

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [THE APPELLANT]
AICAC File No.: AC-13-112**

PANEL: Ms Laura Diamond, Chairperson
Ms Jacqueline Freedman
Mr. Trevor Anderson

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: December 17, 2013

ISSUE(S): Whether the Commission has jurisdiction to hear the Appellant's appeal.

RELEVANT SECTIONS: Subsections 171(1), 172(1), 173(1), 173(2) 174(1) and 182(3) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

Background:

The Appellant, [text deleted], was involved in a motor vehicle accident on September 21, 2010, in which he suffered various injuries. He was awarded a permanent impairment benefit under the MPIC Act in respect of a scar on his scalp. This benefit was confirmed by an Internal Review Decision dated November 23, 2011.

The Appellant disagreed with the amount of the permanent impairment award and filed a Notice of Appeal with the Commission on December 5, 2011. This Notice of Appeal was subsequently withdrawn by the Appellant, who filed a Notice of Withdrawal of Appeal with the Commission on December 19, 2011.

On August 12, 2013, the Appellant filed an Application for Review with MPIC, seeking a second review of the original MPIC case manager's decision. The Internal Review Officer sent a letter to the Appellant dated August 30, 2013, stating that a second review is not possible. The Appellant then purported to file a Notice of Appeal dated September 17, 2013, with the Commission, in response to this letter from the Internal Review Officer. The Appellant now seeks to have his appeal heard by the Commission.

The issue which requires determination is whether the Commission has jurisdiction to hear the Appellant's appeal.

Decision:

For the reasons set out below, the panel finds that the Commission does not have jurisdiction to hear the Appellant's appeal.

Evidence of the Appellant:

The Appellant testified that on the day of the accident, he was driving into town on provincial trunk highway [text deleted], signalling to turn, when he was rear-ended by a car travelling at significant speed behind him. He noted that the other driver was 100% at fault for the accident. The Appellant noted that he was knocked out momentarily and that he was bleeding after the accident. The Appellant's evidence was that the impact of the accident was significant to him.

The day after the accident, he saw his own doctor and the Appellant feels that his own doctor would have made a more accurate assessment of the size and significance of the scar than the MPIC doctor who assessed the scar one year later.

The Appellant noted that he doesn't recall all the paperwork that was involved in his appeal in 2011. He does not specifically remember his representation by the Claimant Adviser Office; however, he does remember filing the Notice of Withdrawal.

In discussing the reason for filing the Notice of Withdrawal of his 2011 appeal, the Appellant said that he was told by many friends and that it was commonly known among people who talk about such things that MPIC doesn't really pay for personal injuries. He believed that to pursue his appeal would be a waste of time; therefore, he withdrew it. He was strongly of the view that MPIC is simply for fixing up vehicles and even so they didn't pay him enough for his truck.

With respect to having the Commission hear his appeal now, the Appellant said he is experiencing difficulties at the moment with respect to poor sleep, a sore neck and other pain and he is hoping to address those issues in his appeal. As well, he feels that he did not receive enough compensation for the scar on his head.

Submission of MPIC:

MPIC submits that the Commission should not hear the Appellant's appeal. It is important to remember that the appeal was withdrawn in 2011. MPIC refers the panel to two AICAC decisions, AC-04-132 and AC-04-104. In those cases, the Commission held that once an appeal has been withdrawn or discontinued, it can only be reinstated if there are exceptional circumstances or grounds of a compelling nature and MPIC submits that those circumstances do

not exist here. MPIC notes that the Appellant made a deliberate choice to file his Notice of Withdrawal because of his belief that there was no point in proceeding with his appeal. The Appellant was of the view that he wouldn't receive any further compensation from MPIC; therefore he acted with intent when he filed his Notice of Withdrawal.

AICAC decision AC-04-104 did find compelling grounds to reinstate an appeal, due to the Appellant's medical and psychological condition which caused her not to fully appreciate the nature and consequences of discontinuing her appeal. MPIC submits that those reasons do not exist here. There is no evidence that the Appellant was confused or did not understand what he was doing.

