Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-38

PANEL:	**Ms. Yvonne Tavares, Chairperson** **Mr. Wilson MacLennan** **Ms. Barbara Miller**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.**
HEARING DATES:	**November 20, 2002 and January 14, 2003**
ISSUE(S):	**1. Entitlement to travel expenses;** **2. Entitlement to loss of wages to attend a medical appointment;** **3. Entitlement to additional permanent impairment benefits; and** **4. Entitlement to income replacement indemnity benefits beyond July 25, 1999.**
RELEVANT SECTIONS:	**Subsections 110(1)(a), 110(2)(d), 127, 136(1) and 172(2) of The Manitoba Public Insurance Corporation Act (the "MPIC Act"); Section 8 of Manitoba Regulation 37/94; Sections 5, 19 and 20(1) of Manitoba Regulation 40/94; and Section 2 and Schedule A of Manitoba Regulation 41/94.**

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 head-on motor vehicle collision on November 8, 1996, wherein he sustained a fractured right, upper femur, a fractured right fibula, a fractured right tibia, a fractured right ankle and a fractured right hip requiring pinning. In addition, he suffered dental damage and numerous contusions and lacerations. As a result of those injuries, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing four separate Internal Review decisions with regards to the following issues:

1. Entitlement to travel expenses;
2. Entitlement to loss of wages to attend a medical appointment;
3. Entitlement to additional permanent impairment benefits; and
4. Entitlement to income replacement indemnity ("IRI") benefits beyond July 25, 1999.

1. Entitlement to Travel Expenses

The Appellant submitted a claim to MPIC for travel expenses in the total amount of $106.42 for the 340 km trip from [text deleted] to [text deleted] to attend a medical appointment with his general practitioner, [text deleted]. The case manager's decision, dated November 17, 2000, allowed the Appellant's travel expense claim in the amount of $62.60.

The Appellant is claiming the remainder of the total cost on the basis that his family doctor, [text deleted], is most familiar with his condition since the motor vehicle accident, and as such he prefers to maintain the continuity of care provided by [Appellant's doctor].

The Internal Review decision, dated April 26, 2001, confirmed the case manager's decision and dismissed the Appellant's Application for Review.

Section 19 of Manitoba Regulation 40/94 provides that:

> **Travel and accommodation**
> **19** Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.

Subsection 20(1) of Manitoba Regulation 40/94 provides that:

> **Expenses beyond 100 km from victim's residence**
> **20(1)** Where a victim incurs an expense for travel or accommodation for the purpose of receiving care at a distance of more than 100 km from the victim's residence when the care is available within 100 km of the victim's residence, the corporation shall pay only the expenses for travel or accommodation that would have been incurred by the victim if the care had been received within the 100 km.

The Commission finds that MPIC has reimbursed the Appellant the maximum allowable expense pursuant to the Regulation when the care sought is available within 100 km of the victim's residence. Although the Appellant has a reasonable explanation for attending upon [Appellant's doctor] in [text deleted] for care, the Appellant did have the option of attending a general practitioner closer to home. As a result, the Commission dismisses the Appellant's appeal with respect to reimbursement of additional travel expenses and confirms the decision of MPIC's Internal Review Officer, bearing date April 26, 2001.

2. Entitlement to Loss of Wages to Attend a Medical Appointment

The Appellant was required to attend a medical appointment with [Appellant's orthopedic specialist #1] and sought reimbursement of the expenses incurred in connection with that attendance.

The Internal Review decision dated April 26, 2001, stated that:

> You were unable to reschedule your appointment with [Appellant's orthopedic specialist #1] and had no option but to take the day off in order to keep your appointment with him. Your claim in this regard amounts to wages for one day of work. This lost income can be regarded as an expense you incurred in order to keep your appointment with [Appellant's

> orthopedic specialist #1]. It should, therefore, be reimbursed to you under Section 5 of Regulation 40/94, together with the appropriate interest.

