

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-10-094**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Mr. Neil Cohen  
Mr. Les Marks

**APPEARANCES:** The Appellant, [text deleted], was represented by [text deleted], by teleconference call; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

**HEARING DATE:** June 15, 2011

**ISSUE(S):**

- 1. Extension of time to file Application for Review.**
- 2. Entitlement to Income Replacement Indemnity Benefits beyond March 11, 2010.**
- 3. Entitlement to reimbursement of travel expenses.**

**RELEVANT SECTIONS:** Section 172 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 head-on motor vehicle accident on March 25, 2006. Following the accident, the Appellant was transported by ambulance to [text deleted] Hospital where he was diagnosed with soft tissue injuries. His complaints upon admission included pain in his pelvis area, chest, stomach, right foot, left knee, neck and jaw. Due to the injuries which the Appellant sustained in this motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

At the time of the accident, the Appellant was in receipt of Canada Pension Plan (“CPP”) Disability benefits due to a previous [text deleted] collision in 1992, which had left him substantially unable to work. However, just prior to this motor vehicle accident, the Appellant had begun working for a trucking company [text deleted]. He was planning on working on a part-time basis, doing one or two runs a month. Due to the injuries which he sustained in the March 25, 2006 motor vehicle accident, the Appellant was unable to return to this employment and therefore he became entitled to income replacement indemnity (“IRI”) benefits from MPIC.

On March 12, 2009, MPIC’s case manager wrote to the Appellant to advise as follows:

This letter is in regard to your entitlement to Income Replacement Indemnity (IRI). I will outline the details below.

A review of your medical reports by our Health Care Services Team opines that you did not develop a physical impairment of function as a result of the motor vehicle accident which would affect your ability to perform work as a part-time Semi-Driver/Operator. They go on to state that you did not develop a medical condition as a result of the accident injuries that might, in turn, lead to physical impairments in the future that would negatively affect your ability to pursue gainful employment.

As you are capable of returning to your pre-accident employment, as it relates to the injuries you sustained in this accident your entitlement to IRI has ended. However, as the employment you held at [text deleted] is no longer available, you are entitled to a further one year of IRI. Your entitlement to IRI will end on March 11, 2009 (*sic* 2010).

On May 20, 2009, MPIC’s case manager wrote to the Appellant regarding his entitlement to reimbursement for travel expenses covering the period from March 25, 2008 to January 21, 2009 and April 8, 2009 to April 11, 2009. In that letter, the case manager advised as follows:

This is in regard to your submission for travel expenses covering the period from March 25, 2008 to January 21, 2009 and April 8, 2009 to April 11, 2009. I will outline the details below.

The Personal Injury Protection Plan covers travel expenses to and from accident related health care appointments. Our Health Care Services Team opine your ongoing symptoms and functional difficulties are a byproduct of pre-existing medical conditions as well as conditions not causally related to the incident in question. As there is no coverage for

mileage incurred to attend for medical appointments not related to the injuries sustained in the motor vehicle accident, I am returning your travel expense forms unpaid.

The Appellant sought Internal Reviews of those decisions. In a decision dated April 13, 2010, the Internal Review Officer dismissed the Appellant's Applications for Review and confirmed both of the case manager's decisions. In her decision, the Internal Review Officer dismissed both of the Appellant's Applications for Review on the basis that he had not provided a reasonable excuse for filing either Application for Review beyond the 60-day time limit provided for in the MPIC Act.

Notwithstanding that the Internal Review Officer dismissed the Appellant's Applications for Review on the basis of his late filing, she reviewed both matters on their merits and determined as follows:

1. With respect to the Appellant's claim for IRI benefits, the Internal Review Officer found that, on the balance of probabilities, his current condition was not causally related to the March 25, 2006 motor vehicle accident and accordingly that he was not entitled to IRI benefits beyond March 11, 2010.
2. With respect to the Appellant's claim for reimbursement of travel expenses, the Internal Review Officer found that the Appellant was not entitled to reimbursement of travel expenses as there was no causal connection between the treatments sought for the Appellant's condition and the motor vehicle accident. Therefore, the Appellant was not entitled to reimbursement of travel expenses for the periods from March 25, 2008 to January 21, 2009 and from April 8, 2009 to April 11, 2009.

The Appellant has now appealed that decision to this Commission. The issues which require determination on this appeal are:

1. extension of time to file Applications for Review;
2. entitlement to IRI benefits beyond March 11, 2010; and
3. entitlement to reimbursement of travel expenses.

