



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-13-152

PANEL: Ms Laura Diamond, Chairperson
Mr. Paul Johnston
Dr. Sharon Macdonald

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

HEARING DATE: April 14, 2014

ISSUE(S): Extension of time for filing the appeal.

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

AICAC 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 December 6, 2007. At the time of the accident the Appellant was employed as a painter but was off work from October 2, 2006 due to rheumatoid arthritis (R.A.)/connective tissue disease.

On March 8, 2011, the Appellant's case manager wrote him to advise that there was no evidence to suggest that as a result of the motor vehicle accident he would be impaired from his ability to perform his pre-accident duties. The Appellant sought an Internal Review of this decision and

on February 8, 2012, an Internal Review Officer for MPIC upheld the case manager's decision and dismissed the Appellant's Application for Review.

The Appellant then filed a Notice of Appeal from the Internal Review decision of February 8, 2012 with the Commission, dated November 18, 2013.

On January 8, 2014, the Appellant provided correspondence to the Commission outlining the reasons for his failure to file the Notice of Appeal within the statutory time frame of 90 days set out in Section 174 of the MPIC Act. The Appellant stated:

"I write to you with great respect asking for an extension of my appeal with M.P.I. file #AC-13-152-DT that was closed on January 30 2012. To let you know I am going through a bitter divorce which started in September of 2007. My ex-wife vacated the house in October of 2010 and did not leave the Mailbox key she had and was sending her friends to the mailbox and they took all the important mail out of the Mailbox. In 2008 I hired a lawyer; I did receive about 2 consent forms from him which I signed and returned to him, at this time I was living ay (sic) [text deleted]. In June of 2010 I moved back to [text deleted] after securing private financing. I called the lawyer a few times after that and Stopped because Scared of a huge bill, at this point called my union at work and on the 18th Sept of 2012 I fell and broke my wrist. I was admitted to hospital and I had surgery on the right wrist. After a few months I started to call the union. They keep dragging their feet until September of 2013 when I called the Commission and was told to call M.P.I. for the Medical report which I did and received two copies with the same (sic) the file was closed and different date of my accident. In December of 2013 the Appeals Officer who was the most polite person I talked to in this whole ordeal.
Lastly I get that you please consider granting me an extension of my appeal which I would be very grateful for." (sic)

In a letter dated January 10, 2014, MPIC objected to the extension of time for the Appellant to file his Notice of Appeal. In MPIC's view, the Appellant's letter dated January 8, 2014 did not provide any explanation as to why his application was 1½ years late. Accordingly, MPIC opposed the Appellant's request for additional time to file his Notice of Appeal on the grounds that it was excessively late and no reason for the delay had been provided.

At the hearing the Appellant explained that he had sought help in connection with his claim from both legal counsel and from his union. He explained that in 2008 or 2009 he obtained counsel. Although he periodically received correspondence from him, he found that counsel was not responsive and not getting anything done so he decided to seek the advice of his union, in 2012. He stated that he had not spoken to his lawyer since 2010 or 2011 and explained that the initial Application for Review had been filed by his lawyer, but that he had not signed the application and had not received the Internal Review decision from the lawyer.

The Appellant stated that every week his union told him they were going to look into the issue, but nothing happened until he finally went down to a union meeting to voice his concerns, in September of 2013. At that time, the union president advised him to make some telephone calls. One of the calls he made was to the Commission, where staff then explained what he needed to do.

The Appellant also testified that attending to these matters became difficult when he broke his right hand in 2012 and couldn't do any writing. As well, the Appellant testified that matters were complicated when he and his wife separated and she kept some of his important mail from him when he moved.

The Appellant submitted that the information contained in MPIC's case manager and Internal Review decisions did not correspond with the information available from his doctor and from his employer. He submitted that due to the difficulties he had had with his broken hand, his wife, his lawyer and his union, that the Commission should exercise its discretion to extend the 90 day limit for seeking an appeal from the Internal Review decision.