At the appeal hearing, the Appellant advised that he had not yet been reimbursed for the lost wages, interest and travel expenses incurred in attending the appointment with [Appellant's orthopedic specialist #1]. Counsel for MPIC and the Appellant agreed that the Appellant should be reimbursed for the loss of 8 hours of pay when the Appellant was required to take a day off in order to attend an appointment with [Appellant's orthopedic specialist #1] and the related travel expenses. Accordingly, if this amount has not already been paid to the Appellant, the Commission orders that the Appellant be reimbursed for the loss of 8 hours of pay and the related travel expenses in order to attend the appointment with [Appellant's orthopedic specialist #1], together with the appropriate interest.

3. Entitlement to Additional Permanent Impairment Benefits

The Internal Review decision dated February 5, 2002 rejected the Appellant's Application for Review of the claim's decision dated June 19, 2001, for failure to comply with Section 172 of the MPIC Act. The Appellant's Application for Review was filed after the 60 day time limit set out in ss. 172(1) had expired. The Internal Review Officer considered whether the Appellant had a "reasonable excuse for failing to apply for a review of the decision" within the time period provided. The Internal Review Officer held that the Appellant had not provided any excuse for late filing and therefore Section 172(2) was inapplicable and accordingly he rejected the Application for Review.

The Commission, having considered the testimony of the Appellant, and the fact that the assessment of his permanent impairment benefits was a complex matter and was ongoing (a

subsequent claim's decision having been rendered on this matter on February 4, 2002), finds that an extension of the time for filing an Application for Review should have been granted. As such, we have considered the merits of the Appellant's claim.

As a result of the injuries which the Appellant suffered in the motor vehicle accident of November 8, 1996, the Appellant sustained permanent physical impairments which, pursuant to Section 127 of the MPIC Act, entitle him to a lump sum indemnity in accordance with the Regulations to the MPIC Act. The Appellant is appealing the Internal Review decisions, dated July 21, 2000 and February 5, 2002, with respect to the amount of the lump sum indemnity as calculated by MPIC.

Section 127 of the MPIC Act provides that:

> **Lump sum indemnity for permanent impairment**
> **127** Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than $500. and not more than $100,000. for the permanent impairment.

The Regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

The Internal Review decision, dated February 5, 2002, confirmed the case manager's decision of June 19, 2001, which had determined a permanent impairment benefit of 12.7% as follows:

Permanent Impairment	**Percentage**
Right quadriceps wasting	2.0 %
Altered sensation right thigh	4.0 %
Altered sensation right calf	1.0 %
Change in form/symmetry right ankle	2.0 %
Scarring and change of form/symmetry	3.7 %

TOTAL:	12.7 %

The total of 12.7% when applied against the $104,138.00 maximum impairment benefit payable for 1996, resulted in an impairment benefit in the amount of $13,225.52.

The Internal Review decision, dated July 21, 2000, confirmed the case manager's decision of February 14, 2000, which had determined a permanent impairment benefit of 18.7% as follows:

Permanent Impairment	**Percentage**
Scarring to right lower limb	8.0 %
Facial scars	1.85 %
Damaged teeth	3.75 %
Diminished Range of Motion of Right Hip	2.1 %
Diminished Range of Motion of Right Ankle	3.0 %
TOTAL:	18.7 %

The total of 18.7% when applied against the $104,138.00 maximum impairment benefit payable for 1996, resulted in an impairment benefit in the amount of $19,473.81.

The impairment benefits as assessed by MPIC were based on measurements taken by a physiotherapist. The Appellant presented no medical evidence at the hearing of the appeal to contradict the measurements or the subsequent assessment of the permanent impairment benefits undertaken by MPIC. Accordingly, the Commission finds no reason to disturb these permanent impairments benefits as calculated by MPIC and confirms the decisions of MPIC's Internal Review Officer, bearing date July 21, 2000 and February 5, 2002.

The Appellant, however, submits that he is entitled to additional permanent impairment benefits arising from the injuries he sustained in the motor vehicle accident. Specifically, for a fracture in his jaw, for injuries sustained to his nose, for scarring to his left leg and for the loss of

consciousness which he sustained at the time of the accident. These matters shall be referred back to MPIC's case manager for an assessment and determination of whether or not a permanent impairment benefit is applicable for this Appellant.

4. Entitlement to Income Replacement Indemnity Benefits beyond July 25, 1999

The decision of MPIC's Internal Review Officer, dated March 10, 2000, denied the Appellant's Application for Review and confirmed the case manager's decision dated July 23, 1999. The case manager's decision had terminated the Appellant's entitlement to IRI benefits as of July 25, 1999, on the basis of Subsection 110(1)(a) of the MPIC Act.

