

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-130**

PANEL: Mr. Mel Myers, Q.C.

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

HEARING DATE: December 17, 2010

ISSUE(S):

1. Did the IRI calculation properly make deductions for CPP and EI.
2. Did the Appellant provide reasons for the late filing of the appeal and particulars of the appeal.

RELEVANT SECTIONS: Sections 112(1) and 174(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

[The Appellant] [text deleted] was involved in a motor vehicle accident on June 10, 2005. As a result of the injuries sustained in the accident, he suffered a loss in pay regarding a promised employment he was unable to begin due to the motor vehicle accident injuries.

Case Manager's Decision:

The Appellant made an application for Compensation to MPIC. MPIC accepted his claim and initially determined that his Income Replacement Indemnity ("IRI") benefits in respect of his

promised employment should be based on a 40 hour week and the Appellant received IRI benefits from MPIC on that basis.

The Appellant made an Application for Review of MPIC's calculation of these benefits.

Internal Review Officer's Decision – September 11, 2007:

The Internal Review Officer issued a decision dated September 11, 2007 determining there was sufficient evidence to support a promised employment to the Appellant based on working 50 hours per week and referred this matter back to the case manager to make the appropriate calculations. MPIC received confirmation from the Appellant's employer supporting the Appellant's contention that IRI benefits should be calculated on the basis of 50 hours per week rather than 40 hours per week. Unfortunately the case manager calculated the IRI benefits based on 40 hours per week.

The Appellant made Application for Review of the case manager's decision claiming IRI benefits were to be calculated on the basis of 50 hours per week of employment rather than 40 hours per week. As well, the Appellant claimed that MPIC did not make a proper deduction of CPP and EI from the IRI calculation.

Internal Review Officer's Decision – February 21, 2008:

A hearing between the Internal Review Officer and the Appellant took place on February 6, 2008 and the Internal Review Officer issued a decision on February 21, 2008. In that decision the Internal Review Officer upheld the Appellant's position that he was to be employed on a 50 hour per week basis and determined that the Appellant's IRI benefits would be recalculated accordingly.

The Internal Review Officer rejected the Appellant's submission that there had been an improper reduction of CPP and EI from the IRI calculation. The Appellant's position was that the IRI benefits were calculated to replace income he would have generated in [text deleted] and because of the motor vehicle accident he was unable to travel to [text deleted] to work there. The Appellant submitted that had he worked in [text deleted] he would not be subject to deductions of CPP and EI from his income.

The Internal Review Officer rejected this submission and determined that MPIC had made no error in deducting for CPP and EI as Section 112(1) of the MPIC Act requires that these deductions be made.

The Appellant filed a Notice of Appeal to the Commission which was received on October 27, 2009.

Appeal:

The MPIC Act provides:

Determination of net income

[112\(1\)](#) A victim's net income is his or her gross yearly employment income, to a maximum of the maximum yearly insurable earnings established under section 114, less an amount determined, in accordance with the regulations, for income tax under *The Income Tax Act* and the *Income Tax Act* (Canada), premiums under the *Employment Insurance Act* (Canada) and contributions under the Canada Pension Plan.

Appeal from review decision

[174\(1\)](#) A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

The Appellant's Notice of Appeal was not timely since it was filed approximately 17 months after he received the Internal Review Decision.

On November 26, 2009 the Commission wrote to the Appellant asking for clarification of his Notice of Appeal. In his Notice of Appeal the Appellant stated "they are not covering the full replacement of my promised income". The Appeals Officer requested fuller particulars of what the Appellant was seeking in respect of IRI. The Appeals Officer also advised the Appellant that his Notice of Appeal was past the time limit but the Commission had the power to extend the time within which a Notice of Appeal must be filed. In order to consider extending the time allowed for appeal the Commission required a written explanation from the Appellant providing a reason for extending that time. The Appeals Officer as well requested that the Appellant provide a response no later than December 18, 2009. No reply was received by the Commission from the Appellant.

On January 7, 2010 the Appeals Officer wrote to the Appellant again requesting that the Appellant provide an explanation of the issues being appealed and the reasons why he had filed late. The Appeals Officer further stated in her letter that upon receipt of a reply the Commission would review the file and make a determination on whether there was an appealable issue and whether the reason for late filing was reasonable. No reply was received by the Commission from the Appellant.

The Commission decided to conduct a Case Conference with the Appellant and MPIC to determine these issues. A Case Conference was held by teleconference on April 12, 2010. During the course of the Case Conference the Appellant requested clarification from MPIC in respect of the deductions that had been made relating to the Appellant's CPP and EI when MPIC

calculated his IRI benefits. The Commission agreed with the Appellant's request and directed MPIC to provide the Commission and the Appellant with a written clarification of the manner in which the deductions of the Appellant's CPP and EI occurred.

