

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-57**

PANEL: Mr. Mel Myers, Chairperson
Ms Leona Barrett
Ms Jean Moor

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

HEARING DATES: September 3, 2009 and January 11 and 12, 2010

ISSUE(S): Entitlement to benefits under the Personal Injury Protection
Plan ("PIPP").

RELEVANT SECTIONS: Section 160(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act')

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

[The Appellant] [text deleted], was involved in a motor vehicle accident on July 11, 2006 and sustained injuries to his neck, low back and complained of headaches and pain and numbness to his left leg. At the time of the motor vehicle accident the Appellant was [text deleted] years of age and had recently began work as a mobile officer for [text deleted] on June 11, 2006.

The Internal Review Officer provided a succinct description of the essential facts which caused MPIC to terminate the Appellant's PIPP benefits. The Internal Review Officer, in her report dated May 8, 2008 stated:

- “4. You signed an Application for Compensation under PIPP on July 26, 2006. On page 8 of that form it indicated under point number 3, which you initialled, “I agree to notify MPI immediately of any change in circumstances affecting this claim, including any return to work or income earned from employment, and understand that failure to do so may result in suspension or termination of my benefits.”
5. On March 7, 2007, your case manager [text deleted] sent you a letter indicating that your entitlement to PIPP benefits was being terminated for knowingly providing false or inaccurate information regarding the extent of your injuries and functional abilities in contravention of Section 160(a) of the Act (copy enclosed). She indicated that this was based on the following information:
- a. On October 16, 2006 you advised that you remained injured and unable to work. You indicated that you developed severe back pain and were still under the care of [Appellant’s Chiropractor] [text deleted]. However, as early as September 21, 2006 you were working as a security officer at the [text deleted] which is confirmed by the Winnipeg Police who were dispatched there regarding an assault. You identified yourself as working security and that you recently removed a patron who was causing a disturbance.
 - b. On November 7, 2006, you provided a Level of Function report to MPIC indicating that you were suffering considerable functional limitations and were depressed because you feared that you may never be able to return to employment due to the severity of your injuries. However, despite this information you were seen working security at the [text deleted].
 - c. You applied for employment with a security firm and your licence to work for that firm was approved as of November 6, 2006.
 - d. You played football for the [text deleted] against the [text deleted] on August 26, 2006 and the records indicate that you were the leading tackler in the game.
6. The decision letter went on to state that even if your benefits were not terminated under Section 160(a) your entitlement to Income Replacement Indemnity (“IRI”) would have ended in accordance with Section 110(1)(a) of the Act (copy enclosed). The investigation confirmed that you are functionally capable of working and that you are in fact working and your conduct and effort at the [Rehabilitation (Rehab) Clinic] supports your ability to work. The letter further states that you are in contravention of Section 149 of the Act (copy enclosed) because your failure to advise MPI of changes in your circumstances which affected your entitlement to benefits. The letter further states that in accordance with Section 189(1) of the Act (copy enclosed) you are required to reimburse MPI the amount of \$13,495.27 comprised of \$8,595.27 in IRI and \$4,900.00 as the cost of the [Rehab Clinic] program.
7. You provided documents in support of your Application for Review including a letter from yourself indicating that you did not work at the [text deleted] between July 11, 2006 and November 28, 2007. You provided the phone number for the

manager in charge, [text deleted]. I phoned that number and there was nobody there by that name and accordingly the information you provided could not be verified. The male who answered the telephone indicated that that was not a number for [text deleted] or the [text deleted].

8. You provided a letter from the [text deleted] dated September 6, 2007. It indicated that you were never employed by the [text deleted] from June, 2007 to September 6, 2007. However, those are not the dates that are in question in the decision letter.”

