

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by [the Appellant]  
AICAC File No.: AC-95-16**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mr. Charles T. Birt, Q.C.  
Mrs. Lila Goodspeed

**APPEARANCES:** Manitoba Public Insurance Corporation ('M.P.I.C.') represented  
by Ms Joan McKelvey  
[Text deleted], the Appellant, appeared in person

**HEARING DATE:** November 9th, 1995

**ISSUE(S):** To qualify for Income Replacement Indemnity under Section  
85(1)(a) of the M.P.I.C. Act, does the Applicant have to have a  
firm offer of employment made and accepted prior to the date  
of the accident?

**RELEVANT SECTIONS:** Section 85(1)(a) of the M.P.I.C. 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 FACTS:**

[The Appellant] sustained a number of injuries when the automobile he was driving,  
was struck by another vehicle, on November 20th, 1994. The injuries were primarily to the right

side of his neck and his right shoulder and his physician, [text deleted], described [the Appellant] as having “suffered a moderate to severe whiplash type of injury, a cervical spine strain”. In [Appellant’s doctor’s] report of April 10th, 1995 he stated that [the Appellant] had made “significant improvement” and was probably left with a 25 % residual disability. He hoped that [the Appellant] would continue to improve and he should be fairly well recovered in the next six months.

At the time of the accident [the Appellant] was unemployed and receiving no income as he had exhausted his Unemployment Insurance Benefits. [the Appellant] had last been employed as a clerk with the [text deleted] making approximately \$25,000.00 per year. At the time of the accident he was looking for work, had made a number of job applications but did not have a contract of employment.

On or about December 14th, 1994 [the Appellant] saw an adjuster with Manitoba Public Insurance Corporation (‘M.P.I.C.’) and filed an application for compensation, short form, for out- of-pocket expenses arising out of the accident . [The Appellant] was advised at that time he was not eligible for Income Replacement Indemnity (‘I.R.I.’) as he was unemployed and had no contract of employment. A few days later the adjuster called [the Appellant] and advised him that he (the adjuster) might perhaps have been in error. He qualified his earlier advice by adding that, if [the Appellant] were able to secure a job or a firm job offer within six months after the accident and could not take or hold that job because of his injuries resulting from the accident, then it was just possible that he might qualify for I.R.I. based on the salary of that new job or job offer.

In response to this new information [the Appellant], in late December 1994, after seeing an advertisement in a newspaper seeking people to teach English to children in Korea, called the advertiser, [text deleted]. [The Appellant] was faxed a letter, dated December 27th, 1994 and an unsigned form of employment agreement. The teaching position was to start on February 1st, 1995 and paid \$1,300.00 (U.S.) per month with medical coverage, furnished accommodations and a round-trip air fare with a bonus of \$1,300.00 (U.S.) for completion of one year of work. [The Appellant] signed the form and faxed it back to [text deleted]. The document, of which a copy was filed by [the Appellant] at his hearing, did not contain a signature on behalf of or by the Employer. In a subsequent telephone call to a representative of the company, [the Appellant] was advised that [text deleted] was merely an agency and that the Employer had to approve [the Appellant's] application before he would be hired for the job. The representative stated he would advise [the Appellant] if he had the job prior to the start up date of February 1st.

By the end of the third week in January 1995 [the Appellant] had not heard back from [text deleted].

It follows, therefore, that while [the Appellant] had offered his services by signing the form sent to him by [text deleted], his offer had never been accepted and he therefore had no firm employment available. In any event, [the Appellant] decided to contact [text deleted] on January 21st, to advise them that, because he had been injured in an auto accident, he would not be taking the job. When asked at the hearing why he had declined the job he advised that he would have been lonely in Korea and that all of his family and friends live in Manitoba. He also added that he had become somewhat confused and felt that he 'would get into hot water' if he accepted an offer of employment and then declined it. [The Appellant] made one more call to [text deleted] in preparation for the hearing

before this Commission. He was told, he said, that it (i.e. the paper he had signed) ‘was a job offer, not a job hire’. We agree, with the qualification that the offer emanated from [the Appellant].

