

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-18-092**

PANEL: Ms Jacqueline Freedman, Chair
Ms Laura Diamond
Mr. Brian Hunt

APPEARANCES: The Appellant, [text deleted], was represented by
Mr. Akinfolusho George;
Manitoba Public Insurance Corporation (“MPIC”) was
represented by Mr. Anthony Lafontaine Guerra.

HEARING DATE: February 7, 2019.

ISSUE(S): Whether the Commission will grant the Appellant an
extension of time to file his Notice of Appeal.

RELEVANT SECTIONS: Section 174 of The Manitoba Public Insurance Corporation
Act (“MPIC Act”).

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE
APPELLANT’S PRIVACY AND TO KEEP PERSONAL INFORMATION
CONFIDENTIAL. REFERENCES TO THE APPELLANT’S PERSONAL HEALTH
INFORMATION AND OTHER PERSONAL, IDENTIFYING INFORMATION HAVE
BEEN REMOVED.**

Reasons For Decision

Background:

On November 23, 2015, [text deleted] (the “Appellant”) was involved in a motor vehicle accident (the “MVA”). As a result of the MVA, he was entitled to certain Personal Injury Protection Plan (“PIPP”) benefits under the MPIC Act.

He requested Income Replacement Indemnity (“IRI”) benefits from MPIC. MPIC reviewed the Appellant’s file, and the case manager issued a decision letter dated September 16, 2016, which provides as follows:

... The medical information on file indicates that there is insufficient evidence to support a causal relationship between your head injury symptoms (headaches, irritability, concentration and sleep disturbance) and the Motor Vehicle Accident (MVA) of November 23, 2015. Therefore, there is no entitlement to benefits under PIPP including IRI, for injuries related to symptoms of a head injury including, headaches, visual disturbance, sleep disturbance, concentration and irritability.

... The medical information on file does not support that you would be incapable of full time duties as a [text deleted] following the MVA for any period of time due to your MVA related injuries. Therefore, as your MVA related injuries did not preclude you from performing your job related duties of your employment, there is no entitlement to IRI benefits.

The Appellant disagreed with the decision of the case manager and filed an Application for Review. The Internal Review Officer considered the decision of the case manager and issued an Internal Review decision dated August 18, 2017, which provides as follows:

Based on my review, the medical information on file does not establish that you have a physical or mental impairment of function as a result of the MVA that would render you entirely or substantially incapable of performing the essential duties of your employment. As such, you are not entitled to IRI benefits related to the MVA of November 23, 2015.

...

Giving consideration to the totality of the evidence on your file, I agree with the case manager’s decision, which is supported by MPI’s medical consultant’s opinion, and conclude your cognitive symptoms (headaches, irritability, visual disturbance, concentration difficulties, memory issues, fatigue and sleep disturbance) on a balance of probabilities, are not causally related to the MVA of November 23, 2015. As such, you are not entitled to PIPP benefits in relation to your reported cognitive symptoms.

...

... I am, therefore, confirming the case manager’s decision and dismissing your Application for Review.

RIGHT OF APPEAL

If you are unsatisfied with this decision, you have ninety (90) days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission, which can be reached at:

301 – 428 Portage Avenue
 [text deleted], MB
 R3C 0E2

Telephone Number: 204-945-4155
 Fax Number: 204-948-2402
 Toll Free: 1-855-548-7443

Please note that the Commission operates Independently from the Manitoba Public Insurance Corporation and its decisions are binding on MPI subject to the appeal provisions of Section 187 of *The Manitoba Public Insurance Corporation Act*.

The Appellant disagreed with the decision of the Internal Review Officer. On August 15, 2018, almost a year after receiving the letter from the Internal Review office, the Appellant filed a Notice of Appeal with the Commission. The Appellant, being outside the 90-day appeal period, asked the Commission for an extension of time for filing his Notice of Appeal pursuant to subsection 174(1) of the MPIC Act, which 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.

Issue:

The issue which requires determination in this hearing is whether the Commission will grant an extension of time to the Appellant in order to allow him to file his Notice of Appeal in respect of the Internal Review decision dated August 18, 2017.

Decision:

For the reasons set out below, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review decision dated August 18, 2017, to the Commission.

