

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-01-05

PANEL: **Mr. J. F. Reeh Taylor, Q.C., Chairman**
Ms. Yvonne Tavares
Mr. Colon C. Settle, Q.C.

APPEARANCES: **The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey.**

HEARING DATE: **February 19, 2001**

ISSUE: **Claim for EI benefits, lost due to motor vehicle accident.**

RELEVANT SECTION: **Section 85(1)(b) of the MPIC 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 Appellant] sustained injuries in a motor vehicle accident on December 9th, 1999. He was, at the time, unemployed. His normal occupation was that of a painter and sandblaster; he had been laid off in September 1999 but, had he not been involved in his accident, he would have found at least short-term employment from December 13th, 1999, to January 16th, 2000. He was therefore paid Income Replacement Indemnity for the latter period. [The Appellant] returned to work on January 17th, 2000, but, by about mid-July of that year, apparently had a relapse; Income Replacement Indemnity was re-established for him until, on September 18th, 2000, he was functionally capable of returning to work and, in fact, did so.

On or about October 12th, 2000, [the Appellant] became subject to a seasonal lay-off. Had he not been involved in his motor vehicle accident, he would have been working for a sufficient period to have qualified for Employment Insurance ('EI') benefits by accumulating 700 hours of insurable employment in the previous 52 weeks. In fact, he had only worked for 245 hours during those weeks and, therefore, was unable to qualify for Employment Insurance benefits. He seeks reimbursement for the EI benefits thus lost or, in the alternative, the re-establishment of his Income Replacement Indemnity for an equivalent period.

MPIC's Internal Review Officer has denied [the Appellant's] claim, citing Section 85(1)(b) of the MPIC Act which reads as follows:

- 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:
- (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.

The Internal Review Officer found that, since [the Appellant] was not claiming Employment Insurance benefits to which he had been entitled at the time of his accident, his claim must, on that account, fail.

With deference, we are of the view that the Internal Review Officer erred in relying upon that section of the Act; the time-frame encompassed by [the Appellant's] claim commenced some months after the expiry of the 180-day period.

Unfortunately, however, that does not help [the Appellant's] cause. If [the Appellant] is entitled to any insured benefit, it must be found within the four corners of the MPIC Act and Regulations. The simple fact is that there is no statutory provision that will allow us to

compensate [the Appellant] for his loss of Employment Insurance benefits - a loss which, without a doubt, was directly attributable to his motor vehicle accident. It is not every possible kind of economic loss that is covered by the insurance policy embodied in the MPIC Act; [the Appellant's] loss is one that is not covered. During the layoff period for which he seeks compensation, he was not disabled. It was, of course, open to him to seek alternative employment, although he points out that the only other jobs that he found available were offering substantially lower wages than those to which he was accustomed. The MPIC Act makes no provision for payment of the difference between what he might have earned from alternative employment and the monies he would have received had he been entitled to Employment Insurance.

It follows, therefore, that [the Appellant's] appeal must be dismissed.

Dated at Winnipeg this 20th day of February, 2001.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.