On January 31st, 1995 [the Appellant] worked at a telemarketing job making telephone calls for a few hours; he was offered a job but he testified that he just didn’t show up for work the next day. He did not give the employer any reason for not returning to the position, although he did give evidence to the effect that he could not comfortably sit in a chair all day in a job where he could not stand or leave the telephone.

[The Appellant] advises that he receives free rent from his landlord in return for doing odd jobs and yard work. He also stated that he is now capable of carrying a canoe and portaging with one, indicating a substantial degree of recovery. This was in keeping with the apparent candour which clothed [the Appellant’s] evidence.

#### **THE LAW:**

[The Appellant] was not employed or earning an income from any source at the time of the accident; to qualify for Income Replacement Indemnity he would have to qualify as a “non-earner” under Section 85(1)(a) of the M.P.I.C. Act, which reads as follows:

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

85(1) A non-earner is entitled to an income replacement

indemnity for any time during the 180 days after an accident that the following occurs as a result of the accident:

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

M.P.I.C.’s Internal Review Officer has interpreted this section to mean that a successful Applicant must have an existing job offer, made and accepted, prior to the time of the accident in order to qualify for Income Replacement Indemnity. We do not agree.

We hold that this section clearly qualifies for I.R.I. any Applicant who, within 180 days after his/her accident, either obtains employment or obtains a firm, bona fide offer of employment and is not able to accept or continue in the job as a result of an injury caused by the accident. The I.R.I. commences from the date the job would have started during this 180-day period; the amount received would be based on the salary that the individual would have earned at the job. The I.R.I. continues only to the end of the 180-day period for the purposes of this section.

This section does not apply when the Applicant has simply filed a job application or filed a personal resume with a potential employer. To qualify for I.R.I. during the 180 days after the accident the Applicant must have received a bona fide job offer. The Applicant must provide proof of the validity of the job offer and proof that he could not accept the job, or could not continue with it having once started, because of problems arising from the accident.

Does this interpretation then allow [the Appellant] to qualify for I.R.I.? We are of the opinion that the mailing of an Employment Agreement For Instructor to [the Appellant] by [text deleted] was merely what is known in law as an invitation to treat, that [the Appellant's] signature on December 28th, 1994 amounted to an application for employment and that the document never became a contract of employment. [The Appellant] was told by the representative of [text deleted] that he would have to have his client, [text deleted], accept his application before he would be offered the job. What [the Appellant] did with his call to [text deleted] in late January 1995, when he had had no response to his application, was to remove that application from consideration by the employer. This was not a valid contract of employment as there was neither the offer of a job by the employer nor an acceptance by that employer of [the Appellant's] application. As noted above, it is doubtful, in any event, whether a firm offer of employment would have been forthcoming at that late date.

The telemarketing job that [the Appellant] was offered in January, 1995 does not appear to qualify him for I.R.I. since, although he did not return to work, he gave no reason to the employer for his disappearance and we are not satisfied that his accident caused him to discontinue that brief employment. If pain or discomfort arising from the accident that had occurred two months earlier had obliged him to quit work after so short a time, it would have been logical for him to have said as much to the employer.

To qualify for I.R.I. [the Appellant] had to provide proof of a valid job offer that existed prior to the date of the accident or during the 180-day period thereafter, and of his inability to

hold that employment due to the accident. [The Appellant's] own evidence is that he applied for several jobs but neither received and accepted a valid job offer nor felt obliged to refuse one by reason of his injury. Therefore, under the clear wording of the Act, we must find that he does not qualify for I.R.I..

**DISPOSITION:**

We dismiss [the Appellant's] appeal and confirm the decision of M.P.I.C., not for the Corporation's stated reasons but, rather, for those stated above.

Dated at Winnipeg this 21st day of November 1995.

**J. F. REEH TAYLOR, Q.C.**

**CHARLES T. BIRT, Q.C.**

**LILA GOODSPEED**