Evidence and Submission for the Appellant:**Evidence:**

The Appellant testified at the hearing into his request for an extension of the 90-day appeal period. He said that he didn't receive the Internal Review decision when it was originally sent out by the Internal Review Officer, [text deleted], in August, 2017, but he was certain that he received the decision when [the Internal Review Officer] sent a second letter to him in September, 2017. He noted that he was dealing with more urgent issues than the Internal Review decision at that time.

He said that he had a number of health issues that became concerning after the MVA, including issues relating to his concussion and his heart. The Appellant referred in particular to testing that had been done in [text deleted] in December, 2016, which revealed that he had a lot of plaque in one of his arteries. The Appellant noted that 96% of people have a better score than him on this test, and this made him quite nervous and anxious. There are not a lot of treatment options available to him, other than chelation treatment, which he tries to do fairly regularly in [text deleted].

The Appellant recalled speaking to [Commission staff] regarding appealing the Internal Review decision, although he said he was not certain whether he was talking to someone at the Commission or at MPIC [she is, in fact, Commission staff]. He said that [Commission staff] directed him how to make an appeal, and she sent him the appeal forms. [Commission staff] told him to get his appeal in as soon as he could. He noted that he did call [Commission staff] a few times. He acknowledged that he is not sure he filed his appeal as soon as he could have, because he had ongoing medical issues. This was his first time filing an appeal of a decision from MPIC. He was not aware of the appeal process and didn't realize the rigidity of the appeal period. He said "the priorities were not always the appeal process".

The Appellant said that he has operated a very successful insurance and investment practice, which he has built up over the last several years. He noted that the investment practice was sold a few years ago and he now concentrates on the insurance practice.

When questioned by his counsel on redirect, the Appellant noted that during the course of his communications with MPIC, he did not explain in detail all of his health issues, because he did not think it was relevant. He was doing his best at balancing all of his staffing concerns along with everything else, and he didn't think that his health issues would have mattered in the big picture. He also did not understand the urgency of filing his Notice of Appeal.

Submission:

Counsel for the Appellant pointed out that the Appellant had never appealed an MPIC decision before. Counsel submitted that the Appellant wasn't made aware that he had only 90 days within which to file his appeal. He didn't understand the complexity of the filing requirement; further, he didn't understand that if he missed the deadline, he would lose his ability to appeal. He thought that when he was talking to [Commission staff] in January, 2018, and then later some time in July, 2018, he was still able to file his appeal.

The Appellant encountered a health scare, relating to the plaque in his arteries, and was trying to handle it as best he could. The Appellant's health issues affected him significantly. He had great anxiety over his health, and that's why he more or less dropped everything, to focus on his health. In addition, his doctor had advised him to avoid stress. As well, the Appellant was occupied with his business.

He expressed his intention to appeal on numerous occasions, but he was a bit overwhelmed. The combination of these factors made it difficult for him to file his appeal on time. He always had an intent to appeal, but due to circumstances beyond his control he wasn't able to, so he tried to resolve his health issues, and also attend to his business and other matters of everyday life, before attending to his appeal.

Evidence and Submission for MPIC:

Evidence:

Counsel for MPIC did not call any witnesses, but did question the Appellant on cross-examination. The Appellant confirmed that he was [text deleted]. He described his education, noting that he had a degree from the [school], with a major in economics. He was also licensed by the [text deleted] as an agent for life, accident and sickness insurance. He used to hold a mutual fund license in [province], but he gave that up on the sale of his investment practice.

The Appellant confirmed that he was employed with [text deleted], which he has owned and operated for at least 23 years. He noted that the investments were sold through [text deleted], which was the business that was recently sold. That was his wife's business; she worked in the business, but has retired since she sold it. He has been married to her for at least four years, and they reside together at [text deleted]. They have two children, age [text deleted], who also reside in [province].

[Text deleted], the Appellant's neurologist, advised him shortly after the MVA to take 90 days of rest. When asked if [Appellant's neurologist] mentioned travel, the Appellant responded that the doctor said travel would be okay provided that he rested. Counsel pointed out to the Appellant that he also visited [Appellant's general practitioner] shortly after the MVA, who advised him not to fly within two weeks of the visit. The Appellant said he didn't recall this. He said that when he

visited [Appellant's general practitioner], it would have been to refill his blood pressure medication; [Appellant's general practitioner] is not a neurologist.

