

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-121**

PANEL: Mr. Mel Myers, Q.C., Chairperson

APPEARANCES: Mr. Bob Tyre, of the Claimant Adviser Office, appeared on behalf of the Appellant, [text deleted], who was not present at the hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: March 9, 2007

ISSUE(S): Extension of time to file Notice of Appeal

RELEVANT SECTIONS: Section 174(1) 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

The Appellant, [text deleted], is requesting an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated March 10, 2006.

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.

The Appellant was involved in a motor vehicle accident on December 2, 1995 and suffered injuries as a result of the motor vehicle accident. The Appellant's request for benefits under the MPIC Act were rejected by the case manager in a decision dated August 3, 1999. At that time the Appellant was represented by legal counsel, who received a copy of the decision. The August 3, 1999 decision contained a standard notice required by Section 170(2) of the MPIC Act advising of the Appellant's right to apply for review within sixty (60) days but he failed to do so since his Application for Review dated January 5, 2006 was more than six (6) years out of time.

The Internal Review Officer, in his decision dated March 10, 2006, noted that the Appellant had provided a four-page handwritten letter to provide a "reasonable excuse" for late filing, for the purpose of having the Internal Review Officer extend the time limit under Section 172(2) of the MPIC Act for filing an Application for Review. The Internal Review Officer's decision letter to the Appellant states:

. . . Nothing in your letter remotely qualifies as the sort of "reasonable excuse" which would provide a basis for an expansion (sic) of time.

and, as a result, the Internal Review Officer determined:

In the circumstances, there is no reason whatever to grant an extension of time and, accordingly, I am rejecting your Application for Review.

The Commission notes that the Internal Review Officer's letter dated March 10, 2006 contained the following statement:

RIGHT OF APPEAL

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

301 – 428 Portage Avenue
Winnipeg, MB R3C 0E2

Telephone Number: 945-4155
Fax Number: 948-2402
Toll Free: 1-800-282-8069

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

If you need assistance in appealing this decision to the Commission, contact:

Claimant Adviser Office
200 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Telephone Number: 945-7413 or 945-7442
Fax Number: 948-3157
Toll Free: 1-800-282-8069, Ext. 7413

The Claimant Adviser Office operates independently of both MPIC and the Commission and is available to you at no charge.

The Appellant prepared a Notice of Appeal dated June 2, 2006. The Claimant Adviser Office received this Notice of Appeal on June 23, 2006 and the Commission received this Notice of Appeal from the Claimant Adviser Office on August 8, 2006. On August 14, 2006 the Commission's Director of Appeals wrote to the Claimant Adviser Office advising that the Appellant's Notice of Appeal was filed with the Commission beyond the ninety (90) day limit and indicated that a request for an extension of time, setting out the reasons why the appeal was filed beyond the deadline, must be provided to the Commission.

In response, the Claimant Adviser Office wrote to the Commission indicating that the Claimant Adviser Office intake sheet, completed by the Appellant, reported that the Internal Review decision was not received by the Appellant until May 8, 2006. As a result, the Claimant Adviser

Office further submitted that the receipt of the Notice of Appeal by the Commission on August 8, 2006 was within ninety (90) days of the Appellant receiving the Internal Review decision.

The Commission provided MPIC with a copy of the Notice of Appeal filed with the Commission on August 8, 2006, together with a copy of the Claimant Adviser Office's letter to the Commission dated October 3, 2006. The Commission requested MPIC to inform the Commission of the date that the Internal Review Officer's decision, dated March 10, 2006, was received by the Appellant.

On October 17, 2006 [text deleted], Director of MPIC's Legal Services, wrote to the Commission and advised:

I acknowledge receipt of your letter dated October 6, 2006 together with enclosures.

Enclosed herewith is a copy of Canada Post's "Track a Package" document confirming that the Internal Review decision was successfully delivered to [text deleted] on March 17, 2006.

Please be advised that MPI objects to the Commission granting an extension of time allowing [text deleted] to file his Notice of Appeal.

