

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-16-011**

**PANEL:** **Laura Diamond, Chairperson  
Mr. Trevor Anderson  
Mr. Brian Hunt**

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

**HEARING DATE:** **June 14, 2017**

**ISSUE(S):** **Entitlement to receive Income Replacement Indemnity  
benefits beyond the 180<sup>th</sup> day following the motor vehicle  
accident.**

**RELEVANT SECTIONS:** **Section 110(1)(a) of The Manitoba Public Insurance  
Corporation Act ('MPIC Act')**

**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 injured by a motor vehicle while he was riding his bicycle. As a result of the impact he complained of an injury to his right knee.

On May 5, 2014, the Appellant advised his case manager that he was unable to work due to the bruising on his right knee. He also advised that he had been previously disabled due to injuries sustained in an earlier accident, but that he had a promised employment which was to have begun on May 14, 2014, for 57 days.

On June 2, 2014, the Appellant advised his case manager that he had seen his family doctor who told him that he could try returning to work on June 9, 2014. A report from his family doctor dated June 5, 2014 indicated that an examination of April 29, 2014 found some tenderness and diagnosed a knee sprain/contusion, prescribing ice and physiotherapy. The doctor expected the Appellant to be fit to return to his regular job duties by June 9, 2014. The Appellant's prospective employer advised that he had attended for work on May 14, 2014 to begin his promised employment position for eight weeks. However, they advised that he had been terminated on the same day because he had "threatened physical violence toward supervision". The Appellant denied termination for threatening violence. He indicated that he had been unable to work more than half a day due to his knee injury.

Following further investigation into the claim, the case manager confirmed that the Appellant had promised employment (at [text deleted]) due to start on May 14, 2014 and should have been entitled to Income Replacement Indemnity (IRI) benefits for the period of the promised employment up until June 9, 2014, as he had been medically unable to do the duties of the employment until that time. However, since the evidence provided that he was able to work by June 9, 2014 and the employer confirmed that he had only worked half a day but was terminated for threatening behaviour, the Appellant was denied further benefits after that day.

As the Appellant continued to pursue further IRI benefits, his case manger attempted to obtain medical information from his treating doctor to determine if he qualified for IRI benefits past the 180<sup>th</sup> day of his claim. Following review of the medical information by MPIC's Health Care Services consultant, the case manager concluded, in a decision letter dated October 27, 2015, that the Appellant did not have any compensable injury from the accident which would preclude him

from performing his work duties on a full-time basis and that he would not qualify for further IRI benefits as a result of Section 110(1)(a) of the Act. The Appellant sought Internal Review of this decision.

On January 14, 2016, an Internal Review Officer for MPIC upheld the decision of the case manager. Relying upon the report of MPIC's Health Care Services consultant and the medical information on the Appellant's file, the Internal Review Officer concluded that the medical information supported a disability from the date of the accident until June 9, 2014. There was no medical information on file to support a longer disability and the decision of the case manager was upheld.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

**Issue:**

The issue before the Commission is whether the Appellant is entitled to receive IRI benefits for the period beginning 180 days after the motor vehicle accident. After reviewing the medical information on the Appellant's file, as well as the Appellant's testimony and the submissions of the Appellant and counsel for MPIC, the Commission finds that the Appellant has failed to meet the onus of proof upon him to show, on a balance of probabilities, that he was unable to return to work as of October 23, 2014. Accordingly, his appeal is dismissed.

**Evidence and Submission for the Appellant:**

In support of his claim, the Appellant provided medical reports and letters from his primary physician, [Appellant's doctor].

On June 5, 2014, [Appellant's doctor] reviewed the injuries to the Appellant's knee from the motor vehicle accident, describing his examinations of April 29 and May 29, 2014. He noted that the injury had resulted in the Appellant's inability to work as a [text deleted], from the date of the accident. [Appellant's doctor] indicated the Appellant "is expected to be fit to return to his regular job duties as of the 9<sup>th</sup> of June 2014".

A chart note recorded by [Appellant's doctor] following an examination of May 12, 2015 indicated that the Appellant suffered from:

S: R[ig]th knee pain decreasing/ F/U X-ray/ For MPI hearing in 1-2/12/ Has new job 3/6/15 in pipe fitting in [text deleted] AB – Needs note re: fitness to return

O: R knee- tender lat. Jt. Line and inf. to patella/ ROM- N/ Lig. Intact/ McM – ve X-ray- N (5/3/15)

A: Improving

P: Note—Fit to RTW 3/6/15/ RTC prn

Finally, [Appellant's doctor] provided a report dated August 17, 2015. He stated:

The above named patient suffered right knee sprain/contusion as a result of the above noted accident. An X-ray report has been included. He is currently limited by right knee pain and stiffness which preclude return to work. The most recent examination of his right knee from the 10<sup>th</sup> of August revealed tenderness of the lateral joint line and patella. Range of motion exam revealed flexion to 110 degrees. His ligaments were intact and his McMurray's test was negative. He has been advised to remain off work since his accident and is currently awaiting physiotherapy treatment. In addition an MRI has been ordered, the date of which is pending. His return to work date is currently indeterminate and dependent on the above noted MRI and treatment.

