



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-04-06**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
The Honourable Mr. Armand Dureault  
Mr. Wilson Maclellan

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

**HEARING DATE:** September 23, 2004

**ISSUE(S):** Entitlement to Income Replacement Indemnity benefits

**RELEVANT SECTIONS:** Section 83(1)(a) of The Manitoba Public Insurance  
Corporation Act ('MPIC 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] was involved in a motor vehicle accident on October 27, 2002 and suffered soft tissue injuries to his neck and back and, as a result thereof, he asserts that he was unable to return to work for [text deleted]. The Appellant was employed by this firm sometime between August and September 2002 and he asserts that if not for the motor vehicle accident he would have returned to work on November 1, 2002 and continued to work until February 21, 2003 (when [text deleted] ceased operations in [text deleted] and, as a result thereof, filed a claim with MPIC for Income Replacement Indemnity ('IRI') benefits for this period.

On February 17, 2003 MPIC's case manager wrote to the Appellant and informed him that he was not entitled to IRI benefits because he was off work at the time of the motor vehicle accident for an unrelated medical condition without a confirmed return to work date, pursuant to Section 105 of the MPIC Act.

On February 19, 2003 the case manager received a faxed copy of a medical report from the Appellant's physician, [text deleted], dated February 12, 2003.

The case manager wrote to the Appellant on March 24, 2003 and, relying on the information on the file, concluded that the Appellant was not entitled to any IRI benefits since he was not working at the time of the motor vehicle accident and had not established a return date were it not for the motor vehicle accident.

### **Internal Review Decision**

The Appellant made Application for Review asserting that he was off work from October 28, 2002 to November 1, 2002 due to arthritis and could not go back to work on November 1, 2002 because of the injuries sustained in the motor vehicle accident.

The Internal Review took place on June 4, 2003 and the Internal Review Officer issued his decision on November 19, 2003 rejecting the Application for Review and confirming the case manager's decision. The Internal Review Officer concluded that the Appellant did not establish, on a balance of probabilities, that his lack of employment after the motor vehicle accident on October 27, 2002 had a sufficient causal relationship to the motor vehicle accident to entitle him

to an IRI benefit pursuant to Section 83(1) of the MPIC Act. The Internal Review Officer in his decision stated:

It is far from clear, however, that your inability to work was caused by the car accident. There is significant evidence suggesting that you had been off work for some time before the accident either, according to your evidence, for medical problems involving high blood pressure and arthritis, or, according to [Appellant's doctor's] report of February 13, 2003, for emotional problems.

### Appeal

The Appellant filed a Notice of Appeal on December 30, 2003.

The relevant provision of the MPIC Act in respect of this appeal is Section 83(1)(a) of the MPIC Act, which states:

**Entitlement to I.R.I. for first 180 days**

**83(1)** A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:

(a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred;

The Appeal hearing took place on September 23, 2004. The Appellant appeared on his own behalf and Mr. Dean Scaletta appeared on behalf of MPIC.

The Appellant testified at the appeal hearing and asserted that he was employed with [text deleted] and had been working for this company at the time of the motor vehicle accident. He acknowledged that he had medical problems, acknowledged being away from work between September 22 and 27<sup>th</sup>, and a few days prior to October 27, 2002, due to his medical problems but asserted that he had been working regularly for the company between September 27, 2002 and until a day or two prior to the motor vehicle accident. He further testified that he was expected to return to work on November 1, 2002 but was unable due to the injuries he sustained

in the motor vehicle accident. The Appellant, in his testimony, referred to a document which had been filed in evidence entitled 'Employer's Verification of Earnings', dated November 11, 2002, which indicated that the Appellant was paid a total of \$1,835.21 between August 2, 2002 and November 11, 2002 and that his "*salary and wages received or receivable in the pay period of accident*" was nil.

The Appellant further testified that he was unable to provide his pay stubs for the 2002 tax year because he had mistakenly shredded them. He further stated that since the company ceased operations in [text deleted] at the end of February 2003, he tried but was unable to obtain verification from the company as to his employment prior to the motor vehicle accident.

In cross-examination the Appellant acknowledged a number of inconsistencies between the testimony he gave at the hearing, conversations he had with the case manager and medical reports which were provided by his caregivers to MPIC.

[Text deleted], a medical consultant with MPIC's Health Care Services team, was requested to review the medical documentation on the Appellant's file and advise when it would have been medically advisable for the Appellant to return to work as a Customer Service Representative after the motor vehicle accident.