In his letter, dated July 23, 1999, the case manager had advised the Appellant as follows:

> Further to our telephone conversation of July 22, 1999, this letter will confirm that based on the medical information received from [Appellant's orthopedic specialist #1] as well as the second opinion from [Appellant's orthopedic specialist #2] and the discharge report from the [rehab clinic], you are now capable of resuming the duties of your pre-accident occupation of [text deleted] miner.
>
> As we discussed, information provided by your employer indicates that you would have been subject to a layoff on July 30, 1998 due to a shortage of work. As discussed, this letter was provided by the Human Resources Coordinator of [text deleted] and we must accept this information as factual.
>
> As we discussed at previous meetings, our rehabilitation obligation was to return you to be capable of functioning in your pre-accident occupation of [text deleted] Miner. Because your position is no longer available due to circumstances other than the motor vehicle accident, income replacement indemnity benefits would conclude once it was determined you are capable of functioning in this position. As such, your income replacement indemnity benefit will end on July 25, 1999.

The Appellant sought an internal review of the case manager's decision. In his decision, dated March 10, 2000, the Internal Review Officer determined that there were two issues to be decided on the review:

1. Was the Appellant fit to return to his pre-accident work so as to justify the

application of Section 110(1)(a) of the Act? and

2. Had the Appellant lost his pre-accident employment "because of the accident", in which case Section 110(2)(d) would apply to continue his benefits.

The Internal Review Officer concluded the following with regards to the issues under review:

> **SECTION 110(1)(a)**
>
> You suffered serious injuries in your car accident. The rehabilitation process has been a long, slow, and arduous one. I accept that you genuinely believe that you are incapable of returning to your pre-accident work. It is understandable why you might feel that way. Nevertheless, decisions respecting PIPP benefits must be governed by the medical evidence available. [Appellant's orthopedic specialist #2's] report of June 30, 1999 concluded that "I see no objective contra-indications for [the Appellant] to go back to his work as a [text deleted] miner at the present time." This is consistent with the neurological report from [Appellant's neurologist] dated November 23, 1998, with the very brief opinions received from [Appellant's orthopedic specialist #1], and with the significant accumulation of rehabilitation material from the [text deleted], Occupational Therapy & Rehabilitation Consultants, and the [rehab clinic]. There is essentially no contrary medical evidence whatever. Accordingly, this review has no option but to confirm the decision made by [text deleted] to terminate your Income Replacement Indemnity.
>
> **SECTION 110(2)**
>
> Your employer advised us that you lost your job as part of a general staff reduction due to shortage of work a year and a half after your accident. You say that is not true, but the information on which you are relying came to you at second hand from individuals who, apparently, are unwilling to come forward to verify it. On the evidence available, I must confirm [text deleted] decision that Section 110(2) does not apply to your claim so as to extend your benefits.

The Appellant has now appealed the decision of the Internal Review Officer, dated March 10, 2000, to this Commission. The issues which require determination in [the Appellant's] appeal are:

A. Entitlement to IRI benefits beyond July 25, 1999; and

B. Continuation of IRI benefits pursuant to Section 110(2).

A. Entitlement to IRI benefits beyond July 25, 1999

The relevant sections of the MPIC Act and Regulations are as follows:

Section 110(1)(a) of the MPIC Act:

> **Events that end entitlement to I.R.I.**
> **110(1)** A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:
>
> (a) the victim is able to hold the employment that he or she held at the time of the accident.

Section 8 of Manitoba Regulation 37/94:

> **Meaning of unable to hold employment**
> **8** A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

At the appeal hearing, the Appellant submitted that the injuries which he sustained in the motor vehicle accident of November 8, 1996, prevented him from returning to his employment as a [text deleted] miner with his previous employer, [text deleted] at the [text deleted] Site. He contends that his position at the [text deleted] was extremely difficult and challenging and he simply had not regained the functional capacity and stamina to return to that position on July 25, 1999, if at all.

