Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-46

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C. Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey** **[Text deleted], the Appellant, appeared on his own behalf**
HEARING DATE:	**May 12th, 1998**
ISSUE:	**'New information' - right of Appellant to reopen earlier, unsuccessful appeal for post-180 entitlement to income replacement indemnity.**
RELEVANT SECTIONS:	**Section 117 and 188 of the MPIC Act ('the Act') and Section 8 of Regulation 37/94**

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 Appellant] was involved in a motor vehicle accident on November 20th, 1994. He has appeared on two earlier occasions before this Commission. His first appeal was heard on November 9th, 1995 and related to a claim for income replacement indemnity under Section 85(1)(a) of the Act, based upon [the Appellant's] claim that, had it not been for his motor vehicle accident, he would

have been employed teaching English as a second language to children in Korea. The Commission found, on the facts of that case, that [the Appellant] had neither received and accepted a valid job offer nor felt obliged to refuse one by reason of his injury. We found that he did not qualify for income replacement and dismissed his appeal.

[The Appellant's] second appeal was heard in December of 1996. It had three facets to it: the first two dealt with his right to reopen his earlier, unsuccessful appeal for income replacement during the first 180 days following his accident, and the Commission found that the 'new information' sought to be adduced by [the Appellant] at the time was insufficient to warrant reopening the earlier decision. The third ground of his appeal was a claim for income replacement indemnity ('IRI') for the period following the 180th day after his accident. The Commission was obliged to find that, upon a strong preponderance of evidence (including [the Appellant's] own admissions) he had attained his pre-accident status long before the first 180 days had expired. As we said in our Reasons for that decision, in part

> ....this is not to suggest that [the Appellant] is not suffering from a disability, but we are unable to find that any continuing disability on his part can be laid at the door of his motor vehicle accident. On the contrary, it seems clear that his disability predated his accident. We understand that [the Appellant] has been referred, by his regular, family physician, to a specialist who may be able to help him in that context.

[the Appellant] now asks us to revisit that same claim for post-180 day IRI, upon the basis of new evidence in the form of reports from [text deleted] (general practitioner), [text deleted] (clinical

psychologist), [text deleted] (physiotherapist and athletic therapist), [text deleted] (specialist in rehabilitation medicine), [text deleted] (orthopedic surgeon) and [text deleted] (a specialist in sports medicine).

[Appellant's doctor's] most recent report, addressed to this Commission, bears date March 11th, 1998; [Appellant's phychologist's] report, addressed directly to [the Appellant], is dated April 18th, 1997. All of the other material that we were invited by [the Appellant] to examine (apart, of course, from his own most recent testimony) was in existence long before the date of his earlier appeal which was heard on December 9th, 1996.

Section 188 of the MPIC Act reads as follows:

> 188 Except as provided in this Part, a decision of .....the Commission is final and binding and not subject to appeal or review by a court.

Section 117 of the Act deals with situations where a victim suffers a relapse of bodily injury where the original injury was sustained in the course of a motor vehicle accident. It is clear that, were [the Appellant] able to establish that the problems from which he now suffers constitute a 'relapse', he might well have been entitled to some income replacement. However, we find as a fact that this is not the case.

It is not necessary for us to decide whether, despite the language of Section 188 cited above, this Commission would have a duty, or even a right, to reopen the subject matter of an appeal if we were

presented with new evidence, unavailable previously, that tended to shed a different light upon the facts of the case. A careful reading of [Appellant's doctor's] letter of March 11th, 1998 and [Appellant's phychologist's] letter of April 18th, 1997 persuades us that, even had the contents of those letters been made available to us in December of 1996, along with all of the other material to which [the Appellant] refers, our decision of December 9th, 1996 would have remained unchanged. As we have noted earlier, there is no doubt that [the Appellant] is, indeed, the victim of a pain disorder associated with psychological factors, or a somatoform pain disorder. However, we are not persuaded, upon a balance of probabilities, that his problems can be attributed to his motor vehicle accident of November 1994. It follows, therefore, that his appeal must be dismissed, not only for the foregoing reasons but, primarily, for the reason that we have no jurisdiction to deal with it. The remedy that he seeks has already been denied him and his appeal to this Commission from that denial was dealt with in December of 1996. Nothing new has been adduced that would allow us to revisit the earlier decision of this Commission, even if the right to do so exists.

Dated at Winnipeg this 13th day of May 1998.

_____ **J. F. REEH TAYLOR, Q.C.**

_____ **CHARLES T. BIRT, Q.C.**

_____ **F. LES COX**