The Internal Review Officer confirmed the decision of the case manager to terminate the Appellant’s PIPP benefits and dismiss the Appellant’s Application for Review. In her decision, the Internal Review Officer stated:

“Discussion and Rationale for Decision

In my opinion your Application for Review was filed within the time limits. The termination of your PIPP benefits was justified. In September of 2006, you were working security at the [text deleted] and at the [text deleted] in November, 2006, yet in October, 2006 you advised that you were still injured and could not work. You knowingly provided information that was false in contravention of s. 160(a) of the Act. You also failed to notify MPI of your return to work as per the Application for Compensation under PIPP which you signed. I also find that you were working and in contravention of s. 149 of the Act as you failed to advise MPI of this. You are required to reimburse MPIC \$13,495.27 in accordance with s. 189(1) of the Act. I am therefore confirming the decision of the case manager dated March 7, 2007.”

The Appellant filed a Notice of Appeal on May 30, 2008.

Appeal:

The relevant provision in the MPIC Act in respect of this appeal is Section 160(a) which states:

Corporation may refuse or terminate compensation

[160](#) The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

- (a) knowingly provides false or inaccurate information to the corporation;

The hearing commenced on September 3, 2009. The Appellant appeared on his own behalf. Mr. Kirby appeared on behalf of MPIC. The Appellant testified that he was not employed as a security guard at the [text deleted] on September 21, 2006 but was merely a customer on the premises and he denied that he was employed as a security guard at that time.

The Appellant provided an undated letter from [Appellant's Manager] which states:

“I was [the Appellant's] Manager at the [text deleted] and recall when [the Appellant] had been in the vehicle accident. He had been a key part of our security team at the time and put us in a very difficult situation when he was unable to work due to the accident. We had to hire less desirable employees at that time to offset the loss of [the Appellant]. It ended up changing the security plan that we had in place for the [text deleted].”

I hope this clarifies any matter that has arisen with [the Appellant] and his work with the [text deleted].”

The Appellant testified that this letter corroborated his testimony that he was not employed at the [text deleted] on September 21, 2006.

The Appellant testified that he did not recall applying for a private investigator and/or security guard licence on November 6, 2006 to be employed by [text deleted].

The Appellant further testified that although he attended the [text deleted] on November 16, 2006 he was not employed as a security officer at the [text deleted]. In support of his position, the Appellant referred to a letter dated September 6, 2007 from [text deleted], Payroll Manager at the [text deleted], which stated:

“The Appellant was never employed by [text deleted] from June 2007 to the present time.
If you have any questions please call.”

At the conclusion of the Appellant's testimony, the hearing was adjourned to permit MPIC to call witnesses in support of his case.

Hearing, January 11, 2010:

The hearing reconvened on January 11, 2010. The Appellant telephoned the Commission on January 10, 2010 to advise that he was suffering from the flu and would not be able to attend the hearing on January 11, 2010. The Commission reconvened the hearing and telephoned the Appellant in the presence of Mr. Kirby, MPIC's legal counsel. The Appellant informed the Commission that he was too sick to attend the hearing. As a result, the Commission adjourned the proceedings to the next day, January 12, 2010. On the evening of January 11, 2010, the Appellant telephoned the Commission and left a voicemail message which was transcribed by the Commission's Secretary, [text deleted]. [Commission's Secretary] prepared a sworn affidavit stating that the following was a true transcript of the Appellant's voicemail message:

“Hello it's [the Appellant] calling.

I'm supposed to have a hearing tomorrow via telephone, um...can you just let the Board know not to bother calling me. I'm still very sick. Just to carry on and do whatever they need to do there.

I'm...I have no further evidence than I had before and whatever they need to do they can go and do and let me know via mail.

[Commission's Secretary's] affidavit was filed as Exhibit 1 in these proceedings.

At the commencement of the hearing the Chair of the Commission panel advised MPIC's legal counsel of the contents contained in the Appellant's voicemail message and during the proceedings the Commission took a brief recess to review this matter.

After a short interval, the panel returned to the appeal hearing and the Chair of the panel advised MPIC's legal counsel that:

1. The Appellant had not requested an adjournment in his voicemail statement but had instructed the Commission to carry on with the proceedings and to do whatever was required to be done.
2. The Appellant's voicemail statement constituted a waiver of his right to participate in the Commission's hearing.
3. As a result the Commission intended to proceed with the hearing.