In support of his position, the Appellant testified that:

- In his position at [text deleted], he would work 10-hour shifts, every day for 28 days in a row, followed by 14 days off. [Text deleted] is an [text deleted] mine. His endurance for heavy work had never been tested for that length of time. He noted that he would be limping and fatigued when he finished his work hardening sessions at [rehab clinic], which lasted for six hours.

- He was not certain that he could sustain the rigorous pace required to maintain the production levels which allowed him to attain the production bonuses which he regularly achieved prior to the motor vehicle accident.

- His duties at [text deleted] included working inside the mine to blast rock surfaces, removing debris, operating heavy machinery and working with hand tools. His major duties included:

    - Walking into and out of the mine.
    - Drilling holes in the rock face using a hand held jack; placing and detonating dynamite in the holes to remove the ore (rock debris and sludge were created with the blasting).
    - Operating scouper and other heavy machinery to remove debris and sludge after drilling and blasting.
    - Handling timber to build reinforcing structures along mine walls.

- He could not safely lift and carry over 100 lbs. and would be required to lift weights greater than that in the course of his duties. The Jackleg drill, which was one of the primary pieces of equipment which he utilized, weighed 120 lbs., complete; the explosives which he would carry into the mine could weigh more than 100 lbs. and the timbers could weigh over 100 lbs.

- Walking on the uneven surface of the mine was very difficult because of the instability associated with his ankle. Walking in the mine involved walking consistently on an incline or decline of approximately 15-20 degrees, which was even more challenging when he was carrying heavy weights.

- Occasionally he would be required to work at ground level which would require squatting and kneeling. The low level work would include drilling at ground level or building reinforcing structures with timber along the mine's tunnel. The Appellant testified that working while squatting or kneeling would be difficult, if not impossible, for him because of the weight of the drill which he would have to support (squatting or kneeling is usually performed while handling weights of 90 to 100 lbs. and maintaining the squatting position for up to 45 minutes).

- Balancing and climbing because of his right ankle which was not supportive, was challenging. He could not climb a ladder and carry any heavy weight. He was also uncertain as to whether or not he would be able to climb the exit ladders in case of an emergency evacuation of the mine.

- Doing overhead work would have been problematic. He would occasionally be required to drill holes in the rock face above shoulder level (for intervals of up to 20 minutes) and in this position he would control the entire weight of the Jackleg drill.

According to the Appellant, the functional requirements of his position as a [text deleted] miner at [text deleted], exceeded his functional capacity as determined by the [rehab clinic] in their

Discharge Assessment dated January 29, 1999. Additionally, the Appellant submits that [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2's] assessments are not determinative of the issue of whether or not he could return to his employment, because they did not fully appreciate the demands of his position as a [text deleted] miner. As a result, the Appellant submits that his IRI benefits should not have been terminated as of July 25, 1999, and he is seeking a continuation of IRI benefits to June 25, 2001, when he became a lead miner at [text deleted].

Counsel for MPIC submits that the termination of the Appellant's IRI benefits pursuant to Section 110(1)(a) was appropriate based upon all of the information on the Appellant's file. Counsel for MPIC relies on the discharge assessment from the [rehab clinic], dated January 29, 1999, which stated that:

> **SUMMARY**
> [The Appellant] successfully completed his work hardening program as of January 29, 1999. He currently meets the critical job demands required to work as a miner at the [text deleted]. In order to allow a smoother transition back to the work place, it may be beneficial to have him work reduced hours as compared to the regular 10 hour shifts for 30 days in a row. [The Appellant] should also continue to work on strengthening and stretching for his lower extremities, as well as some type of cardio-vascular conditioning.

Counsel for MPIC notes that according to the discharge assessment, the Appellant had the ability to work as a miner at the [text deleted] as of January 29, 1999. As of that date, she notes that he had the ability to push and pull almost 100 lbs., was able to lift 75 lbs. waist to crown, and lift 100 lbs. floor to waist. Counsel for MPIC contends that the Appellant's testimony about his job demands was not significantly different from the Job Site Analysis Report, dated March 23, 1998, completed by [text deleted], Occupational Therapist. In her submission, the Appellant met the physical demands of the position of a [text deleted] miner according to the Job Site Analysis Report.

