

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-19-193**

COMMISSIONER: Jacqueline Freedman

APPEARANCES: [Text deleted] (the “Appellant”) did not attend the hearing; Manitoba Public Insurance Corporation (“MPIC”) was represented by Anthony Lafontaine Guerra.

HEARING DATE: May 12, 2022

ISSUE(S): Whether the Appellant failed to diligently pursue his appeal, and if so, whether the appeal should be dismissed.

RELEVANT SECTIONS: Sections 182.1 and 184.1 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

Background:

The Appellant was driving his car on July 24, 2010, when he was involved in a motor vehicle accident with another vehicle (the “MVA”). As a result of the MVA he sustained injuries, and he sought benefits pursuant to the Personal Injury Protection Plan provisions of the MPIC Act, including permanent impairment benefits.

On October 1, 2019, the case manager issued a decision which stated that the injuries that the Appellant sustained in the MVA did not result in a ratable permanent impairment. An Internal Review Decision (“IRD”) was issued dated December 10, 2019, which confirmed the case manager’s decision.

The Appellant filed an appeal of the IRD with the Commission on December 23, 2019. A case management process then ensued in the Appellant’s appeal, which is described below.

On January 29, 2021, the Appellant wrote to the Commission by email, indicating that he no longer wished to proceed with his appeal.

The Commission wrote to the parties on September 16, 2021, advising that the Appellant had not provided any further documentation to the Commission or been in contact with the Commission. Therefore, the Commission would schedule a hearing, to determine whether the Appellant had failed to diligently pursue his appeal, within the meaning of subsection 182.1(1) of the MPIC Act, and, if so, whether the Commission should dismiss his appeal.

Issue:

The issue which requires determination in this hearing is whether the Appellant has failed to diligently pursue his appeal and, if so, whether the Commission should dismiss his appeal.

Decision:

For the reasons set out below, the Commission finds that the Appellant has failed to diligently pursue his appeal, and his appeal should be dismissed.

Procedural Matters:

A Case Conference was held in this matter on January 29, 2021, to discuss the status of the appeal. Both parties attended the Case Conference via teleconference. At the Case Conference, discussion was held regarding the permanent impairments in respect of which the Appellant was seeking benefits, as compared to those which had been considered by MPIC in the case manager's decision and the IRD. Given that MPIC had not addressed certain claims, it was agreed that those issues should be referred back to the Internal Review Office ("IRO") for further review. The Appellant was asked to provide the Commission with a letter or email confirming the particular entitlements that he was currently seeking. Once this written confirmation was received, the Commission would provide it to counsel for MPIC, who would consult with MPIC's Health Care Services team. The IRO would then provide a further decision within 10 weeks, which could be added to the current appeal.

A few hours after the conclusion of the Case Conference on January 29, 2021, the Appellant sent an email to the Commission, as follows:

I'm removing myself from the situation, I do not care about the scraps of corruption that comes off the governments table. This is my last response, and I will Not respond to any further request you, MPIC could possibly have.

You are all a waste of time and life,
[The Appellant]

On February 1, 2019, the Commission wrote to the parties, summarizing the discussion at the Case Conference. The Commission noted that subsequent to the conclusion of the Case Conference, the Appellant had sent the above-noted email, indicating that he no longer wished to proceed with his appeal. The Commission enclosed a Notice of Withdrawal form for him to complete and return to the Commission. The Commission also offered in the letter that, in the alternative, if the Appellant determined to proceed, he should provide written confirmation of the permanent impairment

entitlements that he sought by Friday, February 26, 2021. The Appellant did not return a completed Notice of Withdrawal form to the Commission, nor did he otherwise communicate with the Commission.

On March 9, 2021, the Commission wrote to the Appellant. The Commission noted that if a signed Notice of Withdrawal form was not received within three weeks from the date of the letter, the appeal would be held in abeyance for six months. The Commission advised that if the Appellant did not contact the Commission in the next six months to take steps to pursue his appeal or to provide an explanation as to why he was unable to pursue his appeal, the matter would be scheduled for hearing to determine whether he had failed to diligently pursue his appeal and, if so, whether the Commission would dismiss the appeal.