The case manager's decision for which [text deleted] sought an internal review is dated August 3, 1999. In his Internal Review decision of March 10, 2006, [text deleted] noted that [text deleted's] Application for Review is more than 6 years out of time and that he had failed to provide a "reasonable excuse" for late filing sufficient to allow an extension of time under Section 172(2) of the MPIC Act. That factor, combined with [text deleted's] failure to provide a reasonable excuse for not filing a Notice of Appeal in time, with the obvious prejudice to MPI resulting from the overall delay, constitute the basis for our objection.

Thank you for the opportunity for MPI to provide its position on this issue.

On January 10, 2007 the Commission, in a Notice of Hearing to Ms Danielle Robinson, legal counsel for MPIC, and Mr. Bob Tyre, Claimant Adviser Office, advised that a hearing would take place on March 9, 2007 at the Commission office to determine whether the Commission should extend the time

within which the Appellant could file a Notice of Appeal from the Internal Review Officer's decision of March 10, 2006.

On March 9, 2007 a hearing took place at the Commission office and Ms Danielle Robinson of MPIC and Mr. Bob Tyre of the Claimant Adviser Office attended at the hearing but the Appellant was absent. Mr. Tyre advised the Commission that he was in contact with the Appellant several days prior to the hearing and requested that the Appellant attend the hearing, on March 9, 2007, in order to testify as to the reasons why there had been a delay in filing the Notice of Appeal within the ninety (90) day period pursuant to Section 174(1) of the MPIC Act. Mr. Tyre further advised the Commission that he expected the Appellant to attend the hearing and to testify in order to provide the Commission with the information the Commission needed to exercise its discretion to extend the time to permit the Appellant to file his Notice of Appeal. In the circumstances Mr. Tyre requested an adjournment be granted.

In response, Ms Robinson objected to the adjournment and indicated she wished to proceed with the appeal. In support of this objection she submitted that, having regard to the initial six (6) year delay in the Appellant filing an Application for Review, and his subsequent delay in filing a Notice of Appeal, MPIC has been thoroughly prejudiced in its ability to case manage the Appellant's claim.

Ms Robinson also provided the Commission with a copy of the decision of the Commission in [text deleted] (*AC-02-103, April 22, 2004*). In that case the Commission set out the following factors the Commission should take into account when exercising its discretion to extend the time for appealing a review decision pursuant to Section 174 of the MPIC Act:

1. the actual length of the delay compared to the 90 day time period set out in s. 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 proceeding.

In response, Mr. Tyre indicated that he was unable to provide the Commission with any reasons why the Appellant had delayed beyond the ninety (90) day period in filing a Notice of Appeal with the Commission.

The Commission notes that the actual length of time of delay beyond the ninety (90) day limit provided by Section 174 of the MPIC Act was forty-nine (49) days. The Commission further notes that the Appellant did not provide any reasons for the delay when filing the Notice of Appeal. The Claimant Adviser, Mr. Bob Tyre, advised the Commission that he expected the Appellant to attend the appeal hearing on March 9, 2007 to testify as to the reasons for his delay since he was in touch with the Appellant several days prior to the hearing when he had discussed this matter with him.

The Commission also notes that, having regard to the total circumstances surrounding the Appellant's request for a review of MPIC's decision to reject his claim, that he delayed filing an Application for Review for a period of six (6) years, and further delayed for a period of forty-nine (49) days before filing a Notice of Appeal. The Commission finds that MPIC was prejudiced by the initial delay of six (6) years, and subsequent delay of forty-nine (49) days, in its ability to case manage the Appellant's claim.

Upon a consideration of the totality of the evidence before it, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has not provided a reasonable excuse for his failure to appeal the Internal Review decision within the ninety (90) day limit set out in Section 174 of the MPIC Act. As a result, the Commission will not

extend the time within which the Appellant may appeal the Internal Review decision dated March 10, 2006 to the Commission.

Dated at Winnipeg this 13th day of March, 2007.

MEL MYERS, Q.C.