The Appellant participated in the appeal hearing by teleconference. He described the motor vehicle accident, indicating that he was sent to the emergency room immediately following, but later saw his primary care physician, [Appellant's doctor]. He indicated that he has not been able to work since the motor vehicle accident and the injury to his knee. He said his knee is just not

functioning and he can hardly walk on it. He said he wasn't working at the time of the accident but was about to start another job which he was unable to start due to the injury.

He described his work in construction, doing various work with [text deleted]. He indicated that it was heavy work which involved heavy lifting.

The Appellant testified that since the letter [Appellant's doctor] wrote in June of 2014, he had not experienced any improvement to his knee. He said that because MPIC would not provide him with physiotherapy benefits, he did not go to physiotherapy and his knee did not get better.

The Appellant testified that he went to [Appellant's doctor] in June of 2014 and told him that he would like to try to go back to work. Because of his inability to work, he had been having difficulties in employment, with income, with his family life and with his housing situation. He was desperate.

When asked, on cross-examination, about the reports on his file that he returned to work at [text deleted] but was terminated because he had threatened his supervisor with physical violence, the Appellant indicated that this was not true and that he had quit the job because of his knee problem. He did not recall whether he had told MPIC that he was going to try to work on that day, and although counsel suggested that he did not tell MPIC about this until [text deleted] reported what happened to MPIC, the Appellant indicated he could not recall this.

Nor could he recall his appointments with [Appellant's doctor] on April 29 and May 29, 2014. He did recall telling [Appellant's doctor] that he wanted to go back to work on June 9 because, he said, he really wanted to try, as he badly needed the money. When asked about [Appellant's

doctor's] chart note that his knee was improving, the Appellant denied that his knee had improved, indicating that perhaps it felt better on that day, but that it had not improved overall.

He denied seeing [Appellant's doctor] on various occasions without mentioning his knee pain, saying that this was because MPIC was preventing him from going to physiotherapy or any rehab.

He confirmed that he had told his doctor that he had a new job starting in Alberta and had asked him for a note saying he was fit to return to work. He said that the only reason his knee was improving at that time was because he was heavily sedated and heavily medicated and that he did not indeed go to Alberta to start that work.

The Appellant submitted that the accident was no fault of his and that he could not work as a result of injuries from that accident. He submitted that the only reason that he tried to return to work was because he was destitute and poor. The accident basically turned his life and his working life around 180°. The accident changed his life for the worse and the fact that he is not receiving IRI benefits is not fair. He pointed to [Appellant's doctor's] notation of his right knee and persisting superior patella pain, indicating that this prevented him from working and that as a result, he should be entitled to IRI benefits.

**Evidence and Submission for the MPIC:**

MPIC took the position that the Appellant is not entitled to further IRI benefits, as the evidence does not support that he was incapacitated due to a right knee injury or any injury from the motor vehicle accident as of October 2014.

He noted that the burden of proof is on the Appellant to show that the case manager's decision and the Internal Review decision are incorrect, but that the evidence before the Commission does not show that.

Counsel pointed out that following the accident, the Appellant went to see [Appellant's doctor]. [Appellant's doctor] provided a letter dated June 5, 2014 to MPIC outlining his patient's condition. In the first paragraph he stated that there had been an accident and that an exam of the right knee revealed plate tenderness, range of motion of 120°, with ligaments intact and McMurray's test negative.

In May, the Appellant had reported that his right knee improved, although he had not attended for rehab. Again the McMurray's test was negative. The result of this visit was quite similar to the one from the month before. The Appellant's inability to work was noted but he was expected to be fit to return to work as of June 9, 2015. At that point, [Appellant's doctor] cleared the Appellant for work as of June 9. Counsel also noted that in spite of X-ray investigation, findings regarding the Appellant's knee were normal.

All this medical information was sent to MPIC's Health Care Services for a review. The Health Care Services consultant provided a report dated October 26, 2015. The probable diagnosis was described as a "mild soft tissue injury to the right knee" with no X-ray abnormality and with ligaments intact and no cartilage tear or significant joint diffusion noted. There was no significant range of motion restriction noted.