**1. Extension of Time to File Applications for Review:**

The Appellant is appealing the Internal Review Decision dated April 13, 2010 with regards to whether he has provided a reasonable excuse for failing to file his Applications for Review within the 60-day period set out in Section 172(1) of the MPIC Act. The Internal Review Decision dated April 13, 2010 rejected the Appellant's Applications for Review for failure to comply with Section 172(1) of the MPIC Act.

Section 172 of the MPIC Act provides as follows:

**Application for review of claim by corporation**

[172\(1\)](#) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

**Corporation may extend time**

[172\(2\)](#) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

As noted above, MPIC's case manager issued decision letters respecting the Appellant's entitlement to PIPP benefits on March 12, 2009 and May 20, 2009. The Application for Review of the March 12, 2009 decision was received by MPIC on July 21, 2009. The Application for Review of the May 20, 2009 decision was dated January 22, 2010.

At the appeal hearing, counsel for the Appellant argued that there was no prejudice to MPIC due to the late filing of either Application for Review. Further, counsel for the Appellant maintains that the Appellant was relying upon his lawyer at the time to file the Applications for Review on time. Although the Appellant reminded his lawyer repeatedly to file his Applications for Review, his lawyer failed to do so in a timely manner. Counsel for the Appellant submits that the Appellant's reliance on his legal counsel is a reasonable explanation for the delay in filing and that the Appellant should not suffer due to the errors of his legal counsel. As a result, counsel for the Appellant argues that the Commission should accept the Appellant's explanation for the delay and extend the time for filing the Applications for Review.

Counsel for MPIC submits that the Appellant has not provided a reasonable excuse for the delay in filing the Applications for Review. Counsel for MPIC maintains that the Appellant knew that the time period for filing was 60 days. He relied upon his lawyer even though he found that the lawyer was unreliable. Counsel for MPIC contends that the Appellant should have taken matters into his own hands and filed the Applications for Review in a timely fashion. As a result, counsel for MPIC submits that an extension of time should not be granted to the Appellant to file either Application for Review.

The Commission, having considered the totality of the evidence before it, finds that the Appellant has provided a reasonable excuse for his failure to file both Applications for Review within the time period set out in Section 172(1) of the MPIC Act. The Commission accepts the Appellant's explanation that he was relying upon his lawyer at the time to represent him and file the Applications for Review as required. The Commission is satisfied that the Appellant was genuinely relying upon legal counsel to represent his interests. In these circumstances, we find that the Appellant has provided a reasonable excuse for failing to apply for review of the case

managers' decisions within the statutory time period. Accordingly, the time for filing the Applications for Review is extended.

**2. Entitlement to Income Replacement Indemnity Benefits beyond March 11, 2010**

Counsel for the Appellant submits that the motor vehicle accident of March 25, 2006 caused the injuries which he continues to suffer and, in particular, the failed arthrodesis to his right ankle (non-fusion of the right ankle). Counsel for the Appellant maintains that the Appellant has suffered a considerable amount of pain for the past four years and has suffered from depression, amongst many other symptoms, that relate to the injury to his ankle. These conditions, which arose as a result of the March 25, 2006 accident, have prevented the Appellant from returning to the employment he held at the time of the accident.

Counsel for the Appellant claims that the Appellant injured his ankle when he jumped out of the semi-truck after the motor vehicle accident. Counsel for the Appellant argues that just prior to the motor vehicle accident, the Appellant was in a position to return to work and had been cleared to return to work by his medical caregivers. Even though he had a pre-existing ankle injury, counsel for the Appellant contends that the Appellant would have been gainfully employed if not for the motor vehicle accident of March 25, 2006. Counsel for the Appellant argues that since that motor vehicle accident, the Appellant has been unable to regain the ability to return to work due to the injuries to his ankle.

Counsel for the Appellant also submits that since the accident of March 25, 2006, the Appellant's overall condition has steadily deteriorated. His ankle condition has caused him such pain that he has been unable to walk in a normal fashion. Further, due to his inability to carry on regular activities such as walking (without the aid of a cane or walker), the Appellant has

developed back and hip pain. Counsel for the Appellant submits that, but for the accident of March 25, 2006, the Appellant would have recovered fully from his pre-existing injuries and would be gainfully employed and able to carry out all tasks associated with his employment. As a result, counsel for the Appellant argues that IRI benefits should be reinstated effective March 11, 2010.

