

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.K.
AICAC File No.: AC-09-07**

PANEL: Ms Laura Diamond

APPEARANCES: The Appellant, L.K., was represented by the Claimant Adviser, Mr. Dan Joannis;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: May 6, 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

The Appellant was injured in a motor vehicle accident on May 5, 2006. On November 9, 2007, his case manager provided him with a decision letter indicating that his Income Replacement Indemnity benefits would end as of November 18, 2007, because he was then capable of performing the duties of his determined employment as a labourer.

The Appellant sought an Internal Review of this decision. On August 15, 2008, an Internal Review Officer for MPIC agreed with the case manager's conclusion that he was able to work as a labourer as of November 18, 2007 and confirmed the case manager's decision.

On January 19, 2009, the Appellant filed a Notice of Appeal from the decision of the Internal Review Officer dated August 15, 2008, with the Commission.

The Appellant's Notice of Appeal was filed beyond the 90 day time limit set out in Section 174 of the MPIC Act and noted on the last page of the Internal Review Decision dated August 15, 2008. The Appellant is requesting an extension of time in order to file a Notice of Appeal from the decision of the Internal Review Officer.

The Appellant provided the Commission with a letter dated February 24, 2009 setting out the reasons why he was seeking an extension of the 90 day time limit. He also gave evidence at the hearing. The Appellant indicated that when he received the decision of the Internal Review Officer he did not agree with the decision. He contacted the Claimant Adviser Office in September of 2008 to request assistance with an appeal. He also contacted the Commission in September to request that they mail him a Notice of Appeal form.

The Appellant indicated that less than 1 week after receiving the forms he completed them and sent them back. He now believes that he may have mistakenly mailed the forms to MPIC or the Commission instead of to the Claimant Adviser Office, but unfortunately did not keep copies of the forms. There was no record of them arriving at MPIC or the Commission.

The Appellant indicated that when he met with the Claimant Adviser he understood that appeals could take quite some time for processing and that he must be patient. File notes made by the Claimant Adviser Office at the time of the initial meeting confirm this discussion. As a result, he testified, he was not alarmed initially, when he had no response to the forms he had mailed.

However, on December 19, 2008, he again contacted the Claimant Adviser Officer to enquire as to the status of his appeal. At that time, he learned that his original forms had not arrived at the Claimant Adviser Office. The Claimant Adviser Office advised him of the 90 day time limit and sent out a second set of forms. He completed these forms within a couple of days and sent them right back to the Claimant Adviser Office. However, the forms were returned to him, as they had not been properly completed. He filled in the missing information and signed the forms again, mailing them back to the Claimant Adviser Officer for filing.

The Appellant also gave evidence of other difficulties he had endured during the period following the Internal Review Decision. He had surgery on his hand in September of 2008 and was hospitalized for eight days. He was then involved in post-operative care, which included physiotherapy and rehabilitation treatment as well as medical visits. He also indicated that he continued to suffer from neck and low back pain and headaches due to the motor vehicle accident.

Counsel for the Appellant submitted that the Appellant had provided a reasonable excuse for his failure to meet the 90 day time limit for filing an appeal set out in the MPIC Act. His actions had always been consistent with those of an individual intending to challenge the Internal Review Decision. He formed the decision to appeal within a few weeks of having received the decision, but the original forms which he had completed and mailed to the Claimant Adviser Office never arrived. Because he understood that filing an appeal was a lengthy process, he did not initially become concerned with the delay in receiving a response after he had mailed the forms. He simply waited. He did not live in Winnipeg and had to deal with his hand surgery and treatment and recovery.

Then, when he discovered that the original forms had not arrived, he took all the steps he could to fill out the forms properly and ensure that they were filed.

Counsel also noted that the delay of 67 days was not significant, particularly when compared with the importance of the issue to the Appellant. The minimal prejudice which might result to MPIC as a result of the delay was far outweighed by the impact on the Appellant (who was of a fairly young age with many work years remaining in his life) of MPIC's decisions regarding his ability to work.

Counsel submitted that the Appellant had acted in good faith and done everything required, with consistent efforts to file his appeal. Any minimal prejudice to MPIC which may have been caused by delay was outweighed by the Appellant's reasonable excuse and by the severe consequences for him should he not be able to proceed with his appeal.

Counsel for MPIC set out some relevant factors for consideration in a letter to the Commission dated March 10, 2009. That letter and the submission of Counsel at the hearing indicated that the information appeared to establish that the Appellant had formed the intention to challenge the decision of the Internal Review Officer within a few weeks after he received it, and that this intent had been essentially continuous since that time.

Counsel noted that there was no evidence suggesting that MPIC had ever waived the 90 day time limit set out in the statute, and that given the issue on the proposed appeal (dealing with the Appellant's capability to perform the duties of his determined employment in November of 2007) the delay was somewhat problematic and could involve some prejudice to MPIC.

Counsel also noted that the Appellant had had cause to visit Winnipeg while dealing with the treatment for his hand surgery and could have followed-up on the status of his appeal during those visits.

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 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 established, on a balance of probabilities, a reasonable 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. The Commission finds that the

Appellant evidenced a clear and continuous intent to appeal the Internal Review Decision and had made reasonable and credible efforts to pursue this appeal. However, the appeal documents he initially mailed went astray. The fact that the Appellant remained unaware of this error, combined with his understanding that the appeal process was a lengthy one, were the primary causes for the delay in the filing of his appeal with the Commission. Having regard to the Appellant's reasonable excuse and the length of the delay, the Commission will extend the time limit within which the Appellant may appeal the Internal Review Decision dated August 15, 2008.

Dated at Winnipeg this 20th day of May, 2009.

LAURA DIAMOND