It should be noted that counsel for MPIC then referred the Appellant to documents submitted by the Appellant which consisted of a list of travel dates, together with accompanying itineraries, on which dates the Appellant purportedly travelled to [text deleted]. The Appellant said his office staff compiled the list of dates and the itineraries, and he had no reason to dispute the records that his office put together. However, on further examination, both by the panel and by the Appellant together with his counsel, it was determined that these documents were unreliable, and so they were withdrawn by the Appellant.

The Appellant confirmed that he started working on a part-time basis on February 5, 2016, for three hours per day, taking some phone calls. He would have good days and bad days. He resumed full-time work in June, 2016.

The Appellant was referred to the case manager's decision dated September 16, 2016, and his Application for Review dated November 15, 2016. When asked by counsel if he wrote the attached letter and completed the Application, the Appellant responded that he did write the letter and sign the form, but staff in his office had typed the letter and filled out the form for him, so only the signatures were in his own handwriting.

Counsel asked the Appellant when he received the Internal Review decision dated August 18, 2017. The Appellant said that he believed MPIC sent him two letters, and he got the second one, in September, 2017. When asked whether he read it thoroughly when he received it, he said that to the best of his recollection, he did. The Appellant said that he called the Internal Review Officer

to tell him that he received the decision and that he would be appealing it. When asked whether he received the letter from the Internal Review Officer dated September 13, 2017, the Appellant responded: "I did not get the first one, I got the second one".

Counsel referred the Appellant to a progress note made by the Internal Review Officer, dated November 16, 2017, which recorded a conversation with him. The Appellant said that while he doesn't remember these conversations well, as he said, he did recall that he spoke with the Internal Review Officer to say that he wanted to appeal the decision. He confirmed with the Officer that he received the second letter. He pointed out that while he is out of town, there is someone who retrieves his mail so he doesn't have a full mailbox. Counsel pointed out a further progress note from the Internal Review Officer dated November 27, 2017, which records a telephone conversation in which the Appellant confirmed that he received the Internal Review decision. The Appellant responded: "I'm very clear that I got the September letter, I have it in my file".

The Appellant was referred to a file note made by the case manager dated November 16, 2017. He said that he recalled that he may have called MPIC with respect to the cancellation of his chiropractic treatment benefits. He acknowledged that he may also have said that he would not request chiropractic treatment in [text deleted]. He agreed that he told MPIC that he went to [text deleted] for chelation treatments.

Counsel referred the Appellant to a file note dated November 27, 2017, in which the case manager recorded that the Appellant had called to ask about replacement glasses. The Appellant said that he didn't specifically recall this conversation, but acknowledged that they may have spoken about it, because glasses were always on the agenda. He agreed that he made arrangements for [eyewear

store] to forward a receipt to MPIC. The Appellant acknowledged that he contacted the case manager on December 7, 2017, from [text deleted], to discuss reimbursement of his glasses.

Counsel questioned the Appellant regarding his communication with the Commission regarding his appeal. A letter from the Commission dated January 15, 2019, notes that the Appellant called the Commission on November 16, 2017. The Appellant said he recalled a conversation with [Commission staff], and that he discussed the appeal process with her. He said he recalled that [Commission staff] said that she was going to send him material, but he was not specifically aware that the Commission had sent him forms and brochures. He said he does not do a lot of email; most of his correspondence is handwritten. He does not retrieve his own emails; the office staff retrieve them and he reads the ones that the staff put in front of him. The Appellant said he did not read the email from the Commission, but he did recall speaking to [Commission staff]. In response to a question from the panel, the Appellant confirmed that he did know his own email address, and he did give it to [Commission staff].