On April 6, 2021, the Commission wrote to the Appellant and noted that he had not submitted a Notice of Withdrawal form to the Commission within the allotted 3 weeks. Therefore, the Commission would hold his appeal in abeyance for 6 months.

As noted above, the Commission wrote to the parties on September 16, 2021, advising that the Appellant had not provided any further documentation to the Commission or been in contact with the Commission. Therefore, the Commission would schedule a hearing, to determine whether the Appellant had failed to diligently pursue his appeal, within the meaning of subsection 182.1(1) of the MPIC Act, and, if so, whether the Commission should dismiss his appeal.

Commission staff subsequently attempted to contact the Appellant by email to schedule the hearing date for this matter. No response was received from the Appellant. Accordingly, the Commission peremptorily set this hearing for May 12, 2022, at 9:30 a.m., to be held by teleconference.

A Notice of Hearing for the May 12, 2022, hearing was sent to the Appellant by Canada Post Xpresspost and regular mail, to the address provided by him in his Notice of Appeal. An acknowledgement of receipt of the Canada Post Xpresspost delivery was signed by “[the Appellant]” on March 23, 2022. The Notice of Hearing sent to the Appellant by regular mail was not returned to the Commission. The Notice of Hearing was also sent to the Appellant by email.

The Notice of Hearing provided instructions to the parties for their attendance at the teleconference hearing, including a telephone number to join the hearing remotely by telephone. The Notice further provided that the time and date of the hearing were firm and that postponements would only be granted under extraordinary circumstances. The Notice provided that at the hearing, the Commission would consider whether the Appellant had failed to diligently pursue his appeal, and that the parties would have the opportunity to make submissions on this issue. It further indicated that their submissions could be made orally or in writing. The Notice also provided that should either party fail to attend the hearing, the Commission may proceed with the hearing and dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deemed appropriate.

The hearing commenced by teleconference as scheduled at 9:30 a.m. on May 12, 2022. Counsel for MPIC was in attendance. The Appellant was not on the line. In accordance with the Commission’s practice, a grace period of 15 minutes was provided for the Appellant to join the hearing. When the Appellant did not attend by 9:45 a.m., the hearing proceeded in his absence. The Commission heard submissions from counsel for MPIC. The Appellant did not subsequently contact the Commission to explain his absence or to request an adjournment of the hearing.

Relevant Legislation:

Section 182.1 of the MPIC Act provides that the Commission may dismiss an appeal in certain circumstances. It provides as follows:

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.

Section 184.1 of the MPIC Act provides how notices may be given to the Appellant. It provides as follows:

How notices and orders may be given to appellant

184.1(1) Under sections 182, 182.1 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

When mailed notice received

184.1(2) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

Submission for MPIC:

Counsel for MPIC provided a written submission in addition to oral argument, which was appreciated. He noted that the issue in this hearing is whether the Commission should dismiss the Appellant's appeal on the grounds that he failed to diligently pursue it. It is MPIC's submission that the Appellant did not diligently pursue his appeal and it should therefore be dismissed.

Counsel referred to earlier decisions, AC-17-033 and AC-14-088, in which MPIC identified four factors that should be considered in these types of cases, as follows:

1. did the Appellant receive proper notice of the hearing;
2. if so, did the Appellant fail to diligently pursue the appeal;
3. if so, did the Appellant have an adequate explanation for the failure; and
4. despite the above, is there some reason why the appeal should or should not be dismissed (i.e. other considerations).

1. Notice

Counsel reviewed the relevant legislation (set out above) and noted that the Notice of Hearing was sent by mail to the address provided by the Appellant on his Notice of Appeal. Paragraph 184.1(1)(b) provides that notice of a hearing can be given to an appellant by sending the notice by regular lettermail to the address provided by him in his notice of appeal, or any other address provided by him in writing. He noted that there is no evidence that the Appellant supplied an updated physical address to the Commission at any time before the issuance of the Notice of Hearing. The Appellant attended a Case Conference after receiving a Notice for that Case Conference sent to him at the same address. As a result, counsel submitted that the Appellant received proper notice of this hearing pursuant to the MPIC Act. In fact, the Commission appears

to have gone beyond its statutory obligations and provided the Appellant with notice by email as well.

Counsel further submitted that the provision of the Notice of Hearing to the Appellant satisfies the requirement in subsection 182.1(2) that an appellant be given an opportunity to make written submissions or otherwise be heard in respect of any proposed dismissal of their appeal.

2. Failure to Diligently Pursue the Appeal

In AC-17-033, the Commission found that diligence in pursuit of an Appeal requires the “careful and persistent application or effort”. Simple pursuit of an appeal is not enough. Also in that case, the Commission noted that the onus is on the Appellant to show that he pursued his appeal diligently.

Here, the Appellant filed his Notice of Appeal on December 23, 2019. After receiving the indexed file in early September, 2020, he told the Commission in early October, 2020, that he was ready to proceed to a hearing. The Commission informed the parties in mid-October, 2020, that a Case Conference would be scheduled to discuss the status of the appeal. The Case Conference was then scheduled for January 29, 2021.

As noted above, at the Case Conference held on January 29, 2021, discussion was held regarding the permanent impairments that formed part of the appeal. The Appellant was asked to provide the Commission with a letter or email confirming the particular entitlements that he was currently seeking. Once MPIC’s Health Care Services team had an opportunity to consider any new impairments being sought, the IRO could then provide a further decision, which could be added to the Appellant’s current appeal, if necessary.

Counsel's written submission concisely set out MPIC's position regarding the Appellant's actions following the Case Conference, as follows:

The Appellant did not advance his Appeal beyond this point. In fact, immediately following the CCH, the Appellant purportedly sent the Commission an email indicating that he was "...removing himself from this situation..." and that he would "...not respond to any further request you [the Commission], MPIC could possibly have". Following the receipt of this email, the Commission asked the Appellant to confirm his position by February 26, 2021 and sent him a Notice of Withdrawal (in the event that he did not wish to proceed with his Appeal). The Commission did not receive a response from the Appellant and therefore sent him another letter on March 9, 2021 stating, among other things, that, if the Commission did not receive his Notice of Withdrawal within 3 weeks' time, the matter would be held in abeyance for 6 months. The letter also highlighted the power of the Commission to dismiss an appeal under s. 182.1(1) of the Act "... where an Appellant does not take active steps to pursue their appeal ...". Finally, the letter concludes that the Commission will schedule a FTP hearing if the Appellant fails to contact the Commission within the next 6 months. There is no evidence that the Appellant contacted the Commission within this 6 month period, or at all.

The Appellant did not carefully and persistently apply effort to advance this Appeal following the January 29, 2021 CCH. The Appellant was specifically warned that his failure to contact the Commission within 6 months of March 9, 2021 would result in the scheduling of an FTP hearing. Notwithstanding this warning, the Appellant did not respond and appears to have made good on his promise to make his January 29, 2021 email to the Commission his "last response". [footnotes omitted]

Counsel submitted that the Commission should therefore find that the Appellant has failed to diligently pursue his appeal.

3. No Adequate Reasons for the Failure

Counsel further submitted that the Appellant did not provide any adequate reasons for his failure to pursue his appeal. He did not supply any written or oral submission, and there is nothing before the Commission by way of reasonable explanation for the failure to do so. Counsel pointed out that, on the contrary, in his email of January 29, 2021, the Appellant expressly indicated that he would not pursue his appeal after that date. Counsel submitted that, in the absence of evidence, the Commission must conclude that there is no excuse for the failure of the Appellant to pursue his appeal, let alone an adequate one.

4. No Other Considerations

Counsel submitted that there are no other considerations in this case that would weigh in favour of allowing the Appellant's appeal to continue at this stage. This appeal is not ready for hearing, and the Commission requires clarification of the issues in dispute, which requires effort on the part of the Appellant that he appears to be unwilling to provide.

Counsel argued as follows in his written submission:

Subsection 182.1(1) of the Act encourages the prompt advancement of appeals to a resolution but is also designed to find and remove from the docket those appeals that are otherwise doomed to languish in perpetuity. The Commission receives numerous appeals each year and has only so many resources at its disposal. Appeals such as this ought to be dismissed in order to make room for appeals involving appellants who are genuinely interested in their outcomes. [footnote omitted]

Conclusion

Counsel submitted that the evidence shows that after the January 29, 2021, Case Conference, the Appellant did not diligently pursue his appeal. Further, he has provided no explanation for his failure to do so. The Appellant was, or ought to have been, aware of this hearing and did not attend. Counsel therefore submitted that the Commission should dismiss his appeal.

Discussion:

As indicated above, the issue which requires determination in this hearing is whether the Appellant has failed to diligently pursue his appeal, and, if so, whether the Commission should dismiss his appeal.

Service of the Notice of Hearing

The Notice of Hearing for the May 12, 2022, hearing was sent to the Appellant on March 18, 2022, by Canada Post Xpresspost and regular mail, to the address provided by him to the Commission

in his Notice of Appeal. As indicated above, the Notice of Hearing sent by Xpresspost to the Appellant was accepted and signed for on March 23, 2022. On May 3, 2022, Canada Post provided to the Commission a copy of the scanned signature of the recipient of the item, showing that the Canada Post Xpresspost was signed for by “[the Appellant]” on March 23, 2022.

The Commission finds that the Appellant was properly served with the Notice of Hearing by personal service pursuant to section 184.1 of the MPIC Act.

Opportunity to be Heard

Subsection 182.1(2) of the MPIC Act requires that the Commission must give the Appellant the opportunity to make written submissions or otherwise be heard, prior to making a decision under subsection 182.1(1) of the MPIC Act. As indicated above, the Notice of Hearing sent to the Appellant provided instructions for attendance at the teleconference hearing. The Notice further provided that at the hearing, the parties would have the opportunity to make submissions, and their submissions could be made orally or in writing. Although the Appellant was not present at the hearing, he had been given proper notice of the hearing. The Commission finds that he had been given the opportunity to make written submissions or otherwise be heard in respect of the dismissal of his appeal, within the meaning of subsection 182.1(2) of the MPIC Act. Therefore, the Commission has the jurisdiction to consider whether the Appellant failed to diligently pursue his appeal, and, if so, whether the Commission should dismiss his appeal.

Did the Appellant Fail to Diligently Pursue his Appeal

It is MPIC’s position that the Appellant has failed to diligently pursue his appeal, that he has not provided an excuse for his failure, and that the Commission should exercise its discretion to dismiss his appeal under subsection 182.1(1) of the MPIC Act.

As noted above, the onus is on the Appellant to show that he has diligently pursued his appeal and that the appeal should not be dismissed. The Appellant's last active participation in his appeal was on January 29, 2021, more than 15 months ago, when he participated by teleconference in the Case Conference to discuss the status of his appeal. As indicated, shortly after the conclusion of that Case Conference, the Appellant wrote to the Commission to advise that "I'm removing myself from this situation [...] This is my last response, and I will Not respond to any further request [...]".

The Commission then wrote several letters to the Appellant and advised him of the consequences of failing to actively pursue his appeal. However, the Appellant did not respond to the Commission's letters and attempts to contact him, or take any further steps to pursue his appeal in response to the Commission's letters.

The Appellant clearly indicated to the Commission his intention not to proceed with his present appeal. As noted above, the Appellant did not attend the present hearing, nor did he provide any written submissions, although he was provided the opportunity to do so. The Commission finds that the Appellant has failed to pursue his appeal in a careful, persistent or diligent manner. He has not provided any excuse for his failure to pursue his appeal; on the contrary, he specifically advised the Commission of his intention to cease pursuing his appeal. Since the Appellant has ceased to pursue his appeal, the Commission sees no compelling reason to proceed with the appeal.

Conclusion

Upon a consideration of the totality of the evidence and submissions, and upon a consideration of the relevant legislation, the Commission finds that the Appellant has failed to diligently pursue his appeal within the meaning of subsection 182.1(1) of the MPIC Act.

Disposition:

Based on the foregoing, the Appellant's appeal is dismissed.

Dated at Winnipeg this 31st day of May, 2022.

JACQUELINE FREEDMAN