronic and Related Equipment Installing and Repairing Occupations* could be considered for individuals with more advanced training, or Level II (i.e. graduates of our Network Support Technician program). The latter individuals would require a broader range of technical skills in addition to those provided in the program which [the Appellant] attended. In order to be considered for positions at this level, he would require further training and certification.

Accordingly, counsel for the Appellant submits that the Appellant's employment should be classified pursuant to the category Electronic and Related Equipment Fabricating and Assembling Occupations within Schedule C of Manitoba Regulation 39/94.

Counsel for MPIC submits that the Appellant's employment was properly classified in the category, Electronic and Related Equipment Installing and Repairing Occupations, n.e.c. pursuant to Section 17, Product Fabricating, Assembling and Repairing Occupations of Schedule C of Manitoba Regulation 39/94. He maintains that the Internal Review Officer reviewed all of the relevant job classifications and made a proper determination of the Appellant's job classification.

Counsel for MPIC insists that the training and skills acquired through the MST course include installing software and hardware and repairing hardware. He submits that this type of work falls

within the installing and repairing category and not within the fabricating and assembly classification. Further, he notes that the category confirmed by the Internal Review Officer includes positions not elsewhere classified and, therefore, it is a broader category, encompassing more positions. Counsel for MPIC submits that since this is a “catch-all” category, the Appellant’s position would more likely fall within this category.

Counsel for MPIC concludes that the Appellant’s training is a closer fit with the installing and repairing occupation, rather than fabricating and assembly and therefore, the Internal Review decision should be confirmed and the appeal dismissed.

The issue in this appeal comes down to a matter of whether the Appellant’s employment should be classified under the classification - Electronic and Related Equipment Fabricating and Assembling Occupations, or whether it should be classified under the classification - Electronic and Related Equipment Installing and Repairing Occupations, n.e.c. Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant’s employment should be classified under the classification – Electronic and Related Equipment Fabricating and Assembling Occupations.

The Appellant testified at the hearing that the MST course provided him with entry-level training. The emphasis of the course was to gain familiarity with computers and their components, troubleshoot computer problems and maintenance of computers. The Appellant testified that his training enabled him to repair hardware problems on stand alone computers, but anything more complicated, involving software problems or networks were beyond his capabilities.

[Placement officer] of [text deleted] testified that the MST program was designed to prepare students for an entry-level position as a computer technician or a computer support professional. It was [placement officer's] opinion that in order to qualify for work as a computer installer and repairer, one would require more advanced skills than the MST program provided, such as might be gained through completion of the Network Support Technician course. [Placement officer] testified that in the MST program, the focus was on coverage of personal computer hardware technology, assembly of computers, replacement of malfunctioning computer parts, installing and configuring operating systems and troubleshooting and maintenance. In his opinion, the MST program would fit within the category of Electronic and Related Equipment Fabricating and Assembling Occupations.

Based upon [placement officer's] testimony, we find that the skills required of a computer installer and repairer would exceed the qualifications of the Appellant. A computer installer and repairer would be required to apply technical knowledge and skills to assemble, install, operate, maintain and repair computers, networks and related instruments. This position would necessarily involve instruction in power supplies, memory structure, microprocessor design, peripheral equipment, programming and networking. These requirements far exceed the Appellant's qualifications.

As a result, we find that the Appellant's occupation should be classified pursuant to the category Electronic and Related Equipment Fabricating and Assembling Occupations. We are satisfied, on a balance of probabilities, that the training he received in the MST course provided him with basic skills required to handle computer hardware, assemble computers and repair computers, to the extent that repair involved replacement of malfunctioning components. In the computer field, this basic training did not give the Appellant the skills necessary to install or repair any

sophisticated computer problems or administer network problems. As a result, we find that the classification Electric and Related Equipment Installing and Repairing Occupations, n.e.c. was not the appropriate category for the Appellant's occupation.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated July 19, 2002, is therefore rescinded.

Dated at Winnipeg this 21<sup>st</sup> day of April, 2004.

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**YVONNE TAVARES**

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**DR. PATRICK DOYLE**

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**BILL JOYCE**