Counsel for MPIC noted that the Appellant did not appeal the Internal Review decision within the 90 day period set out in the MPIC Act. In fact, it took him almost 19 months after the expiration of the 90 day period before he filed his Notice of Appeal. The motor vehicle accident occurred in December 2007, with an Internal Review decision dated February 8, 2012. Now, the Commission is faced with a Notice of Appeal dated November 18, 2013. The onus is on the Appellant to prove that he is deserving of an extension of time from the Commission.

Counsel referred to several factors which the Commission should consider in a case of this nature. These included the reasons for the delay, what the actual length of the delay was compared with the limitation period, whether there had been any prejudice from the delay, whether there had been any waiver from the delay and any other factors which might argue to the justice of the proceeding.

Counsel submitted that the time limits for filing an appeal are clearly explained in every decision coming out of the Internal Review Office. The Appellant's lawyer would have been provided with a copy of this decision containing the deadline. It is hard to believe that, having retained a lawyer who would still be acting for the Appellant, that the Appellant was not aware of what was happening and would not make any attempts to find out. As a result, the credibility of the Appellant's explanation regarding when he first became aware of the Internal Review decision should be seriously questioned.

Counsel noted that there was a very significant delay involved in this case and the inherent prejudice that goes with such a delay was also present.

Although the Appellant explained that there were stressors in his life, these did not appear to be events which would have caused the Appellant to put all other responsibilities in his life on hold.

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.

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 has considered various relevant factors, such as:

1. The actual length of the delay compared to the 90 day time period as 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.
5. Any other factors which argue to the justice of the proceeding.

The panel has also considered the Supreme Court of Canada decision in *R. v. Roberge*, 2005 SCC 48 which sets out considerations for an extension of time. In paragraph 6 of the reasons, it reads as follows:

The power to extend time under special circumstances in s. 59(1) of the Act is a discretionary one. Although the Court has traditionally adopted a generous approach in granting extensions of time, a number of factors guide it in the exercise of its discretion, including:

1. Whether the applicant formed a *bona fide* intention to seek leave to appeal and communicated that intention to the opposing party within the prescribed time;
2. Whether counsel moved diligently;
3. Whether a proper explanation for the delay has been offered;
4. The extent of the delay;
5. Whether granting or denying the extension of time will unduly prejudice one or the other of the parties; and
6. The merits of the application for leave to appeal.

The Supreme Court summarized as follows:

The ultimate question is always whether, in all the circumstances and considering the factors referred to above, the justice of the case requires that an extension of time be granted.

The panel has considered the submissions of the Appellant and counsel for MPIC, as well as the factors for consideration referred to above.

The panel does not find any evidence of a waiver, or any unusual prejudice which might interfere with MPIC's ability to address this appeal. However, the panel does note some confusion in the language of the Internal Review decision. Counsel for MPIC admitted that although the decision seems to suggest that it was a possibility that the matter would be referred back to the case manager for some further review or investigation, this did not occur. No real explanation for the confusing language in the decision or lack of further action was provided.

The Appellant submitted that he suffered from a lack of communication from his lawyer and that he was not aware of the existence of the Internal Review decision until late in 2012. Although

counsel for MPIC argued that the decision was mailed to the Appellant's lawyer who still had the authority to represent him and there was no reason to assume that the Appellant's lawyer did not advise him of this, the panel finds the evidence of the Appellant to be credible in stating that he did not see the Internal Review decision on a timely basis. Complications in his life including his separation and move, the lack of communication with his lawyer and his misguided attempts to get help from his union all contributed to his lack of awareness and understanding regarding the terms of the decision and how to appeal it, leading to his delay. No evidence was provided by MPIC or on cross-examination to establish otherwise.

Accordingly, for all the circumstances outlined above, the panel finds that the justice of the proceedings should lead to an extension of time for the Appellant to appeal, beyond the time 90 day time limit set out in the MPIC Act. The Appellant's request for an extension of time for the filing of his appeal is therefore allowed.

Dated at Winnipeg this 5th day of June, 2014.

LAURA DIAMOND

PAUL JOHNSTON

DR. SHARON MACDONALD