

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF AN APPEAL BY [the Appellant]

AICAC File No.: AC-96-7

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila J. Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation (M.P.I.C.)
represented by Mr. Keith Addison,
[Text deleted], the Appellant, appeared in person

HEARING DATE: October 1st, 1996

ISSUE: Determination of the Appellant's level of experience in his
identified class of employment for the purposes of calculation of
Income Replacement Indemnity (I.R.I.).

RELEVANT SECTIONS: Section 81(2)(ii), of the M.P.I.C. Act and Regulation 39/94,
Schedule C

**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], a self employed mechanic was seriously injured in an automobile accident on July 5th, 1995 in which he sustained injuries requiring physiotherapy. [the Appellant] was unable to conduct his business as a self employed small motor mechanic.

[The Appellant's] income replacement indemnity ('I.R.I.') was calculated in accordance with Section 81(2)(ii) of the Act and Regulation 39/94, Schedule C. It was determined that [the Appellant's] class of employment was as a Mechanic and Repairer, Level 1 with less than 36 months of experience. This classification qualified [the Appellant] for a gross yearly employment income of \$18,398.00, upon which his net I.R.I. was thus computed by the insurer. It is from that decision that [the Appellant] now appeals.

THE LAW:

The issue to be determined in this appeal is whether the level of experience determined for [the Appellant] by M.P.I.C. was the appropriate one. [The Appellant] began taking courses in small engine mechanics in 1988 when he became certified as a master mechanic. He stated that he began his business, [text deleted], in 1991 repairing lawnmowers, garden equipment, snowmobiles as well as boat motors. Even while he was employed with [text deleted] from 1989-1992, [the Appellant] continued his small motor repair business from his home and continues to do so today.

It would appear from the record that [the Appellant] had not provided proof of the depth or length of his learning and experience as a motor mechanic and repairer. Subsequent to the hearing, [the Appellant] provided the Commission with documentation to prove his years of work as a Mechanic and the type of training he undertakes annually to assure his certification as a master mechanic.

[The Appellant] commenced a course of study with [text deleted] in 1988. After four courses he received his Trainee Plus certification and has continued annual course work to update his qualifications and maintain his status as a master sales and service dealer. [Text deleted] is listed under [text deleted] as an authorized service centre in the yellow pages of the [text deleted] telephone directory.

[The Appellant] undertook courses with [text deleted] and after seven years obtained the certification of Master Technician which qualifies him to work anywhere on small engines. A certificate from [text deleted] with an issue date of February 14th, 1995 and an expiration date of February 14th, 1997, indicates that [the Appellant] is qualified as a Master Technician. A letter from [text deleted] from [text deleted] in, outlines the excellent mechanical skills [the Appellant] demonstrated when he was employed by him prior to 1990.

A letter from [text deleted] of [text deleted] indicates that the Appellant provided excellent skills while undertaking occasional work for him in 1991.

The adjuster determined [the Appellant's] claim on the basis that he was a Mechanic and Repairer who had 36 months of experience prior to the date of the accident. It is now evident from the testimony and the documents provided by [the Appellant] that he had commenced training and received certification as a master mechanic in 1988 and provided proof of employment as well as self employment in this field as early as 1990.

On the basis of this new information the Commission is of the view that [the Appellant] should have been paid an income replacement indemnity at Level 2 as a Mechanic and Repairer. We find that [the Appellant] was engaged for more than 3 years but less than 10 years in this occupation and therefore would qualify for Level 2 with a deemed gross yearly employment income of \$27,233.00.

DISPOSITION:

The decision of the Internal Review officer is therefore varied accordingly, and the matter referred back to M.P.I.C. for the calculation of the new bi-monthly I.R.I. to have retroactive effect from the seventh day after the date of [the Appellant's] accident.

Dated at Winnipeg this 7th day of November, 1996.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA J. GOODSPEED