When asked if he recalled contacting the Commission again in January, 2018, July 2018, and once more before his Notice of Appeal was filed, the Appellant responded that he spoke to [Commission staff] a few times, but he didn't keep track of the dates. He said that he didn't know who was with the Commission and who was with MPIC. Counsel asked if the Appellant recalled receiving a further email sent to him from the Commission. The Appellant said he did not recall reviewing it. When asked whether he recalled advising the Commission that he was sick, the Appellant said that he may have done so. He explained that by sick, he meant that he was having problems with his weight, sleep apnea, blood pressure, a broad array of medical problems which had arisen since the MVA. Counsel asked the Appellant if he was facing issues which were more urgent than the MVA. The Appellant responded that he was having problems with his insurance practice; he was facing

staff problems, in that none of the staff had been with him since the MVA, which was causing a domino effect, and his health and the practice were all falling apart.

Counsel asked the Appellant if he recalled being out of town in the month of May, 2018. The Appellant said that was possible, because he tried to go away for chelation treatment every 90 or 120 days. To the best of his knowledge, he was not away any other time between January and August, 2018. When asked whether he had any contact with the Claimant Adviser Office (“CAO”) prior to filing his Notice of Appeal, the Appellant responded that he thought [Commission staff] was in charge of the appeal process. He was not sure how he was referred to the CAO. He did not understand the complexity of the appeal process. Counsel asked the Appellant whether, by complexity, he meant the requirement to file a Notice of Appeal within 90 days. The Appellant responded that things became more complex for him due to the fact that he needed to have stress tests. The first one was in March of 2017 or 2018, and he was going to see the doctor again in the next month or two. He also recently had a sleep apnea test done in [text deleted], which revealed that he has deficiencies. When asked why the test results were emailed to his wife, the Appellant responded that he was not an email person, and he did not have email in [text deleted].

Submission:

Counsel for MPIC provided a written submission to the panel, which was appreciated, in addition to making an oral submission at the appeal hearing. He noted that under subsection 174(1) of the MPIC Act, the Commission may extend the time period within which an appeal may be filed. Where an appeal is not filed within 90 days after receiving an Internal Review decision, an appeal may be made “within such further time as the commission may allow”. The Commission may consider various relevant factors, including:

1. The actual length of the delay compared to the 90-day time limit;
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 proceeding.

Length of the Delay

Counsel pointed out that the first issue to determine is when the Appellant received the Internal Review decision, in order to determine when the 90-day appeal period began to run. Section 11 of the Rules of Procedure (Universal Bodily Injury Compensation) Regulation (the “Regulation”) to the MPIC Act requires MPIC to serve its decision on the claimant. Under subsection 1(1), service can be effected either “... personally, or subject to confirmation of delivery by Canada Post, by delivery by mail to the last address provided by the person to the corporation.” It was agreed that the Appellant did not receive the Internal Review decision when it was originally sent to him, and that the letter was returned to MPIC, marked “unclaimed”.

MPIC sent the Appellant a letter enclosing the Internal Review decision a second time on September 13, 2017, by regular mail and also left a copy of it in the Internal Review office for a period of at least 15 days. Subsection 1(3) of the Regulation states that service of the document may be effected by posting it in an office of the corporation for a period of not less than 15 days, where service under subsection 1(1) cannot be completed. As a result, counsel submitted that the 90-day time period began to run on September 29, 2017, which was 15 days after the Internal Review decision was posted in the Internal Review office on September 13, 2017. Using the deemed date of service of September 29, 2017, 90 days from that date is December 28, 2017. Counsel submitted that the Appellant was required to file his Notice of Appeal by December 28, 2017.

The Appellant actually filed his Notice of Appeal on August 15, 2018. Therefore, the actual length of the delay was 230 days, or seven months and 18 days.

Counsel acknowledged that there was documentary evidence on the file from November 27, 2017, in which the Appellant acknowledged to the Internal Review Officer receiving the Internal Review decision on that date. In that scenario, the actual length of the delay would be 170 days, or five months and 20 days. However, counsel submitted that MPIC complied with the Regulation in effecting service and this cannot be ignored. Further, he pointed to the Appellant's testimony, that he recalled receiving the Internal Review decision in September, 2017.

Reasons for the Delay

Counsel submitted that the importance of the actual length of the delay is best seen through the lens of the Appellant's reasons for the delay; in other words, a long period of delay may be justified while a small period may be fatal to an appeal where no explanation exists. He submitted that the Appellant's reasons are insufficient here.

