

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J. D. H.
AICAC File No.: AC-05-148

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, J. D. H., was represented by Mr. Bob Tyre of the Claimant Adviser Office ;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: October 4, 2006

ISSUE(S): Extension of time to file Notice of Appeal

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

The Appellant, J D.H., has requested an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated February 2, 2005.

The Appellant was involved in a motor vehicle accident on June 19, 2004. As a result of his injuries, the Appellant became entitled to Personal Injury Protection Plan benefits in accordance with Part 2 of the MPIC Act. However, in a letter dated September 15, 2004, the Appellant's case manager took the position that he was a non-earner at the time of the accident and therefore not entitled to Income Replacement Indemnity ('IRI') benefits in the first 180-days after his

accident. The Appellant sought an Internal Review of the case manager's decision. In a letter dated February 2, 2005, the Internal Review Officer, confirmed the decision of MPIC's case manager, with the exception of one (1) week of IRI benefits, and dismissed the Appellant's Application for Review.

The Appellant's Notice of Appeal was filed with the Commission on August 18, 2005. However, the Appellant wrote to the Commission, in January and in March of 2006 outlining the reasons for his failure to file the Notice of Appeal within the statutory time frame. The Appellant explained that he had visited the temporary offices of the new Claimant Adviser Office on the 18th floor of 330 Portage Avenue. He indicated that he then filled in a Notice of Appeal form, but mistakenly mailed the form to MPIC, not realizing that he was supposed to send the form to the Commission. He stated that he thought, at the time, that MPIC, the Claimant Adviser Office and the Commission were all the same place. Once he was advised of his error by the Claimant Adviser Office, at the end of July 2005, he filled out a new Notice of Appeal form and the staff at the Claimant Adviser Office faxed it to the Commission in August of 2005.

In a letter dated August 10, 2006, MPIC objected to the extension of time for the Appellant to file his Notice of Appeal.

A hearing was held on October 4, 2006 regarding the Applicant's request for an extension of time. The Commission heard testimony from the Appellant, and from Mr. Robert Sample, the Director of the Claimant Adviser Office.

The Appellant testified that after receiving the Internal Review decision, he was advised by MPIC that there was a new office opening up to assist with appeals and he could go there to file an appeal. The Appellant testified that, although he cannot remember the exact date, he telephoned and attended at the temporary offices of the Claimant Adviser Office on the 18th floor of 330 Portage Avenue, to see if he could file an appeal from the Internal Review decision. Documentary evidence on the file established that this occurred in April of 2005.

The Appellant testified that he met with staff at the Claimant Adviser Office and filled out a number of forms. Although he could not remember exactly when he attended and which forms he filled out, he testified that he mailed a form (which he thought was an appeal form), to MPIC by mistake. It was his testimony that he thought that the three (3) offices of the Claimant Adviser Office, MPIC and the Commission were interconnected government offices and that his forms would go where they were supposed to. He did not keep a copy of the form and has no record of mailing it to MPIC. MPIC has indicated it has no record of receiving this document.

The Appellant testified that when he later discovered that no appeal had been filed, he filled out a Notice of Appeal form and forwarded it to the Claimant Adviser Office for filing. He indicated that he disagreed with MPIC's decision to classify him as a non-earner, which resulted in his not receiving more than one (1) week of IRI benefits for the first 181-days following his accident, and wished to appeal that finding of the Internal Review Officer.

Bob Sample, Director of the Claimant Adviser Officer, provided the Commission with some history regarding the start up of the Claimant Adviser office. He began work as Director of the office in October of 2004, doing preparatory work for the opening of the office. The office did not open until May 15, 2005, but was operating out of temporary office space on the 18th floor of

330 Portage Avenue until it moved to its current location. This was the same office building which housed the Commission at that time. During this period, Mr. Sample was hiring and training staff and getting the office set up. However, MPIC had begun to advise claimants of the existence of the office and claimants were beginning to call.

The Claimant Adviser Office's records indicate that they received a telephone inquiry from the Appellant on April 15, 2005 and met with him to complete preliminary intake sheets on April 20, 2005.

On May 18, 2005, letters were sent to claimants who had contacted the office prior to its official opening, advising that the Claimant Adviser Office was now open and forwarding release and other forms for completion.

On June 27, 2005 Ms Liisa Cheshire, Claimant Adviser, wrote to the Appellant including a Notice of Consent form and requesting that it be completed and returned. Mr. Sample explained that this was because the Appellant had contacted the Claimant Adviser Office, who had done its initial intake and allocated his file to a Claimant Adviser.

Mr. Sample explained that in these early stages, the Claimant Adviser Office was experiencing some growing pains. It was attempting to standardize and streamline its processes. It was the experience of the Claimant Adviser Office that many individuals did not understand the process, or the delineation of responsibilities between the three agencies (the Claimant Adviser Office, MPIC, and the Appeal Commission). For example, some claimants who completed an "Amendment to the Automobile Injury Compensation Appeal Commission Notice of Appeal

form” (authorizing the Claimant Adviser Office to represent them with their appeal), were under the mistaken impression that by doing so they had filled out a Notice of Appeal form.

Mr. Sample indicated that as a result of this, the Claimant Adviser Office then began sending out Notice of Appeal forms to claimants with letters indicating that if they had already completed the form to disregard it, but if they had not, to please fill out and send the form back to the Claimant Adviser Office who would send it to the Commission. This process was developed in an attempt to address, as time went on, some of the difficulties which individuals were encountering with the processes involved. However, this procedure was not implemented until later on, after the Appellant had filed his appeal.

Submissions

It was submitted on behalf of the Appellant that he had a reasonable excuse for failing to file his appeal within the proper time limits. The Appellant believed that, through his dealings with the Claimant Adviser Office in April, he had begun the process of filing an appeal. He was confused about whether the three (3) entities (MPIC, Claimant Adviser Office and the Appeal Commission) were connected or interconnected, was unfamiliar with the process, and mistakenly believed that he had properly filed his appeal.

It was submitted that many of the factors which contributed to the length of delay in this case were not the responsibility of the Appellant. Some delays were due, at least in part, to the normal bureaucracy of the agencies involved, where it would take a few weeks for letters to go back and forth, or, in one instance on the Appellant’s file, where a letter he wrote to the Commission was mistakenly placed on another Appellant’s file.

As soon as the Claimant Adviser Office and the Appellant discovered that something had gone wrong and that the Appellant's Notice of Appeal had not in fact been filed with the Commission, the Appellant responded and attended to the filing of his appeal forms, in August of 2005. This, it was submitted, corrected the matter fairly quickly, and as a result, it was really only a matter of six (6) to ten (10) weeks that the filing of the appeal was delayed. Accordingly, MPIC has not suffered significant prejudice as a result of the delay. The Appellant has arguable grounds for appeal and should therefore have the ability to deal with the file on its merits and be granted an extension of time for the filing of his appeal.

Counsel for MPIC suggested that the Appellant did not attend to the filing of his appeal in a timely basis, waiting as long as seventy (70) days to even contact the Claimant Adviser Office to inquire about the appeal process. It was submitted that the Internal Review decision clearly sets out the process to be followed in filing an appeal with the Commission, complete with its phone number and address. He submitted that there is no evidence that any Notice of Appeal was ever filed or sent by the Appellant to MPIC, prior to the August 2005 Notice of Appeal being filed. It was submitted that the Appellant's evidence was not reliable, as he could not recollect the details and had no copy of the documentation.

It was counsel's submission that MPIC had suffered prejudice as a result of the delay, as the actual case manager's decision on the issue was dated September 2004. Therefore, by the time an appeal is heard, if the Appellant is successful, MPIC will be forced to go back a period of some two (2) or three (3) years to investigate and attempt to reconstruct the circumstances and potential jobs which might affect the Appellant's entitlement to IRI benefits. This investigative time has been lost, as a result of a significant delay on the part of the Appellant of between two and one-half (2 ½) and three and one-half (3 ½) months.

Having regard to the excessive time delay in filing the appeal, the Appellant's failure to provide a satisfactory explanation, no clear basis for the Appellant's appeal and the prejudice to case management opportunities, it was the position of counsel for MPIC that the extension of time for filing the appeal should not be granted to the Appellant.

Discussion

Section 174 of the MPIC Act provides as follows:

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.

Requirements for appeal

174(2) An appeal of a review decision must be made in writing and must include the claimant's mailing address.

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing a review decision. The Commission may consider various relevant factors such as:

1. the actual length of the delay compared to the 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 delays;
4. whether there was any waiver respecting the delays; and
5. any other factors which argue to the justice of the proceeding.

Generally, the Commission will use its discretionary power to extend the time for appealing a

review decision where it is satisfied that the Appellant has provided a reasonable excuse for the delay and the delay has not been overly prejudicial to MPIC.

Upon a consideration of the totality of the evidence before me, both oral and documentary, and upon consideration of the relevant factors surrounding the delay, I find that the Appellant has provided a reasonable excuse for his failure to appeal the Internal Review decision to the Commission within the 90-day time limit set out in Section 174 of the MPIC Act. I accept that the Appellant was confused about the process to be followed and believed that he had initiated the appeal process by attending at the Claimant Adviser Office and filling out documents there in April of 2005. I find that the Appellant's confusion and poor recollection of details, may, at least in part, be due to his unfamiliarity with the process and lack of understanding regarding the role and responsibilities of the three (3) entities involved, MPIC, the Appeal Commission and the Claimant Adviser Office, which he believed to be interconnected government agencies. In these circumstances, I find that the Appellant was under an honest mistaken assumption about the procedure to be followed, and find that this explanation is reasonable, given the facts surrounding the appeal, including the timing and background under which they occurred, at the time of the opening of the Claimant Adviser Office and the period just prior to that.

Although the Commission and MPIC did not receive notification of the Appellant's intention to appeal, I find that the Appellant did, through his actions, display a clear intention to appeal the Internal Review decision within the statutory period and that his failure to properly file the official Notice of Appeal within the time limits is not the only factor contributing to the delay in this appeal. His inadvertent delay has not created significant prejudice to MPIC and given the reasonable excuse described above, should not deprive the Appellant of the opportunity to have

the merits of his appeal heard by the Commission. As a result, the Commission will extend the time limit within which the Appellant may appeal the Internal Review decision dated February 2, 2005 to the Commission.

Dated at Winnipeg this 17th day of October, 2006.

LAURA DIAMOND