The consultant indicated that the patient had pre-existing right knee pain which seems to have been present since 2013, and that it was difficult to differentiate his complaints subject to the event in question from those prior to it.

When asked whether the objective medical findings supported a functional deficit relating to the MVA preventing the claimant from returning to employment, the consultant indicated that the examinations recorded on file did not document any functional deficit. The patient had joint line tenderness, but the relevance of this was unknown in the context of the current imaging findings. The patient appeared to have been cleared to work in [text deleted], with no obvious change in his clinical condition.

Commenting upon [Appellant's doctor's] reports, counsel for MPIC submitted that his credibility regarding the Appellant's capacity to work was in question here. [Appellant's doctor], it was submitted, appears to base his conclusion on the subjective opinion of the Appellant as to whether he could or could not work. Counsel submitted that [Appellant's doctor] had simply responded to the Appellant's subjective complaints but had not properly addressed the Appellant's objective capacity to work. On the whole, MPIC took the position that without any evidence supporting the Appellant's claimed failed attempt to work, there cannot really be a finding that the Appellant was or is incapable of returning to work at his pre-accident duties. Counsel submitted that based on the lack of evidence provided by the Appellant to support this claim, MPIC's decision was correct and that the Internal Review decision should be upheld.



**DISCUSSION:**

Section 110(1)(a) of the MPIC Act provides as follows:

**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;

The issue before the Commission is whether the Appellant is entitled to receive IRI benefits for the period beginning 180 days after the motor vehicle accident. Although the evidence disclosed that the Appellant had sought IRI benefits for the first 180 days (on the basis of promised employment), the Appellant did not appeal that decision to the Commission. As such, that is not the subject matter for this appeal, which deals with the period after the first 180 days.

Following a series of case management and Internal Review decisions, the issue left for this panel was whether the Appellant was able to work after October 23, 2014.

MPIC took the position that the medical evidence did not support any inability to work past October 2014. The Appellant took the position that in spite of two attempts to return to work (both supported by letters from his doctor confirming his fitness to return) he was not able to return to work. Although he may have attempted to return, out of desperation, the injury from the motor vehicle accident stopped him from working. In this regard, he relied upon a letter from his doctor dated August 17, 2015 which stated that he was limited by right knee pain and stiffness, precluding a return to work and indicating that his return to work date was currently indeterminate.

In MPIC's view, the appeal turned upon questions of the credibility of the Appellant as well as the credibility and reliability of his doctor in regard to this claim. Careful review of [Appellant's doctor's] reports show that he relied heavily upon the Appellant's subjective complaints. His reports lacked any objective assessment of the Appellant's injury and its affect on his ability to work. According to MPIC, [Appellant's doctor] was simply responding to the Appellant's requests.

On the contrary, the Appellant submitted that he couldn't work, but needed to try as he was destitute. He couldn't climb ladders or bend and even walking hurt him.

The panel notes that both the oral testimony of the Appellant and the letters of [Appellant's doctor] lacked any specificity regarding the limitations faced by the Appellant and how they prevented him from doing his job. While the Appellant testified that he was barely able to walk, there was no explanation provided as to why his doctor had cleared him to work on two occasions, in a report dated June 5, 2014 and in a chart note dated May 12, 2015.

The panel also reviewed the Health Care Services medical consultant's opinion dated October 26, 2015. This report did not deal specifically with [Appellant's doctor's] notes or recommendations, even though they preceded the Health Care review in time. However, the consultant indicated that a complete review of the Appellant's medical file did not disclose any condition arising from the motor vehicle accident which prevented the Appellant from returning to employment.

As such, the only medical evidence upon which the Appellant can rely is the letter of August 17, 2015 indicating that the timing of his ability to return to work was indeterminate. Preceded as it

was by two indications from the same doctor that the Appellant was fit to return to work on June 9, 2014 and May 12, 2015, the Appellant failed to provide any contextual evidence from [Appellant's doctor] which would explain this contradiction.

Accordingly, the panel must conclude that the Appellant has failed in the onus upon him to show, on a balance of probabilities that he was unable to return to work as of October 23, 2014. The Appellant's testimony and the evidence from his doctor were both vague and imprecise and were not consistent enough to meet the onus of proof upon the Appellant. His doctor's reporting of his fitness to return to work along with other documentation on the file, including file notes, X-rays and Health Care Services reports, lead the panel to conclude that the Appellant has failed to meet this onus. As a result his appeal is dismissed and the decision of the Internal Review Officer dated January 14, 2016 is upheld.

Dated at Winnipeg this 26<sup>th</sup> day of July, 2017.

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**LAURA DIAMOND**

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**TREVOR ANDERSON**

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**BRIAN HUNT**