MPIC noted that even where an Appellant cannot reinstate his appeal, it is open to the Commission to allow an extension of time to an Appellant to file an appeal under subsection 174(1) of the MPIC Act. MPIC submits that a consideration of the necessary factors leads to the conclusion that the Appellant should not be granted an extension of time. Specifically, when considering the length of time involved, the Internal Review Decision was issued on November 23, 2011. The Appeal deadline would have been 90 days after that, which is almost 2 years ago. That is not an insignificant delay, and the reasons for the Appellant's delay are not compelling or exceptional. There has been some prejudice to MPIC in the interim, in the nature of accrued interest and the lost ability to manage the Appellant's case file (he has mentioned additional conditions that he now suffers from). There has also been a waiver on the Appellant's part; he withdrew his appeal in December, 2011 and he did not pursue his case for more than a year and a half thereafter.

MPIC submits that the burden of proof is on the Appellant to show that his withdrawal should be set aside and he has not met that onus.

Submission of Appellant:

The Appellant's submission is that he is being truthful and that time limits should not matter; his injury is legitimate and he ought to be compensated further.

Reasons for Decision:

There are three potential bases under which the Commission may have jurisdiction to hear the Appellant's appeal:

1. The Notice of Withdrawal filed by the Appellant on December 19, 2011, could be set aside (thus leaving his 2011 appeal open before the Commission);
2. If the Notice of Withdrawal is not set aside, the Commission could grant the Appellant an extension of time to file a new Notice of Appeal in respect of the November 23, 2011 Internal Review Decision;
3. If no extension of time is granted, the Appellant is asking for a second review of the original case manager's decision (thus raising the question of whether the Notice of Appeal he purported to file with the Commission dated September 17, 2013, might be valid).

Each of these potential bases for jurisdiction will be discussed below.

Should the Notice of Withdrawal be Set Aside

The Appellant argues that his injuries are legitimate, and that he did not receive enough compensation. He feels that he has a valid basis for his appeal. MPIC points out that the

Appellant deliberately filed his Notice of Withdrawal because he felt that there was no point in pursuing it. MPIC says that the Notice of Withdrawal should not be set aside.

The Manitoba Court of Appeal, in *Winnipeg (City) Assessor v. Winnipeg (City) Board of Revision*, 88 Man. R. (2d) 130, considered the situation where two taxpayers had applied for revision of their property tax assessments and subsequently withdrew their applications. Later, the taxpayers advised the Board that the withdrawals were the result of a misunderstanding and they requested a new hearing date. The Court of Appeal held that “the taxpayer’s withdrawal leaves the Board with no application to hear and no jurisdiction to proceed. The appeal process is at an end unless the application can be re-activated within the statutory time period”.

The panel finds this case to be determinative of this issue. The Appellant clearly expressed in his evidence that he intended to file the Notice of Withdrawal because he believed that it would not be beneficial to pursue his appeal. The fact that he has now changed his mind does not invalidate his previous act. He did not suggest that there was any mistake, duress or other circumstance which might cast doubt on the validity of the Notice of Withdrawal that he filed. Therefore, the panel finds that that the Notice of Withdrawal filed by the Appellant with the Commission on December 19, 2011 should not be set aside.

The Manitoba Court of Appeal noted that the appeal process would therefore be at an end, unless it could be re-activated within the statutory time period. This will be dealt with below.

Should an Extension of Time be Granted

The Appellant argues that time limits should not matter and that he is being truthful. He is, in essence, asking the Commission to extend the time for filing his appeal. MPIC submits that the

Appellant has not shown compelling reasons to explain his delay in pursuing his appeal. MPIC further says that it has suffered some prejudice in the interim.

The provisions of the MPIC Act governing appeals to the Commission provide in part 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.

Commission to determine its practice and procedure

[182\(3\)](#) The commission shall determine its own practice and procedure and shall give full opportunity to the appellant and the corporation to present evidence and make submissions.

Section 174(1) of the MPIC Act provides an appellant with a 90-day period within which to file an appeal. After the 90 days has expired, the Commission may, at the request of an appellant, grant an extension of time to file an appeal. The discretion for doing so is fairly broad, being “within such further time as the Commission may allow”. 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;
2. The reasons for the delay;
3. Whether there has been any prejudice resulting from the delay;
4. Whether there has been any waiver respecting the delay;
5. The likelihood of a successful appeal on the merits of the claim, should the extension be granted; and
6. Any other factors which argue to the justice of the proceedings.

In addition, in AICAC appeal AC-04-132, the Commission noted that “once an appeal has been withdrawn or abandoned, it should not be reopened, except in exceptional circumstances”.