The first witness called by MPIC was [text deleted] who is the Registrar of the Private Investigators and Security Guards, which is part of the Manitoba Department of Justice. [Registrar of the Private Investigators and Security Guards] testified that:

1. An application was made by the Appellant for a Private Investigator Licence on October 14, 2006.
2. The application by the Appellant was for a licence to be employed by [text deleted].
3. A licence was issued on November 6, 2006 to the Appellant to act as a [text deleted] be employed by [text deleted] Services.

The application was filed as Exhibit 2 and the licence was filed as Exhibit 3 in these proceedings.

[Registrar of the Private Investigators and Security Guards] further testified that the Appellant also held a licence for [text deleted].

The next witness, [Security Officer], testified by teleconference and stated that:

1. He had been employed as a police officer for 20 years and retired in the rank of Detective Sergeant.
2. He was subsequently employed for 5 years by the Manitoba Government in its Security Department.
3. In that capacity he helped develop [text deleted] for the Province of Manitoba.
4. On November 16, 2006 he was employed by [text deleted] and was working security at a [text deleted] function at the [text deleted].
5. This event was sponsored by [text deleted] of [text deleted] who had hired [text deleted] to act as primary security for this event.
6. He was in charge of the persons employed by [text deleted] and that the [text deleted] also had their own security personnel.
7. [Text deleted] head of security from [text deleted] convened a meeting of security personnel employed by [text deleted] and those employed by the [text deleted].
8. The only persons present in the room were members of [text deleted] and the security people hired by the [text deleted].
9. The Appellant attended this meeting as a member of the [text deleted] security team.
10. At this meeting it was decided that [text deleted] personnel would cover the perimeter and that the [text deleted] security staff would cover the inner area.
11. During the course of this meeting the Appellant appeared to be in charge of the [text deleted] Security staff.
12. He observed the Appellant working the area at the bar and moving around inside the [text deleted] communicating with the security staff and providing them with direction.

The next witness was [text deleted] who was the co-owner of the [text deleted]. He testified that on November 16, 2006:

1. [Text deleted] was having a [text deleted] Function at the [text deleted].
2. [Text deleted] Services were hired to provide security for this event by the [text deleted].
3. [Text deleted] head of security arranged for [text deleted] to be hired to provide security as well.
4. The Appellant was employed as a casual employee by [text deleted] Services and was working in the capacity of a security guard on the evening of Thursday, November 16, 2006.
5. At the conclusion of the event the Appellant was paid in cash for acting as a security guard.

The next witness was [Surveillance Company Owner] who testified that:

1. He was employed by Winnipeg Police Services for a period of 25 years from 1997 to 2002 and retired as a Detective Sergeant.
2. He was the owner of [Surveillance Company].
3. He was employed by MPIC to provide surveillance of the Appellant.
4. He provided MPIC's Special Investigation Unit with a surveillance report in respect of the Appellant dated January 7, 2007 relating to the Appellant's activities at the [text deleted] on the evening of November 30, 2006.

He further testified that:

1. Together with an assistant he conducted surveillance of the Appellant on the evening of November 30, 2006 at the [text deleted].
2. The Appellant had been physically described to him prior to his attendance at the [text deleted].

3. At 11:00 p.m. [Surveillance Company Owner] observed a person who he believed to be the Appellant. He described this person as [text deleted] and who was dressed in a black jacket and black pants and had an earpiece in his ear.
4. He observed this person being friendly and jovial as he made small talk with numerous persons at the bar, and he further observed this person making his way from one end of the [text deleted] to the other.
5. At approximately 11:30 p.m., he stepped outside the [text deleted] premises to have a cigar and noted that the person who he believed to be the Appellant had also stepped outside to speak to an unidentified male.
6. At that time he informed the person he believed to be the Appellant that he was from [text deleted] and that he was staying in the downtown area.
7. He said that this person mentioned that this particular [text deleted] does not get going until 11:00 p.m.
8. Prior to returning inside, he thanked this person and asked him what his name was and he replied “[the Appellant]”.
9. This person was dressed like the other security persons in black; they all had earpiece and radios on their belts.
10. He did not notice whether this person was carrying a radio because this person’s belt was covered by his jacket.
11. He was of the view that this person was the Appellant who was acting as a security person at the [text deleted] on the evening of November 30, 2006.

