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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.L.W.  
AICAC File No.: AC-05-100**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Dr. Patrick Doyle  
Mr. Paul Johnston

**APPEARANCES:** The Appellant, L.L.W., was represented by Mr. Bob Sample of the Claimant Adviser Office;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

**HEARING DATE:** August 11, 2005

**ISSUE(S):** Whether an Extension of Time would be granted to the Appellant to file a Notice of Appeal.

**RELEVANT SECTIONS:** Section 174 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

**MAIC 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

L.L.W. (hereinafter referred to as the 'Appellant') is seeking an extension of time to permit her to file a Notice of Appeal with the Commission beyond the statutory deadline. The request is opposed by MPIC.

The Appellant was injured in a motor vehicle accident on June 23, 2003. As a result of her injuries, she became eligible for benefits under the MPIC Act. She received treatment for her injuries and by August 18, 2004 the injuries to her left hand had stabilized sufficiently for MPIC

to be in a position to determine whether the Appellant should be awarded permanent impairment benefits in respect of these injuries. On August 18, 2004, the case manager issued a decision stating that the injuries were not within the guidelines of the MPIC Act and therefore no award would be made.

### **Internal Review Officer's Decision**

On September 21, 2004 the Appellant sought a review of the case manager's decision. The Internal Review Officer issued her decision upholding the decision of the case manager, dated October 7, 2004 and stated:

. . . although your left fingers do exhibit some loss of motion, the loss of motion is not enough to fall within the amount for which you can receive compensation.

### **Notice of Appeal**

On May 26, 2005 the Appellant filed a Notice of Appeal, approximately four (4) months past the statutory deadline as provided in Section 174 of the MPIC Act and requested a hearing before the Commission. Section 174 of the MPIC Act states:

#### **Application to appeal from review**

**174** 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 attached to the Notice of Appeal a cover letter explaining that she had missed the ninety (90) day deadline because she felt that she "was at a dead end". She noted also that she had seen a news program on CKY television on May 13, 2005 discussing the newly created Claimant Adviser Office and, as a result, she contacted this office. In her letter, the Appellant added that she felt that she had not been adequately assisted by the staff of MPIC in pursuing her claim, stated that she disagreed with the findings on the extent of her injuries, and noted some of the disabilities she continues to suffer as a result of the injuries to her hand.

On June 1, 2005 the Appellant again wrote to the Commission expanding on the reasons for her delay in filing a Notice of Appeal and requesting a hearing and stated that:

1. when she realized that the Internal Review Office was part of MPIC, she felt that she was “just one of hundreds” and “just a piece of paper on the desk of someone who had never met me and knew nothing about me”;
2. living as she does in a small town, about 120 kms from the closest claim centre, and with contact only over the phone, she felt that she was on her own and fighting a losing battle; and
3. although she was continuing to have troubles with her hand, she left the appeals process alone because she felt defeated.

On June 6, 2005 the Commission forwarded the Appellant’s Notice of Appeal and the two letters to MPIC’s Director of Legal Services and requested his comments. On June 17, 2005 the Director of Legal Services wrote to the Commission opposing a granting of an extension of time and stated:

1. the Notice of Appeal is five (5) months beyond the ninety (90) day deadline set out in the legislation;
2. the Appellant had not offered a reasonable excuse for failing to file the application within the time limit;
3. the Appellant had not provided any objective medical information to demonstrate that the loss of motion in her left hand is sufficient to warrant an award for permanent impairment; and
4. there is no reasonable justification to support proceeding with an Appeal.

For these reasons, the Director of Legal Services urged no additional time should be given by the Commission for the filing of a Notice of Appeal.

### **Hearing**

The Commission decided that a hearing should be conducted between the parties in order for the Commission to determine whether or not an extension of time should be granted to permit the Appellant to file her Notice of Appeal. The hearing took place on August 11, 2005 and Mr. Robert Sample, the Director of the Claimant Adviser Office, represented the Appellant, and Mr. Morley Hoffman represented MPIC.