The Appellant's testimony was that he received the Internal Review decision in September, 2017. There is documentary evidence that the Internal Review Officer spoke with the Appellant on November 16, 2017, told him about the decision, and advised him that he had 90 days to appeal to the Commission. There is also documentary evidence that the Appellant contacted the Commission on November 16, 2017, and was sent, on that day, a copy of a Notice of Appeal form, a Commission brochure and the Commission's Guidelines for Hearing. Counsel pointed out that the Commission's Guidelines for Hearing expressly state that a Notice of Appeal must be filed within 90 days from the receipt of an MPIC Internal Review decision, as does the brochure for the

Commission. As well, the brochure for the Commission advises that a Notice of Appeal can be filed electronically by email, or sent by regular mail or by fax.

On November 27, 2017, the Internal Review Officer recorded a telephone conversation in which the Appellant confirmed to him that he had received a copy of the Internal Review decision. Counsel submitted that, therefore, by at least that date, the Appellant had everything he needed to appeal the decision, including detailed instructions on how to do it. The Internal Review Officer's notes recorded that the Appellant told him that he would be contacting the Commission "within the next 10 days or so to follow through with his application for appeal". The desire and means to complete and submit the one-page Notice of Appeal apparently existed at that point in time.

The Appellant was also dealing with other MPIC matters at the same time. On November 27, 2017, the same day that he spoke to the Internal Review Officer, the Appellant also spoke with a member of the Benefits Administration Unit ("BAU") regarding replacement eyewear. He then left for [text deleted] the next day. On December 7, 2017, while in [text deleted], the Appellant spoke with the BAU member regarding his glasses. Counsel pointed out that the Appellant was able to contact MPIC to ensure that his PIPP benefits would be administered even while out of the country.

There is documentary evidence that the Appellant contacted the Commission on January 25, 2018, to advise that he wanted to "advance the process". He was sent a second Notice of Appeal form, but did not complete and return it at that time. Sometime between July 24 and August 14, 2018, the Appellant contacted the Commission to advise that he had been sick. Counsel submitted that no specifics were provided of the illness, such as the dates of his illness or how his illness prevented him, or someone on his behalf, from submitting the Notice of Appeal to the Commission.

Counsel acknowledged that the Appellant was diagnosed with plaque in his arteries in December, 2016. However, the evidence is that the Appellant traveled to [text deleted] for both business and medical purposes, and there is no medical evidence that he was prescribed a period of rest other than for a period of time shortly following the MVA. There are also numerous documented calls between the Appellant, the BAU and the Internal Review Officer during November and December, 2017, as well as documented trips by the Appellant to his chiropractor and to an eyewear store during that time. If the Appellant had been ordered to rest, the evidence is that he continued to manage his business and personal affairs notwithstanding this. Further, the Appellant is married, and could have relied on the assistance of his wife during this time. There is documentary evidence that she received medical correspondence on his behalf (in particular, an email dated December 19, 2018, which appears to be in relation to a sleep apnea test).

While there is some evidence that the Appellant was out of the province for some time in November to December, 2017, as well as possibly from April to May, 2018, there is no medical evidence to support the assertion that the Appellant was unable to file his appeal during these times. In fact, the evidence supports that the Appellant was well enough to attend to his affairs and travel for extended periods. Counsel argued that if he was well enough to do this, he was well enough to email, fax, or mail a Notice of Appeal.

Counsel also addressed the Appellant's position that he was anxious and extremely stressed as a result of his health issues. Counsel argued that no medical evidence was presented to support any diagnosis of anxiety. He acknowledged that there is reference in the Internal Review decision to a Primary Health Care report based on an examination of December 2, 2015 by [Appellant's neurologist], in which he recorded that the Appellant had numerous complaints. Among those

complaints is listed “anxiety/depression”; counsel pointed out that the Appellant was not diagnosed with any type of disorder.