The last witness was [text deleted], a Police Officer with 10 years of service, who testified that:

1. He had written an occurrence report relating to his attendance at the [text deleted] at approximately 12:01 a.m. on September 21, 2006.

2. He was called to the [text deleted] because a [text deleted] had complained to the police that while attending the [text deleted] his brother had been assaulted by the [text deleted] security officers.
3. He arrived at approximately 12:09 a.m. and spoke to the security staff person of the [text deleted], who identified himself as the Appellant.
4. The Appellant informed him of his age, address and telephone number.
5. The Appellant held himself out as a security officer and advised him that he and another security person had physically removed the person causing a disturbance from the premises and that the male had gone up the street on [text deleted].
6. He attended at that location and located a person under the influence of alcohol who was taken to the detoxification centre.
7. The Appellant identified himself as a security officer when the Police Officers entered the premises and his actions throughout were consistent with that of a person who is working as a security officer at the [text deleted].

Discussion:

The Commission rejects the Appellant's testimony that he was not employed as a security officer on September 21, 2006 at the [text deleted] and on November 16, 2006 and November 30, 2006 as a security officer at the [text deleted].

The Appellant's testimony that he was not employed as a security guard on September 21, 2006 at the [text deleted] was contradicted by the testimony of [text deleted], a Winnipeg Police Officer with 10 years of service who identified the Appellant as being employed as a security guard at the [text deleted].

The Appellant had testified that he was not employed by the [text deleted] as a security officer on November 16, 2006 and November 30, 2006. The Appellant had provided the Commission with a letter from the [text deleted] dated September 6, 2007 in support of his position. The Commission notes that this letter indicates that the Appellant was never employed by the [text deleted] from June 2007 to September 6, 2007. However, the Commission further notes that the relevant period of time that MPIC asserts that he was employed at the [text deleted] was November 16, 2006 and November 30, 2006. As a result, the Commission finds that it cannot give any weight to this letter.

The Commission further finds that the Appellant's testimony that he was not employed at the [text deleted] on November 16 and November 30, 2006 is contradicted by the testimony of [Security Officer], [Venue Co-Owner] and [Surveillance Company Owner]. [Security Officer], a former Police Officer with 20 years' service, testified that the Appellant was working as a security guard the night of November 16, 2006. [Security Officer's] testimony is corroborated by [Venue Co-Owner], a co-owner of the [text deleted], who confirmed that the Appellant was employed as a security guard at the [text deleted] on November 16, 2006 and that at the conclusion of the evening, he paid the Appellant in cash for his services as a security guard. As well, [Surveillance Company Owner], who was employed as a Winnipeg Police Officer for 25 years between 1997 and 2002, is a principal owner of [Surveillance Company] and was conducting surveillance on the Appellant on behalf of MPIC, testified that on the night of November 30, 2006, he observed the Appellant working as a security guard.

[Text deleted] is the Manitoba Registrar of Private Investigators and Security Guards and testified that the Appellant received a licence as a Private Investigator dated November 6, 2006 and was employed by [text deleted]. The testimony of both [Security Officer] and [Venue Co-

Owner] contradicts the Appellant's testimony that he was not employed by [text deleted] Services as a security guard at the [text deleted]

The Commission finds that the Appellant falsely and/or inaccurately informed MPIC that on October 16, 2006 he remained injured and was unable to work and that he had developed severe back pain and was still under the care of [Appellant's Chiropractor]. Having regard to the testimony of [Security Officer], [Surveillance Company Owner], [Venue Co-Owner] and [Registrar of Private Investigators and Security Guards], the Commission is satisfied that the Appellant knowingly provided false or inaccurate information to MPIC. The Commission further finds that pursuant to Section 160(a) of the MPIC Act, MPIC was justified in terminating the Appellant's IRI benefits on March 7, 2007.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the Internal Review Officer's Decision dated May 8, 2008.

Dated at Winnipeg this 4th day of March, 2010.

MEL MYERS, Q.C.

LEONA BARRETT

JEAN MOOR