Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-03

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan G. McKelvey** **the Appellant, [text deleted], represented by [Appellant's representative]**
HEARING DATE:	**August 18th, 1997**
ISSUE(S):	**1. Termination of IRI - whether victim capable of holding former employment;** **2. Whether victim temporary or full-time earner;** **3. Whether victim entitled to further 90 days IRI under Section 110(2)(b); and** **4. Proper employment classification for victim after 180 days.**
RELEVANT SECTIONS:	**Sections 70(1), 81, 84(1), 110(1) and (2) of the MPIC Act, Regulation 39/94 (Schedule C, Section 17) and Regulation 37/94, Section 6.**

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] was involved in a motor vehicle accident on July 2nd, 1995, which resulted in injury to his low back, his neck and his knee. He was, at the time, employed by [text

deleted], for whom he had started working in May of that year.

[The Appellant] received physiotherapy and chiropractic treatments until June 15th, 1996 and, as well, received income replacement indemnity ('IRI') of $570.83 every two weeks, commencing July 9th, 1995. MPIC terminated his IRI, effective June 7th of 1996, upon the basis that [the Appellant] had regained his ability to hold the employment that he had held at the time of the accident. In this context, Section 110(1) of the Act is relevant, and we shall attach copies of this, and of all other relevant sections of the statute and regulations, as an appendix to these Reasons.

MPIC's decision to terminate his IRI benefits gave rise to three separate forms of appeal on the part of [the Appellant]:

1. the Appellant's position is that, contrary to the finding of MPIC, he was not able, by June 7th of 1996, to perform the employment that he had held with [text deleted] at the time of his accident on July 9th of 1995;
2. the argument was also advanced on behalf of [the Appellant] that he was, in any event, entitled to 90 days of additional IRI under the provisions of Section 110(2) of the Act; and
3. since, by virtue of the definition contained in Section 70(1) of the Act, [the Appellant] was classified as a 'temporary earner', he was entitled to have an hypothetical employment determined for him under Section 84(1) of the Act, for the sole purpose of fixing the amount of continuing IRI to which he was entitled, from the 180th day of following his accident. MPIC assigned the category 'general labourer' to him, whereas the Appellant says that "My trade and job description is that of a mechanic".

With respect to the first part of [the Appellant's] appeal noted above, a careful reading of all of the medical, physiotherapy and chiropractic evidence and opinions made available to us persuades us that [the Appellant] had, in fact, reached pre-accident status well before the date when MPIC terminated his IRI benefits and we are not disposed to alter the decision of the insurer's Acting Review Officer of October 3rd, 1996, with respect to that termination.

On the question raised in the second portion of his appeal - namely, whether [the Appellant] is entitled to 90 days of IRI under Section 110(2)(b) of the Act, the answer is a very simple one: that section applies only to a full or part-time earner who lost his employment because of the accident. We find that [the Appellant], having held his employment at [text deleted] for less than one year (see Regulation 37/94, Section 6) and, as well, being still in the probationary period of that employment, was neither a full-time nor a part-time earner within the meanings of those terms as defined in the Act, but was, rather, a 'temporary earner'; Section 110(2) is therefore inapplicable. The fact that he had completed forms of application for group insurance and related benefits does not, of itself, establish the permanence of his position, and the evidence of [text deleted] of a telephone conversation that he allegedly heard, wherein [the Appellant] was promised his job after recovery from his injuries, lacked any semblance of credibility.

Turning, now, to the question whether the class of employment determined under Section 84 of the Act for [the Appellant] by MPIC, to apply to the post-180-days period of his disability, we are of the view that, taking into account the regulations and the education, training, work experience and physical and intellectual abilities of the victim immediately before

the accident (as we are required to do by Section 106(1) of the Act), [the Appellant] is better fitted for the category of a motor vehicle mechanic and repairer at Level 1 of that classification, although that re-classification will not be of much help to him.

[The Appellant], prior to moving to Manitoba via a short spell in Alberta, has spent most of his early years in British Columbia where he was a member of the Plumbers and Pipefitters' Union. The Building Trades Division of that union requires an apprenticeship board, whereas the Metal Work Division does not - or so the Appellant testified. As [the Appellant] put it in cross-examination, "You start as a helper and after a couple of years you become classified as a journeyman pipefitter". This is not to say that no such apprenticeship training is available; [the Appellant] had simply elected to forego it. He had been a member of the union since [text deleted], although he allowed his membership there to lapse when he started moving East in [text deleted]. He had been engaged primarily in pipeline work of various kinds, although during the years from 1992 to 1995, both inclusive, he had spent much of his time receiving unemployment insurance (as it was then called) as well as recovering from injuries sustained in a 1993 motor vehicle accident. Part of that time, in 1993, was also spent working for [text deleted], setting up rides and doing sundry repair jobs including, but not limited to, the more unskilled tasks of a casual labourer. [The Appellant] testified - and we have no reason to doubt his evidence on this point - that he has a natural, mechanical ability, that he has always done all of the mechanical repairs to his own vehicles and that the employer for whom he was working at the time of his accident had classified him as a mechanic. Indeed, although that employer felt that [the Appellant] had an attitudinal problem which may or may not have been the reason for [the Appellant’s] loss of that employment, and although [the Appellant] does not have journeyman's papers either as a pipefitter

or as a mechanic, those qualifications are not required by the language of the regulations and the job description given to us both by [the Appellant] and his former employer persuades us that he is more equitably described as a mechanic rather than as a mere labourer. However, we do not believe that the length or nature of his experience as a mechanic would qualify him for anything higher than Level 1, which contemplates a gross yearly income from employment of $18,216.00 and, since MPIC was paying him an IRI based upon a gross yearly income from employment of $18,720.00, we concur in the decision of MPIC's Acting Review Officer that the quantum of his IRI needs no adjustment.

DISPOSITION:

For the foregoing reasons, [the Appellant's] appeal must be dismissed.

Dated at Winnipeg this 20th day of August 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED