

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.O.
AICAC File No.: AC-08-17**

PANEL: Ms Laura Diamond

APPEARANCES: The Appellant, D.O., appeared on his own behalf and was assisted by an Interpreter, Ms Katherine Dheuw
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: April 9, 2009

ISSUE(S): Whether an extension of time should be granted to the Appellant to file his 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

On January 25, 2007, the Appellant contacted MPIC to file a bodily injury claim for a shoulder injury which he indicated occurred on September 24, 2005 when he was riding a bicycle and was struck by a vehicle and knocked unconscious.

Following investigation, the case manager for MPIC issued a decision on February 19, 2007 advising the Appellant that in the absence of collateral information to support an entitlement to benefits under the Personal Injury Protection Plan ("PIPP"), the Appellant had not established that his injuries were caused by an automobile or the use of an automobile.

On July 23, 2007, MPIC received an Application for Review (dated April 2, 2007) of the injury claim decision dated February 15, 2007.

On October 11, 2007, an Internal Review Officer for MPIC found that the Appellant's excuse for filing the Application for Review beyond the 60 day limit set out in Section 172(2) of the Act for such applications was reasonable. However, she also found that in order to be entitled to PIPP benefits, the Appellant must have sustained bodily injury caused by an automobile. The Internal Review Officer found that the Appellant had not established, on a balance of probabilities, that his injuries were caused by any contact with a vehicle, as the information and documentation did not show, on a balance of probabilities, that the Appellant was injured by or had impact with a motor vehicle.

The Internal Review Decision advised the Appellant that if he was unsatisfied with the decision he would have 90 days within which to appeal to the Automobile Injury Compensation Appeal Commission.

On February 13, 2008, the Appellant filed a Notice of Appeal from the decision of the Internal Review Officer dated October 11, 2007. The Notice of Appeal was not filed within the 90 day time limit set out by the MPIC Act.

The Appellant is now requesting an extension of time in order to file a Notice of Appeal from the decision of the Internal Review Officer. The Appellant wrote to the Commission on November 18, 2008, setting out his reasons for the delay in filing his Notice of Appeal. He stated that he

had been having domestic problems since September 2007 when he was first in jail at the Remand Center. Then he was in custody again, awaiting trial, in February 2008.

On April 9, 2009, the Commission held a hearing to address the request for an extension. The Appellant gave evidence at the hearing, with the assistance of an interpreter.

The Appellant testified that when he received the Internal Review Decision he did not know that he had to appeal. He had been confined to [text deleted] on two separate occasions in 2007 and 2008. When he was released from jail the first time, he could no longer live at his residence on [text deleted] in Winnipeg. He stayed at the Salvation Army Siloam Mission but returned to his former residence on [text deleted] where he found some mail for him in a small box beside the mail box in that apartment building. This is where he found the Internal Review Decision.

The Appellant indicated that when he found the letter containing the Internal Review Decision, it had already been there for some period. After about a week, he attended at the Claimant Adviser Office for assistance. At that time, the letter was explained to him and he filed a Notice of Appeal.

Upon further questioning, the Appellant indicated that he was in jail the first time for three to four months in February of 2007 and then again went back to jail in February of 2008, until December 15, 2008.

On cross-examination, the Appellant indicated that he had actually signed to indicate acceptance of a registered letter containing the Internal Review Decision. This signature was dated October 16, 2007. He surmised that perhaps when he returned to his [text deleted] address he had found a card from the post office telling him that he had registered mail and that he had gone to the

postal outlet, in a drugstore, to pick up the letter. He stated that he could not remember exactly what happened.

The Appellant submitted that sometimes when he finds something like the Internal Review Decision letter, he finds it difficult to read. He must find someone to help him read it. Sometimes, he just takes the letter and puts it his bag, ignoring it for a period and sometimes forgetting about it. He submitted that, before filing the Notice of Appeal in February of 2008, he consulted with his uncle who accompanied him to the office of the Claimant Adviser Office for assistance with the letter.

Counsel for MPIC noted that the Appellant had been in Canada since July of 2005. While MPIC might have been sympathetic to his explanation of not understanding letters he had received and requiring assistance in translating these letters, he noted that in this case, the Appellant's evidence was not consistent. The Appellant's initial explanation was that he had been in jail and moved from the [text deleted] address and then came back there to find a registered letter in a box next to the mailbox. Only upon further questioning did he explain that he had not been in jail when the letter arrived and that he had in fact received a notification card at [text deleted] and went somewhere else to pick up the letter.

Then he testified that he had kept the letter for approximately one week prior to attending at the Claimant Adviser Office for assistance. According to the date on the Notice of Appeal, this would have been sometime in February of 2008. However, that evidence did not fit with other evidence, in the form of a scanned delivery date and signature of the recipient of the item (the Internal Review Decision) from Canada Post, dated October 16, 2007.

Counsel for MPIC suggested that the Appellant had tailored his evidence in hopes of satisfying the Commission with an explanation which would allow the time for filing his appeal to be extended. On the facts, based on the Appellant's evidence and its inconsistencies on very substantive material issues, Counsel submitted that the Appellant should not be granted the extension requested, as his evidence was not consistent or reasonable on its face.

Discussion:

Section 174(1) 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

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing an Internal Review Decision. In exercising its discretion, 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 delay;
4. whether there was any waiver respecting the delay; and
5. any other factors which argue to the justice of the proceedings.

The Commission has reviewed the evidence and submissions before it, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, a reasonable and credible excuse for failing to appeal

the Internal Review Decision to the Commission within the 90 day time limit set out in Section 174 of the MPIC Act, and on the final page of the Internal Review Decision dated October 11, 2007. The lack of consistency and credibility in the explanations he has advanced do not provide a basis for extending the deadline for the filing of his Notice of Appeal.

As a result, and for these reasons, the Commission will not extend the time limit in which the Appellant may appeal the Internal Review Decision dated October 11, 2007, to the Commission.

Dated at Winnipeg this 21st day of May, 2009.

LAURA DIAMOND