Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-4

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:	**June 20th, 1996**
ISSUES:	**1. Loss of employment - whether caused by accident - ture of resultant compensation** **2. Reimbursement of moving expenses**
RELEVANT SECTIONS:	**Sections 110(2) and 136(1) of the M.P.I.C. Act and Regulation 40/94**

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 injured in a motor vehicle accident on August 24th, 1994 in [text deleted], Manitoba, where she sustained injuries to her neck and back. She attended at the [text deleted] Clinic where medication and a physiotherapy program were recommended.

After being employed during the 1993/94 school year at the [text deleted], in Manitoba, the Appellant reported there for work at the beginning of September as a teacher whose time was to be divided equally between grade 6 and Physical Education. She did not report to her supervisor that she had been in a motor vehicle accident. Due to pain, and her inability to lift, stand, or sit for long periods of time, she underwent an examination by [Appellant's doctor #1] on September 7th, 1994. He recommended a four-to-six week massage and physiotherapy treatment program, expressing the view that her condition would probably be mended by October 6th, 1994. Since this treatment program was not available to her in [text deleted], the Appellant chose to undergo her treatments in [Ontario], where she had family. She left [text deleted] on September 8th, 1994, after one week of teaching, having informed her principal with the expectation that he would report her medical treatment leave to the [text deleted]. Shortly after her arrival in [Ontario], she was examined on September 13th, 1994, by [Appellant's doctor #2] who referred her for physiotherapy treatment. She underwent an assessment at the [rehab clinic] on September 19th, 1994 and commenced their prescribed eight-week treatment program, as a private patient, on that same date. There is some evidence to indicate that M.P.I.C. had at some point refused to undertake payment for a more intensive course of therapy (the Early Rehabilitation Program) that the [rehab clinic] had suggested. She was discharged from that initial treatment on November 3rd, 1994, but later, on December 30th, 1994, and with the blessing of M.P.I.C., she commenced the Early Rehabilitation Program which was completed on the following February 9th.

The insurer's file reflects a statement by [text deleted], the Assistant Director of the [text deleted], to the effect that she had no medical report from [Appellant's doctor #1] regarding

the Appellant's need for sick leave as of September 8th. [Appellant's assistant director] apparently said that she had spoken to the Appellant, who had merely reported that she would be off work for a further 4-6 weeks and could not give a date of return. [Appellant's assistant director] indicated that she told the Appellant over the telephone, prior to October 5th, that a decision had been made by the Board of Directors to terminate her employment because she had taken too much sick leave from the time she had started her work with them. The Appellant had missed at least four weeks in the previous school year for medical reasons and, in September 1994, had booked further time off from September 28th to October 4th of the 1994 school term for anticipated surgery (unrelated to the accident) but without mentioning, at the time, her automobile accident and resultant injuries. The Appellant testified that she had contacted [Appellant's assistant director] in early October of 1994, to tell [Appellant's assistant director] that she had to continue her physiotherapy treatment for another six weeks. The Appellant's recollection was that she was not told about the termination of her employment until some time in November. In December she received a confirmatory letter of termination, dated November 30th, 1994. As soon as she was told about the termination of her position, the Appellant contacted her first adjuster who, she says, told her that she would be compensated for the loss of her job due to injuries suffered in the automobile accident.

It is the submission of the Appellant that, if M.P.I.C. had agreed to the more intensive Early Rehabilitation Program recommended by the [rehab clinic] at the outset, rather than delaying that approval until December 19th, 1994, as was the case, she would have recovered more quickly and would not have lost her position. She is of the view that she should be compensated with a lump sum, or in some other way, to assist her until she finds employment.

The Appellant received Income Replacement Indemnity for 159 days, reimbursement for or payment of the cost of treatments, and travel costs to [text deleted] to retrieve her belongings. Although the Appellant's employer claims to have terminated her job for reasons other than those related to the accident, M.P.I.C. appears to have given [the Appellant] the benefit of any doubt by taking into account Section 110(2) of the Act, which reads as follows:

> "Temporary continuation of I.R.I. after victim regains capacity
>
> 110(2) Notwithstanding clauses (1)(a) to (c), a full-time earner or a part-time earner who lost his or her employment because of the accident is entitled to continue to receive the income replacement indemnity from the day the victim regains the ability to hold the employment, for the following period of time:
>
> (a) 30 days, if entitlement to an income replacement indemnity lasted for not less than 90 days and not more than 180 days....."