On April 21, 2010 the Appellant was provided by email with a statement from MPIC setting out the manner in which the calculation took place. No reply was received by the Commission from the Appellant.

On August 19, 2010 the Commission wrote to the Appellant enclosing this report. The Commission indicated in this letter to the Appellant that if the enclosed report satisfactorily explained the manner in which deductions were calculated he may wish to consider withdrawing his appeal. A Notice of Withdrawal was enclosed in this letter to the Appellant. The Appellant was also advised in this letter that if the enclosed report was not satisfactory the Appellant could contact the Commission's secretary by telephone at his convenience and the matter would be set down for further Case Conference. The Appellant was further advised that he had the option of attending the Case Conference either in person or by teleconference.

On October 6, 2010 the Commission forwarded an email to the Appellant asking him to respond to the August 19, 2010 letter asking whether he still wants to proceed with the appeal. On October 16, 2010 the Appellant advised the Commission he still wanted to proceed with the appeal.

On October 19, 2010 the Commission sent an email to the Appellant advising him that a hearing will be scheduled on either December 6, 8 or 17, 2010 at 10:00 a.m. and that the Appellant

should advise which date would be most convenient to him. The Commission did not receive a reply from the Appellant in that respect.

The Commission prepared a Notice of Hearing dated November 3, 2010 wherein the Appellant was advised a Case Conference would be held on December 17, 2010 to determine whether the Appellant would be providing reasons for his reasons for the late filing of his appeal and the particulars of the reasons for his appeal.

The Case Conference Notice was sent by registered mail and the Commission received a confirmation from Canada Post that its letter was successfully delivered to the Appellant's address and receipt was confirmed by the signature of [the Appellant]. At no time after the Appellant's receipt of the Notice did he contact the Commission and indicate that the December 17, 2010 hearing date was not satisfactory.

On December 17, 2010 the Commission convened the Case Conference Hearing at 10:00 a.m. in the presence of Mr. Robinson. The Commission attempted to contact the Appellant by telephone at his home phone number but was unsuccessful. However, the Commission did reach the Appellant on his cell phone and he indicated that he was presently at work.

The Commission's panel indicated to the Appellant that:

1. It wished to proceed with the hearing and he indicated that he was working at that time.
2. He had been provided with ample notice that a hearing would be held on December 17, 2010 and he did not advise the Commission at any time that he objected to the hearing taking place on that date.

3. He was asked to explain why he had filed his Notice of Appeal 17 months after receipt of the Internal Review Decision and what the basis of his appeal was.

In response to these requests the Appellant became belligerent accusing both the Commission and MPIC of being involved in a criminal conspiracy. The Commission's panel advised the Appellant to conduct himself in a civil fashion. In response the Appellant swore at the Commission's panel. The Commission's panel indicated to the Appellant that the hearing would be concluded at that time and a decision would be issued to the Appellant in due course. The Commission ended the hearing and advised Mr. Robertson that a decision would be issued in due course.

A review of the documentary evidence before the Commission clearly indicates that the Commission attempted to obtain clarification from the Appellant on several occasions as to the basis why he filed an untimely application. Section 174(1) of the MPIC Act requires an appeal be filed within 90 days after receiving an Internal Review Decision or within such further time as the Commission may allow. The Appellant did not at any time provide his reasons for filing a Notice of Appeal 17 months late.

The Appellant was also requested to provide his reasons why he felt MPIC had not made a proper calculation in respect of the deductions of CPP and EI.

At the Commission's request the Appellant was provided with full particulars from MPIC indicating the deductions that were made in respect of the Appellant's CPP and EI deductions. Although the Commission requested on several occasions that the Appellant provide an

explanation of the manner in which MPIC had improperly deducted CPP and EI from his IRI the Appellant at no time provided an explanation.

The Commission finds that the Appellant failed to provide a reasonable explanation for his delay of approximately 17 months in filing a Notice of Appeal. In these circumstances the Commission will not exercise its discretion under Section 174(1) of the MPIC Act to grant an extension of time to the Appellant to proceed with his appeal of the Internal Review Decision before the Commission.

In respect of the issue of deductions of CPP and EI, the Commission finds that MPIC complied with Section 112(1) of the MPIC Act in calculating the CPP and EI deductions from the Appellant's IRI benefits. The Commission finds that the Internal Review Officer was correct in determining that there was no error in deducting for CPP and EI as Section 112(1) of the MPIC Act requires that these deductions be made.

The Commission therefore finds that the Appellant has failed to establish on a balance of probabilities that MPIC erred in interpreting Section 112 of the MPIC Act by making improper deductions of CPP and EI from the Appellant's IRI benefits.

For these reasons the Commission confirms the decision of the Internal Review Officer dated February 21, 2008 and dismisses the Appellant's Application to Appeal.

Dated at Winnipeg this 5th day of January, 2011.

MEL MYERS, Q.C.