Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-58

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:	**December 9th, 1996**
ISSUE(S):	**(i) 'New information' - right of appellant to re-open earlier, unsuccessful appeal for I.R.I. during first 180 days?** **(ii) Whether Appellant lost employment opportunities due to accident;** **(iii) Post-180 day entitlement to income replacement indemnity.**
RELEVANT SECTIONS:	**Sections 85(i), 86(1) and (2), 106 (1) and (2) and 171(1) and (2) 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] was involved in a motor vehicle accident on November 20th, 1994.

His initial claim for income replacement indemnity during the first 180 days following that accident

was declined by Manitoba Public Insurance Corporation ('M.P.I.C.'). That decision was confirmed by M.P.I.C.'s Internal Review Officer on July 31st, 1995 and by this Commission on November 21st, 1995. The latter decision was also the subject of an unsuccessful application by [the Appellant] for leave to appeal to the Court of Appeal for Manitoba.

The first question that we need to address, in the present appeal, is whether [the Appellant] has the right to reopen the question of his entitlement to I.R.I. during those first 180 days following his accident. [The Appellant] submits that there is certain evidence that would establish that, although unemployed at the time of his accident, he would have obtained employment within a reasonable time thereafter had it not been for that same accident. He submits, further, that although that information was certainly known to him at the time of his first internal review and subsequent appeal to this Commission, he had not adduced that evidence until now because, he says, he was misinformed by his Adjuster.

> Section 85(1)(a) of the M.P.I.C. Act reads as follows:
>
> "Entitlement for 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;
>
> (b) he or she is deprived of a benefit under the Unemployment Insurance Act (Canada) or the National Training Act (Canada) to which he or she was entitled at the time of the accident."

While we do not question the bona fides of the Adjuster, it is apparent that the Corporation interpreted that section, at the time when [the Appellant's] claim was being processed, to mean that a claimant must necessarily have had a firm offer of employment, made before the accident, that he was unable to accept because of the accident. [The Appellant] argues that, because of what now appears to have been a misinterpretation on the part of M.P.I.C., he should be allowed to adduce, at this new hearing, evidence that he would probably have been employed shortly after the accident.

Although the law is clear enough that, in the normal course, evidence of facts that were known to an applicant or, with reasonable diligence, ought to have been known to an applicant, at the time of the original hearing, but were not then raised, are not admissible on appeal or at a subsequent hearing related to the same claim, we elected to hear [the Appellant] on the point simply because, by general agreement, he had been misled (albeit unwittingly) by his Adjuster in the first place.

However, all of the facts related to us by [the Appellant] serve only to emphasize that, despite what might even be described as heroic efforts on his part to obtain employment, none was available to him, and none would have been available to him even had he not been involved in his motor vehicle accident.

As a consequence, and without exploring the need to determine whether [the Appellant's] application to reopen his original hearing does, or does not, fall within one of the

exceptions to the normal rule, we are obliged to find that, in any event, he was not precluded by his accident from retaining or obtaining any employment that he would otherwise have held, but for the accident.

Turning, now, to [the Appellant's] claim for income replacement indemnity for the period commencing 181 days after his accident, the strong preponderance of evidence - including [the Appellant's] own admission - leads us the inevitable conclusion that he had attained his pre-accident status long before the first 180 days had expired. This is not to suggest that [the Appellant] is not suffering from a disability, but we are unable to find that any continuing disability on his part can be laid at the door of his motor vehicle accident. On the contrary, it seems clear that his disability pre-dated his accident. We understand that [the Appellant] has been referred, by his regular, family physician, to a specialist who may be able to help him in that context.

DISPOSITION:

It follows that we have no option but to dismiss [the Appellant's] appeal.

Dated at Winnipeg this 12th day of December 1996.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED.