

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-15-008**

PANEL: **Laura Diamond, Chairperson
Janet Frohlich
Nikki Kagan**

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

HEARING DATE: **April 8, 2021**

ISSUE(S): **Whether the Appellant has failed to diligently pursue his
appeal.**

RELEVANT SECTIONS: **Section 182.1(1) of The Manitoba Public Insurance
Corporation Act (the 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

Issue and Determination

The issue before the panel was whether the Commission should dismiss the Appellant's appeal on the ground that the Appellant has failed to diligently pursue his appeal.

Following a review of the documentary evidence, the testimony of the Appellant and the submissions of the parties, the Commission has concluded that the Appellant has failed to diligently pursue his appeal.

His appeal is dismissed.

Background

The Appellant was injured in a motor vehicle accident (MVA) on September 13, 2011. He was in receipt of benefits from MPIC, including Income Replacement Indemnity (IRI) benefits. On May 16, 2014 the Appellant's case manager reviewed medical information and confirmed his ability to return to work as of January 15, 2012, ending his entitlement to IRI.

This decision of the case manager dated May 30, 2014 was upheld by an Internal Review Officer (IRO) for MPIC on October 3, 2014.

It is from this decision of the IRO that the Appellant has appealed.

The Appellant file a Notice of Appeal (NOA) with this Commission on January 15, 2015.

He was represented at that time by the Claimant Adviser Office (CAO).

After the NOA was filed the Commission prepared an indexed file of relevant documents, provided a copy to the parties and requested regular updates from them regarding the status of the appeal. Both the CAO and the Commission encountered some difficulties in reaching and communicating with the Appellant, who was incarcerated for periods, had no phone for other

periods, and did not respond to correspondence or provide updates with change of address information.

Accommodations were made for his incarceration, delaying administration of the file. Case conferences were held in attempts to process the appeal and prepare the matter for hearing.

The CAO advised the Commission that it was having difficulty contacting the Appellant. On November 4, 2016, the CAO advised that it was withdrawing representation.

Commission staff located a new address for the Appellant and contacted him to schedule another case conference.

The next case conference was scheduled for June 6, 2017. The Appellant attended. He was provided with a complete copy of his indexed file to review. He advised that he was trying to obtain help from a legal adviser, who may not be a lawyer, and that he would ask him to contact the Commission.

He then attended the next case conferences on August 10, 2017 and advised he was still trying to find a representative. At the next conference, on October 17, 2017, he advised that he would be self-represented.

As a result of issues raised at the case conferences, MPIC conducted further investigations and additional case management decisions were issued. The Appellant asked MPIC to provide IRDs for these new case management decisions. The new IRDs were not issued by MPIC until January 8, 2020.

The Commission received copies of the IRDs and held this appeal in abeyance, pending expiry of the 90 day appeal period provided in the MPIC Act for appealing an IRD, in case the Appellant wished to appeal the new IRDs and possibly have all of his appeals heard together.

After the expiry of the 90 day appeal period for the new IRDs, the Commission attempted to contact the Appellant. Without a current phone number at which to contact the Appellant, Commission staff wrote to him on May 7, 2020. As the Commission was not sure if the Appellant wished to pursue the pending appeal before it, he was provided with a copy of a Notice of Withdrawal (NOW) form and advised that if he no longer wished to pursue his appeal, he could sign the form and return it to the Commission. He was asked to do so within 3 weeks and advised that if the Appellant did not contact the Commission, his file would be held in abeyance for a period of 6 months.

The letter of May 7, 2020 also advised the Appellant that the Commission has the power, pursuant to s 182.1(1) of the MPIC Act, to consider whether an Appellant has failed to diligently pursue their appeal and to dismiss it on that basis. He was advised that if he did not contact the Commission in the next 6 months to take steps to pursue his appeal or to provide an explanation as to why he is unable to pursue it, the matter may be scheduled for hearing to determine whether he has failed to diligently pursue the appeal.

No response was received.

6 months later, on December 2, 2020, Commission staff wrote to the Appellant again. The Appellant was advised that since he had not responded to the letter of May 7, 2020, and did not contact the Commission, provide a phone number to reach him or take any steps to pursue his

appeal, the Commission would schedule a hearing to determine whether the Appellant had failed to diligently pursue his appeal and if so, whether the Commission will dismiss the appeal.

On December 7, 2020 , the Appellant left a message on the Commission’s voice message system indicating that “someone else is on the case” and that he had “given it to the boss” who would “take care of it”. No further information was provided and Commission staff was not able to contact the Appellant in return.

No further contact was received from the Appellant and the matter was scheduled for hearing on April 8, 2021.

The Appellant appeared at the hearing and counsel for MPIC participated by video conference (due to Covid 19 pandemic concerns).

Evidence and Submission for the Appellant

In addition to the documents and letters referred to above, the Appellant testified at the hearing.

He said that he has evidence that MPIC agents are filming him and spraying him with a substance that makes him go bald. It discolours his feet and turns them brown, causing him to stink. He holds MPIC accountable for that because they made bad decisions on all 13 of his claims, and made reference to several past MVAs on various dates.

The Appellant made reference to already knowing some of the panelists or parties at the hearing. He said he knew that they were “[Text Deleted] friends” but it was not clear who [Text Deleted] was or what he was referring to and this point was not factually established.

The Appellant said that his doctors had been “muscle” by MPIC and forced to give false reports. He said he fired his MPIC adjuster, who “screwed him” and prevented him from getting the additional physiotherapy and chiropractic treatments he should be entitled to.

The Appellant described damage to his vehicle from the different MVAs as well as injuries he had sustained in an MVA in September 2011, when he was riding a bike over the [text deleted] bridge. This hurt him a great deal and did lots of damage. He said that his head has a big dent in it from the car bumper.

He said that he had some difficulty with mail delivery after his mother died, but that he did not know why he had not appealed some of the MPIC decisions. He has head damage and is no longer the same person he was before the MVAs. He suffers from headaches and pain in his groin, back, neck and knees. Although he takes odd jobs here and there, he has not been able to work at a full time job because every step he takes causes him pain.

Submission for MPIC

Counsel for MPIC submitted that the issue for the panel was whether the Appellant had failed to diligently pursue his appeal and whether the Commission should exercise its discretion to dismiss the appeal pursuant to s. 182.1(1) of the MPIC Act.

That section requires the Commission to provide the Appellant with an opportunity to be heard and explain his actions. With this hearing, that opportunity has now been afforded to the Appellant. The evidence heard before the Commission supports the dismissal of the appeal for failure to pursue it diligently.

Counsel relied upon a previous decision of the Commission in *AC-14-046*.

In that case, the Commission noted that s. 182.1 of the Act does not require consideration of the merits of the appeal. The only consideration for the panel in this hearing is whether an appellant has failed to diligently pursue his appeal.

The decision in *AC-14-046* also described the onus on the Appellant to show reasonable care and effort in pursuing his appeal, stating:

We agree with counsel for MPIC that the use of the word “diligently” in s. 182.1(1) of the MPIC Act requires an appellant to show care and effort in pursuing an appeal. Based on the foregoing, the panel finds that the Appellant has failed to show reasonable care and effort in pursuing in his appeal.

Counsel for MPIC submitted that similarly in this situation, the Appellant has not met the onus upon him to establish he took reasonable care and effort. The IRD was dated October 3, 2014 and the appeal was filed on January 15, 2015, more than 6 years ago. On May 13, 2019 Commission staff sent a letter to the Appellant asking him to contact the writer by May 31, 2019. No response was ever received.

Counsel acknowledged that the appeal was held in abeyance pending the receipt of further IRDs and the 90 day appeal period which followed, and that the responsibility for this wait did not necessarily rest with the Appellant. These IRDs were then issued on January 8, 2020 and were not appealed by the Appellant.

Commission staff then sent a letter to the Appellant dated May 7, 2020, outlining the status of the appeal and the events which had transpired. The letter also included a NOW form in case the Appellant, who had not contacted the Commission for some years, wished to withdraw his appeal. When he did not respond to this letter, the matter was held in abeyance for 6 months, but the Appellant was put on notice that failure to contact the Commission during this period and take steps to pursue the appeal could result in the Commission exercising its power under s. 182.2(1) of the Act to determine whether he had failed to diligently pursue the appeal.

Counsel pointed out that even before the new IRDs were issued and the matter held in abeyance for a period, the Appellant still did not respond to inquiries and was not actively engaging with the Commission, even when requested to do so. The only response received from him was the somewhat vague voice message of December 7, 2020. This message did not provide any specific information, call back or contact information and was not enough to satisfy the obligation to pursue the appeal.

4 months have now elapsed since that message and there is no evidence that anything further was in fact done by the Appellant during that time, except for attending at this hearing. He received the Notice of Hearing and appeared at the hearing to provide reasons for his inaction. Counsel submitted that after listening to the reasons advanced, it is clear that the Appellant has not provided adequate reasons to indicate why he has not diligently pursued his appeal or why he would not be able to do so.

Counsel noted that in *AC-14-046* the Commission has found in the past that simply because the Appellant attends at a dismissal hearing and provides some reasons is not enough. These reasons have to be reasonable and the Commission has to accept them as a reasonable explanation. He

submitted that in this case there has been no proper explanation presented for the failure to diligently pursue the matter. The appeal should therefore be dismissed.

Appellant's Reply

The Appellant submitted that MPIC has not met its onus of providing him with coverage for his accidents. He submitted that [text deleted] knows the postmaster and he thinks that is what is happening because he wasn't getting his mail sometimes.

He also indicated that he had received a registered letter stating that his appeal was over in 2014, so he didn't do anything else.

Discussion

Section 182.1 of the MPIC Act provides:

Dismissal for failure to pursue appeal

182.1(1) Despite subsection 182(1), the commission may dismiss all or part of an appeal at any time if the commission is of the opinion that the appellant has failed to diligently pursue the appeal.

Opportunity to be heard

182.1(2) Before making a decision under subsection (1), the commission must give the appellant the opportunity to make written submissions or otherwise be heard in respect of the dismissal.

Informing parties of decision

182.1(3) The commission must give the appellant and the corporation a copy of the decision made under subsection (1), with written reasons.

The onus is on the Appellant to show that he diligently pursued his appeal or establish that he had good reasons for his failure to do so.

A review of the documents on file indicate that there was difficulty communicating with the Appellant from the early days after filing his appeal. Some of these challenges were caused by periods of incarceration and lack of access to a telephone, and the Commission has taken these into account. The Commission is prepared to make allowances for these challenging periods, along with the time spent waiting for new decisions from MPIC and for their appeal period to pass.

Yet the panel notes that even outside these periods, the Appellant for the most part failed to respond to letters from the Commission or requests for information. His representative, the CAO, also experienced these difficulties with communication, which resulted in their office withdrawing representation.

While the Appellant offered a few details regarding his difficulties, these focussed on his problems with MPIC filming him and spraying him with an unknown substance, muscling his doctors to provide false reports and keeping letters from him through [text deleted] and the postmaster. None of these statements were substantiated or corroborated in any of the documents or by any other evidence, and it was not completely clear how these comments related to the question before us regarding diligent pursuit of the appeal, or how they affected his failure to engage with the Commission.

The panel must consider the Appellant's efforts to address his appeal or his reasons for failure to do so.

As counsel noted, the question of whether an appellant has diligently failed to pursue an appeal was previously addressed by the Commission in *AC-14-046*. A dictionary definition of diligence was reviewed and included:

... Diligence is defined as careful and persistent application of effort; diligent is defined as careful and steady in application to one's work or duties and showing care and effort. Counsel submitted that the Appellant's actions have either been absent or quite far from diligent.

Upon reviewing the actions of the Appellant, the panel finds that he has not pursued his appeal diligently, with care and effort. He has done nothing to advance the appeal and failed to respond to requests for communication or information from both his representative and Commission staff on numerous occasions. He has not acted with care and diligence.

The next question which arises is whether the Appellant provided adequate reasons for failing to diligently pursue his appeal.

The panel recognizes that the Appellant has been struggling. He expressed difficulties managing the process and materials involved in his appeal and claims and was not able to clearly articulate the issues in a way that the panel could understand.

However, we note that he was provided with the services of the CAO, and was not responsive to their efforts at communication. We also note that he was able to receive much of his mail and did in fact receive some correspondence from the Commission and MPIC. He was able to recall

details and dates of MVAs, attend scheduled case conferences, leave a message for his appeals officer and attend at this hearing.

What he seems not to have been able to do was to provide the information and materials that he was asked to obtain and provide. Each case conference was followed up with a letter confirming the details discussed at the conference and the next steps to undertake. These letters specifically asked him to take steps which he did not take, such as providing updates or representation information to the Commission. The Appellant did not give reasons for his failure to take these actions or to respond to the Commission in any way, except for the one voice message left in December 2020.

Counsel for MPIC submitted that this voice message did not satisfy the onus on the Appellant to show he has taken reasonable steps to pursue or further his appeal. He took no action and provided no explanation. The Commission agrees.

The panel finds that the Appellant has not provided evidence to show that he has attended to his appeal with care or reasonable effort.

Nor has the Appellant provided adequate reasons at the hearing to explain his failure to take any other action between January 2020 and the hearing. We find that he has failed to submit any supportive or medical evidence to establish that he is not capable of pursuing his appeal or has other reasons for failing to do so.

Accordingly, following a review of the evidence and submissions, the Commission finds that the Appellant has failed to meet the onus upon him to show, on a balance of probabilities that he

diligently pursued his appeal or that he has provided adequate reasons or explanation for his failure to do so.

The Appellant's appeal is hereby dismissed as a result of the Appellant's failure to diligently pursue the appeal, in accordance with s. 182.1(1) of the MPIC Act.

Dated at Winnipeg this 17th day of May, 2021.

LAURA DIAMOND

JANET FROHLICH

NIKKI KAGAN