Even if the Appellant was suffering from anxiety, the evidence is that, following the MVA, the Appellant was able to attend to his business and personal affairs. He filed an Application for Review of the case manager’s decision, which included a letter from him dated November 15, 2016, and participated in a hearing in March, 2017. He also apparently travelled in late 2017 for business and personal reasons. After his return, the Appellant contacted the Commission, advising that he wished to advance the appeal process. However, he did not file his Notice of Appeal for more than six months after that, although he did continue to attend to his personal affairs.

Counsel submitted that the Appellant has failed to explain the delay after November 27, 2017. He acknowledged receipt of the Internal Review decision and informed both MPIC and the Commission of his intent to appeal, but failed to file his Notice of Appeal for more than six months. He claims that he was sick and limited due to illness, but provided no objective medical illness to identify the period of illness or the limitations associated with the illness. Although he was away from the province for certain periods, the evidence establishes that he continued to attend to his affairs during his absence, and also that he returned to [text deleted] for extended periods. The Appellant maintained capacity and ability. The explanation for his delay is insufficient to justify extending the 90-day time period.

Prejudice

There is an inherent prejudice which results from the passage of time. Other than this, MPIC is not aware of any specific prejudice that would result if the Commission extended the 90-day time period. However, the absence of specific prejudice does not mean that the Appellant should be

granted an extension; the Commission may still refuse a request to extend the appeal period, where the reason for the delay in filing is not adequate.

Waiver

MPIC did not waive its right to oppose the Appellant's request for an extension of time, nor is it aware of any waiver on the part of the Appellant. Therefore, this factor is neutral.

Summary

Counsel pointed out that the Appellant bears the onus of convincing the Commission to exercise its discretion to extend the 90-day time period. He submitted that the Appellant has no real explanation for not having filed his appeal on a timely basis, and therefore his request for an extension should be denied.

Discussion:

In this case, the Appellant's Notice of Appeal was not received by the Commission within 90 days after he received the Internal Review decision dated August 18, 2017. Accordingly, he has asked the Commission to exercise its discretion to allow an extension of time for him to file the Notice of Appeal, which was received by the Commission on August 15, 2018.

The discretionary power granted to the Commission under subsection 174(1) of the MPIC Act to extend the time for appealing an Internal Review decision of MPIC is fairly broad, being "within such further time as the commission may allow". As noted by counsel for MPIC, in exercising its discretion under this subsection in previous cases, the Commission has considered various relevant factors, including the length of the delay, prejudice, waiver, and the reasons for the delay.

In making our decision, as set out below, the panel has carefully reviewed all of the documentary evidence filed in connection with this appeal. We have given careful consideration to the testimony of the Appellant and to the submissions of counsel for the Appellant and counsel for MPIC. We have also taken into account the provisions of the relevant legislation and the applicable case law.

Length of the Delay

Pursuant to subsection 174(1), the 90-day appeal period begins to run after an appellant receives the Internal Review decision. Here, it is not disputed that the Appellant did not receive the Internal Review decision when it was originally sent to him; the letter was returned to MPIC marked “unclaimed”. On September 13, 2017, MPIC sent a second copy of the Internal Review decision to the Appellant by regular mail and, as indicated by counsel for MPIC, left a copy of the decision in the MPIC office for a period of at least 15 days. Pursuant to the Regulation to the MPIC Act (referred to above), service was therefore deemed to be effected on the Appellant on September 29, 2017.

In his testimony, the Appellant was adamant that he received the Internal Review decision in September, 2017. In his direct testimony, he said that he didn’t receive the original letter, but he was certain that he received the decision when the Internal Review Officer sent his second letter in September, 2017. On cross-examination, he confirmed that he received the decision in September, notwithstanding that this conflicts with certain documentary evidence, specifically a progress note made by the Internal Review Officer on November 27, 2017, which records a telephone conversation in which the Appellant confirmed that he received the Internal Review decision. The Appellant stated very strongly in his cross-examination: “I’m very clear that I got the September letter, I have it in my file”. Accordingly, while there is some conflicting evidence,

the panel finds that the weight of all the evidence establishes that the Appellant did receive the Internal Review decision in September, 2017.

Given our finding, and given the Regulation to the MPIC Act referred to above, we find that the appeal period begins to run on September 29, 2017. Based on this date, the 90-day appeal period expired on December 28, 2017. The Appellant filed his notice of Appeal on August 15, 2018, which was approximately 7 ½ months after the expiry of the 90-day appeal period, or 2 ½ times the length of the statutory appeal period.