The Appellant who was a resident of the village of [text deleted] was not physically present at the hearing but participated fully in the proceedings before the Commission by way of a telephone conference call from [text deleted]. The Appellant advised the Commission that [text deleted] is a village of a little more than five hundred (500) persons located on the West Shore of [text deleted], East of the Town of [text deleted], approximately [text deleted] kms from Winnipeg.

In her testimony the Appellant described the difficulties she had in dealing with MPIC in respect of her claim and stated that:

1. throughout the entire claim process MPIC officers, although polite in dealing with her, were insensitive to her throughout the process;
2. the MPIC officers were annoyed with her requests for assistance and information and did not take the time to explain matters to her which she did not understand. Often she obtained better information and advice from members of her community than she did from MPIC and provided several examples of her difficulties in obtaining her entitlement to home care benefits.

She further testified that:

1. she was required from time to time to attend at the MPIC Office in [text deleted].  
However, without a car and little money she found it difficult to hire a person to drive her to [text deleted] at a cost of \$75 in order to attend her MPIC appointments.
2. in order to attend MPIC appointments she was required, in her absence, to arrange

child care for her daughter, and this was extremely difficult because she did not have the financial resources for that purpose.

3. a number of other factors which, combined together, created feelings of frustration, disillusionment and defeat in dealing with MPIC.
4. having regard to the significant injuries she sustained in the motor vehicle accident, her isolation and geographical distance from the MPIC office in [text deleted], the lack of assistance she had in obtaining MPIC benefits, her lack of skills and experience in relation to processing her claims, overwhelmed her and as a result she lacked the necessary confidence to pursue her appeal and let the deadline pass.

She also testified that:

1. it was only in May 2005 that she saw the news item in respect of the Claimant Adviser Office on CKY television that she felt it possible to launch an appeal.
2. as a result, she telephoned the Claimant Adviser Officer in Winnipeg, spoke to Mr. Robert Sample and with help from her Uncle in [text deleted] she put together a letter to the Commission seeking to appeal and seeking an extension of time to appeal.

### **Submissions**

Both Mr. Sample for the Appellant, and Mr. Hoffman for MPIC, in their argument referred to *V.R. (AC-01-103)*, an April 7, 2004 decision of this Commission, for guidance in relation to the granting of an extension of time for filing a notice of appeal pursuant to Section 174 of the MPIC Act. In that case the Commission set out some of the considerations it will take into account in exercising its discretion to extend the time for appealing a review decision. These considerations are:

1. the actual length of the delay compared to the ninety (90) day time period set out in Section 174 of the MPIC Act;

2. the reasons for the delay;
3. whether there has been any prejudice resulting from the delay;
4. whether there was any waiver respecting the delay; and
5. any other factors which argue to the justice of the proceeding.

In respect of the reasons for the Appellant's delay, Mr. Sample submitted that the evidence demonstrated that the Appellant's geographical isolation, the seriousness of the injury and the difficulties she experienced in her dealings with MPIC led her to become frustrated, disillusioned, defeated, isolated and lacking support. This resulted in a lack of confidence and caused the Appellant to let the ninety (90) day time limit for appeals to pass. These difficulties, he argued, did provide reasonable grounds upon which the Commission could justify granting the extension.

Mr. Sample further submitted that:

1. the evidence did not demonstrate any prejudice to MPIC resulting from the delay.
2. the Appellant's claim related to denial of a permanent impairment award and any delay in determining this award could not have prejudiced MPIC in defending their interests in these appeal proceedings.
3. having regard to the nature of the claim, MPIC was not involved in any case management in respect of this claim and, therefore, no prejudice could have resulted to MPIC from the delay in filing the Notice of Appeal in this respect.

Mr. Sample therefore submitted that the Commission should grant the Appellant an extension of time to file a Notice of Appeal.