[MPIC's doctor] provided an Inter-Departmental Memorandum to MPIC dated March 13, 2003 where he stated the Appellant "*did not have significant impairment in function what would have prevented him from returning to his employment soon after [the accident]. The majority of impairment described by [his] treating physicians was related to pain*". He further stated:

Based on my review of the medical documentation, the only measurable impairment in function that would have been present would have been decreased range of motion of the cervical and lumbar spines and slight decreased grip strength in the right hand. As the majority of [the Appellant's] work duties required him to do keyboarding and light lifting and carrying, it is unlikely that this would have led to a physical disability sufficient to preclude him from the workplace for a prolonged period of time. A period of four weeks for [the Appellant] to have a decreased amount of acute pain and to treat decreased range of motion abnormalities would, in my opinion, have been an appropriate time period for his to recover from the acute effects of [the accident]. (underlining added)

The Appellant, in his submission, reviewed his employment record and submitted that he commenced employment with [text deleted] in either August or September 2002 and continuously worked for this company until the motor vehicle accident had occurred on October 27, 2002 with the exception of a few days prior to that date due to a short illness. The Appellant further asserted but for the injuries he sustained in the motor vehicle accident on October 27, 2002 he would have returned to work on November 1, 2002 and would have worked until February 21, 2003 when [text deleted] ceased operations in [text deleted]. The Appellant therefore asserted that he was entitled to receive IRI for the period November 1, 2002 until February 21, 2003.

MPIC's legal counsel submitted that the main issue in this appeal is whether the Appellant had established, on a balance of probabilities, that his lack of employment after the motor vehicle accident on October 27, 2002 had a sufficient causal relationship to the accident to entitle him to IRI pursuant to Section 83 of the MPIC Act. MPIC's legal counsel reviewed all of the testimony that the Appellant gave at the hearing, as well as the documentation filed with the Commission, and submitted that, having regard to the number of inconsistencies between the Appellant's testimony at the hearing and the documentation on file, the Commission should reject the Appellant's testimony and dismiss the appeal.

MPIC's legal counsel further submitted that:

1. the Appellant failed to establish, on the balance of probabilities, that he was employed between August or September 2002 until the motor vehicle accident.
2. having regard to the Appellant's health problems prior to the motor vehicle accident, he was unable to work between November 1, 2002 and February 21, 2003.
3. the Appellant did not establish, on the balance of probabilities, that but for the accident he would have worked during the first 180 days after the motor vehicle accident.
4. the Appellant had failed to produce any substantiation for his assertion that he was working regularly during the weeks leading up to the accident.
5. subsequent to the motor vehicle accident the Appellant has not established, on a balance of probabilities, that any motor vehicle accident injuries prevented the Appellant from returning to work due to health reasons other than the motor vehicle accident injuries.
6. the Appellant has failed to establish, on a balance of probabilities, that his lack of employment after the motor vehicle accident on October 27, 2002 had a sufficient causal relationship to the accident to entitle him to IRI benefits pursuant to Section 83 of the MPIC Act.

### **Discussion**

The Commission notes that there were a number of inconsistencies in the Appellant's testimony. Notwithstanding these inconsistencies, the Commission was impressed with the testimony of the Appellant at the appeal hearing, finds him to be a credible witness and accepts the Appellant's testimony that:

1. he was employed on a regular basis with [text deleted] from either August or September 2002 until the motor vehicle accident on October 27, 2002 except for several days prior to the accident when he was away from work due to illness.
2. as a result of the motor vehicle accident that the Appellant suffered motor vehicle accident injuries which would have prevented the Appellant from returning to work for a period of time.
3. that he was unable to provide documentary evidence of his employment with [text deleted] because he had accidentally shredded his pay stubs after the 2002 tax year and had tried but was unable to obtain proof of his employment from this employer.

The evidence before the Commission indicated that MPIC, as well as the Appellant, had difficulty obtaining employment information from [text deleted], who had ceased operations in [text deleted], and this evidence corroborates the testimony of the Appellant in this respect.

The Commission also accepts the medical opinion of [MPIC's doctor] who, in his Inter-Departmental Memorandum to MPIC dated March 13, 2003, stated that as a result of the impairment function suffered by the Appellant as a result of the motor vehicle accident, which impairment related primarily to pain, the Appellant had been unable to work for a period of four weeks following the motor vehicle accident. [MPIC's doctor] further indicated that after a period of four weeks the Appellant would have recovered from the effects of the motor vehicle accident and had been able to return to work.

The Commission, after a careful review of all of the evidence, determines that the Appellant has established, on a balance of probabilities, that he was employed between September 27, 2002 until a few days prior to the motor vehicle accident with [text deleted], but for the accident would

have returned to work on November 1, 2002 and would have continued employment with [text deleted] until February 21, 2003 when [text deleted] ceased operations in the Province of Manitoba.

The Commission accepts the medical opinion of [MPIC's doctor] and finds that the Appellant has established, on a balance of probabilities, that he did, as a result of the motor vehicle accident, sustain an impairment of function related to pain which prevented him from working for a period of four weeks following the motor vehicle accident.

### **Decision**

The Commission therefore finds that, pursuant to Section 83(1)(a) of the MPIC Act, but for the accident, the Appellant was unable to work for a period of four weeks. The Commission determines that, excluding the waiting period of seven days after the date of the motor vehicle accident, pursuant to Section 152(2) of the MPIC Act, the Appellant is entitled to the payment of IRI in the amount of three weeks salary, together with interest.

Dated at Winnipeg this 16<sup>th</sup> day of November, 2004.

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**MEL MYERS, Q.C.**

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**HONOURABLE ARMAND DUREAULT**

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**MR. WILSON MACLENNAN**