Counsel for MPIC also notes that according to the Physical Assessment Report, dated August 18, 1999, from the [rehab clinic], the Appellant had full strength in his ankle and was very close to full strength in his knee and hip. She concludes that the Appellant's full strength in his lower extremities would allow him to return to his position as a [text deleted] miner. Further, counsel for MPIC argues that there was no evidence that the Appellant was not physically capable of reaching the production levels which he attained prior to the motor vehicle accident.

Disposition:

Throughout the hearing of this matter, the Appellant presented himself in a very forthright and honest manner. The Commission found the Appellant to be a credible individual who had worked diligently throughout the rehabilitation process to restore his functional status. Upon consideration of the totality of the medical evidence before us, and the Appellant's own testimony, the Commission finds that the Appellant's IRI benefits should not have been terminated pursuant to Section 110(1)(a) of the MPIC Act as of July 25, 1999.

In our view, the employment which the Appellant held at the time of the motor vehicle accident at [text deleted] was extremely demanding, requiring significant physical strength and endurance. The Job Site Analysis Report, dated March 23, 1998, identified the critical physical demands of the occupation of a miner at [text deleted] as follows:

- Standing/walking for the full 10 hour shift for 30 consecutive work days
- Constant walking and standing on rough ground, inclines, and through sludge
- Frequent lifting and carrying of up to 100 lbs.
- Repetitive and sustained squatting to work at low levels
- Adequate lower limb proprioception to operate hydrostatic foot controls on heavy machinery

The Appellant testified at the appeal hearing that his main problems with returning to his previous employment involved the significant weights (often in excess of 100 lbs.) which he would be required to carry; his balance due to the instability of his ankle; walking on the uneven, slippery surface of the mine floor, be it at an incline or decline; lifting heavy machinery to work above shoulder level; climbing ladders; and repetitive and sustained squatting to work at low levels. These concerns correspond to the critical physical demands of the [text deleted] miner position as identified by the occupational therapist who conducted the Job Site Analysis. Taking into consideration the Appellant's testimony with regards to his inability to meet the critical demands of the [text deleted] miner position, we find that the Appellant has established, on the balance of probabilities, that he was substantially unable to perform the essential duties of his employment as a [text deleted] miner.

With regards to the discharge assessment from the [rehab clinic], dated January 29, 1999, which concluded that the Appellant met the critical job demands required to work as a miner at the [text deleted], the Commission finds that the program did not adequately take into account the significant endurance which would be required by the Appellant in carrying out his job functions.

Although the Appellant had certainly regained a great deal of strength at the time of discharge from the work hardening program, his ability to function in the workplace also depended upon the necessary stamina to work extended hours for a 28 day stretch. There is a significant difference in completing tasks in a work hardening program for 10 - 15 minute intervals and the requirements of the Appellant's occupation. His position demanded sustained efforts over 10-hour days for 28 days in a row. As part of his job duties, he was required to sustain a squatting

position for up to 45 minutes, maintain a stooping position for up to 45 minutes and perform overhead work for intervals of up to 20 minutes. All the while, handling weights of up to 100 lbs. The pain and fatigue which would undoubtedly result, would certainly have affected the Appellant's level of functioning.

There is no evidence that the Appellant was capable of performing his duties as a [text deleted] miner and sustaining that level of activity. Accordingly, we accept the Appellant's position that the requirements of his position were extremely demanding and that he had not regained the functional status necessary to meet them as at July 25, 1999. As a result, we find that the Appellant was unable to hold the employment that he held at the time of the accident as at July 25, 1999.

In the context of this particular appeal, we find it necessary to make one further observation regarding the termination of the Appellant's IRI. Although, the Commission finds that the Appellant's IRI benefits should not have been terminated pursuant to Section 110(1)(a) of the MPIC Act as of July 25, 1999, since he could not hold the employment that he held at the time of the accident, we do find that the Appellant would have been capable of holding employment as a miner in a position which was not quite as demanding as the position at [text deleted]. As such, it may have been appropriate for MPIC to determine the Appellant's employment as a miner (in a general sense) pursuant to Section 107 of the MPIC Act and apply Section 110(1)(d) of the MPIC Act to terminate the entitlement to IRI benefits. While we make that observation, we leave that determination to MPIC's case manager and decline to make any order to that effect without allowing the case manager to conduct a complete investigation of the Appellant's work history both before the motor vehicle accident and subsequent to July 25, 1999.