Mr. Hoffman, representing MPIC, submitted that:

1. the Commission should reject the Appellant's explanation for delay in filing a Notice of Appeal as unreasonable.
2. the MPIC Act provided for a ninety (90) day period for the Appellant to file a Notice of Appeal, after receiving notice of the Internal Review Officer's decision, the Appellant had ample time in which to do so.
3. the delay of approximately five (5) months in filing the Notice of Appeal was not a short delay of a few days, but was a significantly long delay.
4. the Appellant had many chances to ask for help from MPIC officers and did not do so.
5. the reasons provided by the Appellant were not persuasive.
6. as a result, the Commission should reject the Appellant's application for an extension of time.

MPIC's legal counsel further submitted that:

1. MPIC would be prejudiced by having to respond so long after the statutory time had passed in order to defend the Internal Review Officer's decision.
2. it was open for the Appellant to restart the process regarding her level of impairment.
3. as a result, MPIC's legal counsel submitted that the Commission should not exercise its discretion in granting the Appellant an extension of time to file the Notice of Appeal.

In response, the Appellant's representative submitted that, having regard to the Appellant's frustration and her negative experience with MPIC, it was unfair to require the Appellant to start over again and submitted that the Commission reject MPIC's suggestion in this respect.

**Decision**

The Commission, after reviewing all of the evidence and submissions of the parties, finds that the Appellant has established valid and compelling reasons for permitting an extension of time to file her Notice of Appeal. The Commission was impressed with the testimony of the Appellant and accepts her testimony as credible. The Commission determines that the difficulties encountered by the Appellant in dealing with her claim, for an impairment award, were of a significant nature which caused her to become defeated and disillusioned and as a result prevented her from filing a Notice of Appeal on a timely basis.

The Commission also finds that MPIC has not established that they were prejudiced as a result of the untimely filing of the Notice of Appeal. The Commission agrees with the submission of the Claimant Adviser that the Appellant's claim for a permanent impairment award does not involve MPIC in the case management process and, as a result, a delay in the filing of this appeal did not prejudice the ability of MPIC to defend its interest.

The Commission also notes that MPIC's legal counsel did not submit that as a result of the effluxion of time arising from the Appellant's untimely filing of a Notice of Appeal, MPIC was prejudiced by the failure of being unable to locate witnesses and/or obtain documentary evidence and/or medical evidence in order to defend its position in respect of the Appellant's claim for a permanent impairment award.

For these reasons the Commission finds that the Appellant has established, on a balance of probabilities, that MPIC was not prejudiced by the late filing of the Notice of Appeal.

The Commission also finds that the Appellant did not waive her right to proceed with her appeal

in respect of a permanent impairment award. The legislation establishing the Claimant Adviser Office was proclaimed to be in force on May 16, 2005. The Commission notes that the Appellant, upon learning of the Claimant Adviser Office in a television news segment on May 13, 2005, made contact with the Claimant Adviser Office and within two (2) weeks thereafter she sent her application for an appeal and her application for an extension of time to the Commission to hear the merits of the appeal. Having regard to the testimony of the Appellant outlining the difficulties she had in dealing with her claim for a permanent impairment award, and having regard to the speed in which she processed her application to this Commission after learning of the establishment of the Claimant Adviser Office, the Commission is satisfied that the Appellant has established, on the balance of probabilities, that she never intended to waive her right to file an appeal to this Commission.

In summary, the Commission finds that the Appellant has established, on a balance of probabilities, that she had valid and compelling reasons for the delay in filing a Notice of Appeal, that MPIC was not prejudiced by this delay and that the Appellant never intended to waive her right to file a Notice of Appeal. For these reasons the Commission therefore grants the Appellant's application to extend the time to file a Notice of Appeal in accordance with Section 174 of the MPIC Act.

Dated at Winnipeg this 16<sup>th</sup> day of September, 2005.

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**MEL MYERS, Q.C.**

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**DR. PATRICK DOYLE**

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**PAUL JOHNSTON**