Here, the 90-day time limit expired on February 21, 2012. It was not until August 12, 2013, a year and a half later, that the Appellant made a further attempt to pursue his appeal (as discussed below). The Appellant has provided no reason for this delay. He says he is now experiencing some difficulties such as poor sleep, but this does not adequately explain why he did not pursue his appeal; rather, it supports MPIC’s position that there has been some prejudice in the loss of the ability to manage the Appellant’s case file in the intervening months.

Upon a consideration of the totality of the evidence before us, and upon a consideration of the relevant factors, the panel finds that exceptional circumstances do not exist here, nor has the Appellant provided a reasonable basis upon which we should exercise our discretion to extend the time to file an appeal and therefore we do not extend the time.

Can There be a Second Review of a Case Manager’s Decision

Having concluded that the Notice of Withdrawal should not be set aside, and that no extension of time will be granted, the panel must then consider whether there can be a second review of the original case manager’s decision in this matter (which will ultimately lead to a consideration of whether the Notice of Appeal dated September 17, 2013, purportedly filed with the Commission by the Appellant might be valid).

The provisions for review of case managers’ decisions are set out in sections 172 and 173 of the MPIC Act, which provide in part as follows:

Application for review of claim by corporation

[172\(1\)](#) Except as provided in subsection (1.1), a claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Powers of the corporation on review

[173\(1\)](#) On a review of a decision, the corporation may set aside, confirm or vary the decision.

Corporation to give written reasons

[173\(2\)](#) The corporation shall provide the claimant with written reasons for the review decision.

The decision of the case manager awarding a permanent impairment benefit to the Appellant was issued on November 7, 2011. Under Section 172(1) of the MPIC Act, as noted above, the Appellant had 60 days to apply in writing to MPIC for review of that decision. He did apply for such review within that time and, as noted above, the Internal Review Decision was issued on November 23, 2011, pursuant to Section 173(2) of the MPIC Act.

As noted above, by application dated August 12, 2013, the Appellant filed an Application for Review with MPIC asking MPIC to review once again the case manager's decision of November 7, 2011. MPIC responded in writing to the Appellant and advised him that an Internal Review Decision had already been issued (November 23, 2011) and as such, the matter was not able to be reviewed a second time. Accordingly, the Internal Review Officer would be closing his file. This was communicated by letter dated August 30, 2013. The Appellant then attempted to file with the Commission a Notice of Appeal (dated September 17, 2013) in respect of this letter from the Internal Review Officer.

Whether the case manager's decision can be reviewed by MPIC a second time is a question of statutory interpretation. *Sullivan and Driedger on the Construction of Statutes, 4th ed.*, notes that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (p.1).

The panel finds that the provisions of the MPIC Act are clear and unambiguous with respect to the rights of claimants regarding the review of claims and the powers of MPIC on review. A claimant has the ability to apply to MPIC for **a** review of a decision within 60 days (emphasis added). On a review of a decision, MPIC may set aside, confirm or vary the decision.

In this case, the Appellant and MPIC completed this process in November and December of 2011. The case manager issued a decision, and, after being requested to do so, the Internal Review Officer reviewed it and issued a written Internal Review Decision on November 23, 2011, confirming the case manager's decision.

There is no provision in the legislation permitting the Appellant to ask MPIC to review the case manager's decision a second time. (In any event, a review of a case manager's decision must be applied for within 60 days after receiving notice of the decision. In this case, the application filed on August 12, 2013 was far beyond that time with respect to the case manager's decision of November 7, 2011.) Under the legislation the Appellant is entitled to **a** review (emphasis added), meaning one review, and not more than one. He has exhausted the avenues for review of the case manager's decision. The letter sent by the Internal Review Officer dated August 30, 2013 is not an Internal Review Decision from which an appeal lies. We find that the Commission does not

have jurisdiction to hear the appeal purportedly filed by the Appellant dated September 17, 2013, nor could any such appeal arise.

The panel notes, however, that subsection 171(1) of the MPIC Act provides that where new information is available with respect to a claim, MPIC may issue a new decision. This may be applicable in the Appellant's case, with respect to injuries that he may have suffered in the accident that do not relate to the permanent impairment under consideration here. For example, in the course of his evidence, the Appellant identified other conditions that he is faced with including difficulty sleeping and a sore neck. He is free to provide medical evidence of these conditions and their connection to the accident to his case manager at MPIC.

Disposition:

Based on the foregoing, the panel finds that the Commission does not have jurisdiction to hear the Appellant's appeal. The Internal Review Decision dated November 23, 2011 is upheld.

Dated at Winnipeg this 19th day of February, 2014.

LAURA DIAMOND