

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-212**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Ms Deborah Stewart

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

HEARING DATE: July 3, 2009

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, [text deleted], is appealing the Internal Review Decision dated October 28, 2005, which dismissed his Application for Review and upheld the case manager's decision of February 16, 2005. The Internal Review Officer found that there was no independent information that the Appellant had lost his employment, which he held at the date of the motor vehicle accident, as a result of motor vehicle accident-related injuries. The Internal Review Officer also found that there was no medical information on the Appellant's file indicating that he was unable to work as a result of injuries sustained in the motor vehicle accident of December 22, 2004.

At the hearing of the appeal, the Appellant advised that due to the motor vehicle accident of December 22, 2004, he suffers with a great deal of back pain which is aggravated when he does any type of heavy labour. At the time of the motor vehicle accident, the Appellant had just started a job as a janitor at [text deleted]. He maintains that he lost this job because of his difficulty lifting heavy garbage containers into the garbage bins. He contends that due to the fact that he was having a hard time doing the heavy lifting required in this position, he was let go.

The Appellant also submits that as a result of his back pain he is unable to do any type of heavy labour, and he has had to look for lighter types of employment. The Appellant advised at the hearing that due to his motor vehicle accident-related injuries, he was unable to complete his training as a [text deleted] engineer, since that position was also too heavy for him. At the hearing, the Appellant did confirm that, notwithstanding his back problems, he has worked steadily since the motor vehicle accident in a variety of jobs.

Counsel for MPIC submits that there is no independent information indicating that the Appellant has lost any employment as a result of the motor vehicle accident. She also argues that there is no medical information supporting the Appellant's inability to work as a result of any motor vehicle accident-related injuries. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated October 28, 2005 confirmed.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established any entitlement to income replacement indemnity ("IRI") benefits as a result of the motor vehicle accident of December 22, 2004. The Commission finds

that the Appellant has not established, on a balance of probabilities, that he lost his employment with [text deleted] on January 7, 2005 as a result of injuries he sustained in the motor vehicle accident of December 22, 2004. Additionally, the medical evidence on the file does not substantiate an inability on the Appellant's part to hold employment. Rather, the evidence provided by the Appellant himself is that he has continued to work, in a variety of positions, since the date of the motor vehicle accident. Accordingly, the Commission finds that since the Appellant has been able to hold employment continuously since the motor vehicle accident, there is no entitlement to IRI benefits as a result of the motor vehicle accident of December 22, 2004.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated October 28, 2005 is confirmed.

Dated at Winnipeg this 13th day of July, 2009.

YVONNE TAVARES

LEONA BARRETT

DEBORAH STEWART