B. Continuation of IRI benefits pursuant to Section 110(2)

The relevant section of the MPIC Act is as follows:

Section 110(2) of the MPIC Act:

> **Temporary continuation of I.R.I. after victim regains capacity**
> **110(2)** Notwithstanding causes 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:
>
> (d) one year, if entitlement to an income replacement indemnity lasted for more than two years.

The Internal Review Officer, in his decision dated March 10, 2000, found that there was insufficient evidence upon which to make a finding that the Appellant had lost his job due to the motor vehicle accident of November 8, 1996. Upon receiving significant new information with respect to this matter, the Internal Review Officer directed that further investigation should be undertaken by the case manager. Such an investigation was carried out and the Internal Review Officer issued a Supplementary Review Decision on the matter by letter dated April 26, 2001.

In his letter dated April 26, 2001, the Internal Review Officer detailed a number of discussions between the case manager, himself and [text deleted], Human Resources Coordinator of [text deleted]. Based on the additional information, and the discussions with [text deleted], the Internal Review Officer found that the Appellant was laid off during the course of a general staff reduction and not due to the motor vehicle accident of November 8, 1996.

The Appellant submits that he was laid off from his position at [text deleted] on July 30, 1998,

due to his extended absence from the workplace. He contends that his lay-off was convenient for the employer since he was away from the workplace. In support of this position, the Appellant refers to a letter dated August 21, 2000 from [text deleted], Senior Foreman, which states that:

> [The Appellant] was employed with [text deleted] at [text deleted] for about two years. He was a valued employee with a good work history. He may have still been employed at [text deleted] if he had been able to work continuously. After he was absent for about a year and a half, he was laid off. The job is on going and believed to continue for at least another year. . . .
>
> Some of [the Appellant's] co-workers, at the time of his accident were [text deleted]. They are still employed at the mine as [text deleted] miners.

Based on this letter from his foreman, the Appellant maintains that he was laid off from his position at [text deleted] due to his medical leave which arose as a result of the injuries which he sustained in the motor vehicle accident of November 8, 1996. Accordingly, he submits that he is entitled to additional IRI benefits in accordance with Subsection 110(2)(d) of the MPIC Act.

Counsel for MPIC submits that the evidence obtained from the Appellant's employer does not support the proposition that he lost his job due to the motor vehicle accident. She notes that the Human Resources Coordinator has always maintained that the Appellant was laid off due to a general staff reduction. Counsel for MPIC also referred to the case manager's e-mail message dated February 26, 2001, commenting on a conversation with [text deleted] from [text deleted]. [text deleted] advised that in 1997, 20 miners were laid off. [The Appellant] was not one of those miners. In 1998 a further 15 miners were laid off. [The Appellant] was one of the miners laid off at this time, due to a shortage of work. In 1999 there were only six miners left at the [text deleted]. Accordingly, counsel for MPIC submits that there is no evidence that the Appellant was laid off because of his absence from the mine. Rather, she submits that, the fact that he survived the first round of lay-offs supports the position that he was not laid off simply as a matter of convenience. As a result, counsel for MPIC submits that the Appellant has not met

the onus of proof required in the circumstances, and accordingly the decision of the Internal Review Officer, dated March 10, 2000, should be upheld.

We find that the Appellant has not established, on a balance of probabilities, that his lay-off from [text deleted] on July 30, 1998 was due to reasons stemming from his motor vehicle accident. Although [text deleted] letter is supportive of the Appellant's position, we accept the evidence as relayed by [text deleted], the Human Resources Coordinator of [text deleted]. As the Human Resources Coordinator, we find that she was in a better position to advise as to the reason for the Appellant's lay-off. We also note that the Appellant was not laid off in 1997, during the first round of lay-offs. If he was laid off as a matter of convenience for the employer, due to his extended absence, one would have expected the Appellant to have been laid off at that stage rather than in July of 1998. Accordingly, the Appellant's appeal with respect to this issue is dismissed, and the decision of the Internal Review Officer, dated March 10, 2000, is confirmed.

Dated at Winnipeg this 2nd day of April, 2003.

YVONNE TAVARES

WILSON MACLENNAN

BARBARA MILLER