



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-50

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Neil Cohen
Ms Deborah Stewart

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: November 9, 2005

ISSUE(S): Entitlement to Income Replacement Indemnity ('IRI') benefits in relation to the motor vehicle accidents of June 24, 2000 and November 19, 2001

RELEVANT SECTIONS: Sections 85(1)(a) and 105 of The Manitoba Public Insurance Corporation Act ('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] was involved in two motor vehicle accidents on June 24, 2000 and November 19, 2001 and applied for IRI benefits in respect of both of these accidents. The Internal Review Officer, in two separate decisions, both dated October 17, 2003, rejected the Appellant's request for IRI pursuant to Section 105 and Section 85(1)(a) of the MPIC Act. These provisions are 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;

No entitlement to I.R.I. or retirement income

105 Notwithstanding sections 81 to 103, a victim who is regularly incapable before the accident of holding employment for any reason except age is not entitled to an income replacement indemnity or a retirement income.

The Appellant appealed the two decisions of the Internal Review Officer to the Commission and a hearing took place before the Commission on November 9, 2005. The Appellant appeared on his own behalf and Mr. Tom Strutt appeared on behalf of MPIC. At the commencement of the hearing the Commission informed the Appellant that the onus was upon the Appellant to establish, on a balance of probabilities, that he was entitled to IRI benefits under the two (2) provisions of the MPIC Act.

The Appellant testified at the appeal hearing and also made a verbal submission in support of his position that he was entitled to IRI benefits. The Appellant submitted that since 1994 he was employed in a variety of different entrepreneurial activities and, as a result, was entitled to IRI.

MPIC's legal counsel cross-examined the Appellant and made both a verbal and written submission to the Commission.

In the written submission to the Commission, MPIC's legal counsel stated:

1. According to [the Appellant's] own statement to the WCB:
 - He suffered a 16 to 20 foot fall in 1992;
 - He has not worked since November 1994 when he developed low back pain "with numbness radiating down the left leg."
 - He underwent unsuccessful back surgery by [Appellant's surgeon] in March 1995.
2. There is no evidence at all that [the Appellant] worked for remuneration at any time in the 5 ½ years between November 1994 and his first accident in June 2000.

- (a) He may have been on WCB benefits. The material from the WCB dated January 30, 1997 leads to that inference.
 - (b) Tab 49 quotes [text deleted] of Employment Insurance as indicating that he had been on “total disability” since 1994.
 - (c) His case manager asked him to produce a five-year employment history and his tax returns for the five years pre-accident. He did not respond.
3. [The Appellant’s] family doctor, [text deleted], is on record in a number of places on this file to the effect that [the Appellant] has been disabled from working since either November 1993 or November 1994.

....

Section 105 provides that there is no IRI for a claimant “who is regularly incapable before the accident of holding employment for any reason except age”. There is clear, and overwhelming, evidence that this claimant had been disabled for the 5 ½ years preceding the first of these motor vehicle accidents. We respectfully submit that Section 105 applies in the circumstances. [The Appellant] is not entitled to IRI.

The Appellant was unable to provide the Commission with any specific evidence that he in fact obtained an offer of employment following either of the motor vehicle accidents, or that any of the entrepreneurial activities he was involved with had either provided him with any income or, as a result of the motor vehicle accident, he had lost income from any of these ventures.

The Internal Review Officer in both his decisions of October 17, 2003 relating to both of the motor vehicle accidents, states:

You indicated on your Application for Compensation dated July 12, 2002 that you were incapable of employment at the time of the accident and that you have not worked since 1994.

In a statement to Worker’s Compensation dated March 11, 1997 you indicated that “I have not worked since November 1994. I am claiming for time loss (sic) from work from then. I feel that I am unemployable at my current occupation as a millwright.”

On November 20, 2002, I spoke to [text deleted] who indicated that you exhibited intelligence and a good work ethic, but he thought that you were physically unable to work for him. He also indicated that his business was such that he was no longer in a position to hire you. He indicated that driving was a necessary part of the job and since your driver’s license has been suspended for some time, he was not sure that he could have hired a driver to fulfill this portion of the work.

[Text deleted] provided a letter dated November 26, 2002 wherein he indicated that you are in partnership with him and that no financial reward has resulted from this partnership as of yet. He wrote that due to the delicate nature of your project and because of federal government guidelines, he cannot divulge any information in that regard.

In a letter dated November 28, 2002, [text deleted] confirmed that you were acting as a consultant to [text deleted] and that you were not an employee and had received no remuneration for your work.

On November 29, 2002, I spoke with [text deleted] who indicated that he had made no offer of employment to you.

[text deleted] provided a letter dated December 11, 2002 wherein he wrote that he is working on a project along with yourself and another associate and the project is confidential because of some legal issues. [Text deleted] concluded that he can advise that this is a long term project and that you have received no payment for your work and research.

MPIC's legal counsel, in his written submission in this respect, stated:

It appears that at his Review Hearing [the Appellant] said he had been involved in various entrepreneurial activities. The file is very unclear as to just what each of these activities was, and what time frame each occupied. Nevertheless, the Review Officer wrote letters requesting information on these ventures. One of the letters has to do with an employment opportunity at [text deleted]. The responses do not support the employment opportunity. Nor do they indicate that [the Appellant] lost any income from any of these ventures as a result of the car accidents. Both Review decisions record that [the Appellant] acknowledged that the accidents did not affect his entrepreneurial activities.

MPIC's legal counsel further stated in his written submission:

Further, and also in the alternative, we would submit the benefit in question is "Income **Replacement** Indemnity." There is no entitlement to this indemnity unless the claimant has, in fact, lost income. [The Appellant] has produced no evidence whatever of any actual income loss. There is no evidence that he has ever received any remuneration from his entrepreneurial activities. Similarly, there is no evidence he has lost income from those activities. Indeed, the evidence supports the conclusion that the accidents have had no effect on his ability to participate in them. Since there is no loss of income, there cannot be an entitlement to IRI.

Having regard to the testimony and submission of the Appellant, the documentary material

which was filed in evidence at the appeal hearing, and the written submissions of MPIC's legal counsel, the Commission is satisfied that the Appellant has not established, on a balance of probabilities, that he was entitled to receive IRI because:

1. Pursuant to Section 85(1)(a) of the MPIC Act, the Appellant did not establish that he was unable to hold employment as a result of either motor vehicle accident during the first 180 days of either of these two accidents;
2. Pursuant to Section 105 of the MPIC Act, the Appellant was regularly unable to hold employment since 1994.

The Commission therefore finds, for the reasons outlined above, the Appellant was not entitled to receive IRI as a result of either motor vehicle accident on June 24, 2000 or November 19, 2001 and, as a result, dismisses the Appellant's appeal and confirms the two decisions of the Internal Review Officer, both dated October 17, 2003.

Dated at Winnipeg this 2nd day of December, 2005.

MEL MYERS

NEIL COHEN

DEBORAH STEWART