Counsel for MPIC submits that the onus is on the Appellant to establish that his ongoing condition is as a result of the accident of March 25, 2006. She submits that the Appellant has an extensive history of pre-accident injuries that were not enhanced as a result of the motor vehicle accident of March 25, 2006. Counsel for MPIC argues that the significant amount of medical reports on the Appellant's file suggest that the Appellant's pre-accident injury was permanent and severe. Further, the medical reports on the Appellant's file indicate that he would never return to full-time work following the [text deleted] accident of 1992. This is corroborated by the fact that the Appellant continued to receive Canada Pension Disability benefits (as a result of the injuries sustained in the accident of 1992) in 2006. Counsel for MPIC contends that the Appellant's condition was not adversely impacted by the accident of March 25, 2006 and regardless of the accident, the Appellant would have been unable to return to work.

In support of her position, counsel for MPIC relies upon [MPIC's Doctor's], [text deleted], memorandum of March 24, 2010. In his memorandum, [MPIC's Doctor] notes as follows:

The information obtained from the new documents submitted [the Appellant's] file indicates ongoing difficulties his lower back and right lower leg that are a byproduct of medical conditions that did not develop as a direct result of the incident in question (i.e. failed arthrodesis involving right ankle and moderate spinal stenosis involving the lumbosacral spine). Even though the medical evidence obtained from the file indicates [the Appellant] reported increased symptoms involving his right ankle subsequent to the incident in question, the file does not contain sufficient medical evidence indicating his pre-existing ankle condition was enhanced by the incident in question. From a

radiological standpoint, information obtained from the documents submitted to the file indicates no structural change was evident involving the right ankle subsequent to the incident in question.

...Based on this review, it is my opinion [the Appellant's] inability to perform work as a semi truck operator is secondary to physical impairments that have developed as a result of medical conditions not causally related to the incident in question based on the balance of probabilities. In other words, had [the Appellant] not been involved in the March 25, 2006 motor vehicle incident, it is medically probable he would still have his present physical impairment relating to his back and ankle that negatively affect his ability to perform his pre-accident employment.

Relying upon [MPIC's Doctor's] opinion, counsel for MPIC submits that the Appellant's inability to return to work is as a result of his pre-existing injuries which were not causally related to the accident of March 25, 2006. Accordingly, counsel for MPIC argues that the Appellant's appeal should be dismissed and the Internal Review Decision of April 13, 2010 should be confirmed.

Upon a careful review of all of the oral and documentary evidence filed in connection with this appeal and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant's IRI benefits were properly terminated effective March 11, 2010. The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that the conditions preventing him from working are related to the motor vehicle accident of March 25, 2006. Rather, we find that the Appellant's extensive pre-accident injuries are the more likely cause of his ongoing inability to return to work. We note that the Appellant's pre-existing injuries were serious and significant, to such a degree that the Appellant continued to receive CPP Disability benefits as of March 25, 2006. Furthermore, the Appellant continued to complain of ankle instability and lower back pain in January and February 2006, just prior to the motor vehicle accident. On the balance of probabilities, the Commission finds that the



Appellant's inability to return to work is more likely related to his pre-existing condition rather than the motor vehicle accident of March 25, 2006.

Additionally, the Appellant did not establish that his pre-existing injuries were affected by the motor vehicle accident to a degree that the motor vehicle accident enhanced those injuries. The medical information before the Commission, including the radiological report of May 24, 2006, do not indicate any change to the Appellant's pre-existing injuries. As a result, we find that there was a lack of evidence before the Commission to establish that his pre-existing injuries were enhanced by the accident in question.

As a result the Appellant's appeal is dismissed and the Internal Review Decision dated April 13, 2010 is confirmed.

### **3. Entitlement to Reimbursement of Travel Expenses**

Upon a careful review of all of the oral and documentary evidence filed in connection with this appeal and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of travel expenses for the period from March 25, 2008 to January 21, 2009 and from April 8, 2009 to April 11, 2009. Based upon the Commission's finding that the Appellant's pre-existing medical condition was not enhanced by the motor vehicle accident of March 25, 2006, the Commission finds that the Appellant is not entitled to reimbursement of travel expenses for the time periods requested.

As a result the Appellant's appeal is dismissed and the Internal Review Decision dated April 13, 2010 is confirmed.

Dated at Winnipeg this 27<sup>th</sup> day of July, 2011.

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**YVONNE TAVARES**

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**LES MARKS**

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**NEIL COHEN**