The Appellant did, in fact, receive compensation for loss of employment in the amount of 30 days additional I.R.I.

The Appellant, having thus lost her job and continuing to need family support, moved back to [Ontario], incurring some furniture-moving costs for which she now seeks reimbursement.

[The Appellant] does not quarrel with the amount, nor with the duration, of the Income Replacement Indemnity paid to her by the insurer; she acknowledges that her disability had been overcome by the 13th of February, 1995 - the date to which her I.R.I. was originally paid, before the insurer decided to extend it by the further 30 days referred to above.

ISSUES:

The issues here are:

(i) Did the accident cause loss of the Appellant's job?
(ii) Even if it did, is she entitled to any additional compensation?
(iii) Is she entitled to reimbursement of moving expenses?

HE COMMISSION'S FINDINGS:

With regard to the Appellant's loss of employment, it is difficult to deduce, from the evidence, that the accident caused her job termination. [The Appellant] submits that the need to take time off work because of the accident was, indeed, the direct cause of her being fired. Moreover, she says: "If I'd been allowed the Early Rehabilitation Program when it was recommended, I'd only have missed six weeks of work and I would not have been fired."

It is far from clear that earlier E.R.P., even if started on September 19th, would have resulted in faster recovery. The Manager of Clinical Services of the [rehab clinic], posing the same question in a letter to the Appellant of February 19th, 1996, raises doubts about the likelihood of a speedier recovery, adding that lower back pain cases usually recover spontaneously within 4 to 8 weeks and, in 90% of such cases, within 4 to 6 weeks.

But, even if E.R.P. had started on September 19th, six weeks absence would have taken the Appellant to the end of October, by which time a decision to terminate her employment had already been communicated to her. In other words, the intensive program would have made

no difference; [the Appellant] would still have lost her job. Whether the Appellant would have a valid claim for wrongful dismissal is an interesting question, but not one that lies within our mandate.

The Appellant feels that "I should continue to receive I.R.I. until I have found a job." This, unfortunately, indicates a lack of understanding of the nature of the coverage provided under the Act. There is no provision in the Act for any lump sum payment under circumstances such as these, and the statute only allows the payment of income replacement *during a period of disability* stemming from an accident caused by, or by the use of, a motor vehicle. Where the victim has also lost his or her job as a result of that accident, a further 30 days of income replacement becomes payable. M.P.I.C. has fulfilled its statutory obligations in these contexts and this portion of her appeal must therefore fail.

As to [the Appellant's] moving expenses, a victim is entitled to be reimbursed for any expenses that occur as a result of an automobile accident, but only to the extent that those expenses qualify under the terms of the Act. The relevant section of the Act reads in part as folows:

> "Reimbursement of victim for various expenses:
>
> 136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
>
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
>
> (b) the purchase of prostheses or orthopedic devices;
>
> (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
>
> *(d) such other expenses as may be prescribed by regulation."* (Our italics.)

Since [the Appellant's] moving expenses are clearly not covered by any of the first three subsections of Section 136(1) above, we must have reference to what is "prescribed by regulation". The relevant regulation, being No. 40/94 entitled "Reimbursement of Expenses (Universal Bodily Injury Compensation) Regulation," makes no provision of moving expenses of the kind incurred by [the Appellant]. The M.P.I.C. Act is, in effect, an insurance policy covering persons injured in motor vehicle accidents with what may be called a 'Manitoba connection'. Like all insurance policies, it does not purport to insure against every possible kind of loss, but only for those losses described in the policy - in this case, the Act and Regulations. This Commission is not empowered to add compensible expenses where the legislation omits them. In consequence, we must also deny this aspect of [the Appellant's] appeal.

DISPOSITION:

For the foregoing reasons the appeal of [the Appellant] is dismissed and the decision of the Internal Review Officer confirmed.

Dated at Winnipeg this 2nd day of July 1996.

J. F. R. TAYLOR, Q.C. (CHAIRPERSON)	**LILA GOODSPEED.**	**CHARLES T. BIRT, Q.C.**