Prejudice

Counsel for MPIC acknowledged that there is no specific prejudice to MPIC here due to the Appellant's delay in filing his Notice of Appeal, although there is an inherent prejudice to MPIC resulting from the passage of time.

Waiver

The Appellant did not waive his intention to appeal; rather, he expressed his intention to appeal on several occasions, both to the Commission and to MPIC.

MPIC did not waive its right to oppose the Appellant's request for an extension of time.

Reasons for the Delay

Counsel for the parties focussed most of their submissions on the Appellant's reasons for the delay in filing his Notice of Appeal. Counsel for the Appellant argued that the Appellant was unaware of the rigidity of the 90-day deadline. As well, he was occupied with addressing his health and business issues, and these issues prevented him from filing his Notice of Appeal on a timely basis.

Counsel for MPIC argued that the Appellant's reasons for his delay in filing his Notice of Appeal are insufficient to justify extending the 90-day appeal period.

The Appellant testified that he did not understand the rigidity or "complexity" of the appeal period. However, he also testified that he received the Internal Review decision, that he read it thoroughly when he received it, and that he has it in his file. As indicated above, that decision clearly outlines the time period to appeal, stating: "If you are unsatisfied with this decision, you have ninety (90) days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission ...". Further, the Appellant was advised by both the Internal Review Officer and in documents sent to him by the Commission as to the 90-day appeal period. In his testimony, the Appellant said that when he spoke with [text deleted], of the Commission, in November, 2017, she directed him how to make an appeal and she sent him the appeal form. He acknowledged that she told him to get his appeal in as soon as he could. However, he said that "the priorities were not always the appeal process". He acknowledged that he did not file his Notice of Appeal as soon as he could have.

The Appellant argued that it was his first time filing an appeal of an MPIC decision, and this was another reason why he was unable to meet the 90-day deadline. Although he has not filed a previous appeal with the Commission, he did file an Application for Review with MPIC, appealing the decision of the case manager in this matter. That Application for Review was filed on a timely basis, within the 60 days allowed for filing. The Appellant testified that his office staff completed the Application form for him, and typed the accompanying letter, and that he simply signed both documents. It is unclear why he could not have instructed his office staff to similarly prepare the one-page Notice of Appeal document for his signature.

Further, the Appellant testified to his significant education, including a university degree and licensing from several provincial [text deleted], as well as ownership and operation of an insurance company for the last 23 years. It is unclear why the requirement to file a Notice of Appeal within 90 days would seem complex to him, when it is set out explicitly in the Internal Review decision, and when he had previously met the filing deadline with respect to his Application for Review.

The Appellant testified that he was diagnosed with plaque in his arteries in December, 2016, and that the results of this test made him quite nervous and anxious. However, there was no medical evidence to support a diagnosis of anxiety arising from his concerns over his health issues. Nor was there any medical evidence to support that the diagnosis of plaque in his arteries limited him from attending to his personal or business affairs. On the contrary, the evidence was that during the 90-day appeal period, September 29, 2017 to December 28, 2017, the Appellant was still able to travel, to contact MPIC (both from [text deleted] and from [text deleted]) to ensure that his PIPP benefits would be administered, and to contact the Commission, as well as to attend to staffing concerns.

Thus, the evidence does not support the Appellant's position that he was not capable of completing the Notice of Appeal form, either due to illness, or lack of capacity, during the 90-day appeal period, or from the expiry of that period to the date that he filed it, August 15, 2018.

Conclusion

Therefore, upon a consideration of the totality of the evidence, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay, the panel finds that the weight of the factors leads us to decline to exercise our discretion to extend the time limit set out in subsection 174(1) of the MPIC Act.

Disposition:

Accordingly, the Commission will not, under subsection 174(1) of the MPIC Act, extend the time limit within which the Appellant may appeal the Internal Review decision dated August 18, 2017, to the Commission.

Dated at Winnipeg this 14th day of March, 2019.

JACQUELINE FREEDMAN

LAURA DIAMOND

BRIAN HUNT