As a result of my automobile accident, I no longer have any income

THE FACTS

For two years, the claimant had held employment with a mining drilling company. He worked on call when the company required him to work. For more than six months, he had been working on a cycle of 28 consecutive days on the company's job site, followed by 14 consecutive days of unpaid break. Thereafter, he would return to the job site for a period of 28 days and so on, alternating between work and an unpaid break.

He had an automobile accident on the tenth day of one of his 14-day breaks. As a result of the accident, he suffered injuries which prevented him from returning to work on the job site for an indefinite period.

The employer was notified of the situation by a close family member. Thinking it was helping its employee, the company sent him a termination of employment dated the last day of work before the automobile accident.

Following his automobile accident, the employee filed a claim with the Société de l'assurance automobile du Québec (SAAQ) in order to, among other things, receive an income replacement indemnity, given his then current inability to work.

The SAAQ, through a compensation agent, refused the claimant's right to receive an income replacement indemnity. According to the SAAQ, at the time of the accident, the claimant was not a full-time salaried employee, because he was on a 14-day unpaid break and had received a notice of termination of employment.

After receiving the SAAQ's written decision, the claimant contacted his employer. The employer confirmed in writing to the SAAQ's compensation agent that the claimant would have returned to work on the job site for his 28-day shift had he not suffered the automobile accident. The company's representative further indicated that no notice of termination of employment should have been sent to the claimant.

Despite this information, the SAAQ's compensation agent maintained his position and indicated that the claimant could not immediately receive an income replacement indemnity.

The claimant therefore applied to the administrative review division for a review of the decision rendered by the SAAQ's compensation agent.

THE ISSUE

Was the claimant entitled to contest the decision rendered by the SAAQ's compensation agent? If so, was there a time limit within which to do so?

Was the SAAQ's compensation agent right in deciding that the claimant was not a salaried employee?

Was the claimant entitled to receive an income replacement indemnity for the period he was unable to return to work immediately after his automobile accident?

THE DECISION

The claimant was entitled to contest the decision rendered by the compensation agent by applying to the SAAQ's administrative review division for a review of the agent's decision. The application to contest the decision had to be made within sixty days following receipt of the compensation agent's written decision.

The claimant's application contesting the decision was allowed by the SAAQ's administrative review division.

The jugement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

legal aid

As a result of my automobile accident, I no longer have any income (Cond't)

THE GROUNDS

The SAAQ's compensation agent improperly characterized the claimant's status when he decided that he was not a salaried employee. According to the administrative review division, at the time of the accident, the claimant was indeed a full-time salaried employee, albeit with an atypical work schedule.

The SAAQ's administrative review division concluded that the claimant was a full-time salaried employee, based on the following facts and documents:

- the letter from the employer's representative indicating that the claimant would have continued to work. He would have continued to work according to the same work schedule, namely, 28 days of work and 14 days of rest, if he had not had the car accident. Under normal circumstances, he would never have received a termination of employment;

- the claimant had been employed by the mining drilling company, on an on-call basis, since his hiring two years earlier;

- the claimant had always been considered as being employed by the drilling company, during the days he worked as well as during the days of rest, with or without pay.

This work schedule, although atypical, could not, in any way, affect or undermine the claimant's status. The fact that a person has a work schedule that differs from most of the people in the working world is not a reason to declare that he is not a full-time employee.

In conclusion, the claimant was fully entitled to receive an income replacement indemnity during the period of disability following the accident. The SAAQ was therefore required to correct its records and indemnify the claimant accordingly.

The fact that a person has a work schedule that differs from most of the people in the working world is not a reason to declare that he is not a full-time employee.

The jugement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

Contact us

Community legal centre of Montréal region
425, boul. de Maisonneuve Ouest
Bureau 600
Montréal (Québec)
H3A 3K5

Phone : 514 864-2111
Fax : 514 864-1515
www.ccjm.qc.ca

References

Mercier-Langlois v. Société de l'assurance automobile du Québec, Review decision no. 1385067-2, S.A.A.Q. Review Division, Rendered on March 27, 2009.