

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-54**

PANEL: Ms Yvonne Tavares, Chairperson

APPEARANCES: The Appellant, [text deleted], was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.

HEARING DATE: December 7, 2006

ISSUE(S): Extension of time to file 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.

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 January 10, 2006.

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.

The Appellant's Notice of Appeal was filed with the Commission on October 2, 2006.

The Appellant is seeking to challenge the Internal Review decision dated January 10, 2006, on the basis that his Income Replacement Indemnity benefits should not have been terminated pursuant to Section 110(1)(d) of the MPIC Act, as he was not able to hold the determined employment as of January 12, 2006. At the hearing of this matter, the Appellant testified that he only realized that he should challenge the Internal Review decision when he received responses and feedback from prospective employers, who advised him that he didn't have sufficient education and/or experience to hold the determined employment. His last such response was received on September 13, 2006. The Appellant submits that it was only by going through the interview process that he realized that he did not have the necessary qualifications to hold the determined employment and that he should appeal the Internal Review decision. The Appellant argues that he couldn't have known any sooner that he was not suitably qualified for the determined employment and did file his appeal as soon as practicable.

Counsel for MPIC submits that the Appellant has not provided a reasonable excuse for failing to file a Notice of Appeal within the 90-day time limit set out in the MPIC Act. Counsel for MPIC maintains that the Appellant agrees with the determination of employment and the appeal has no likelihood of success. As a result, counsel for MPIC submits that the Appellant's request for an extension of time to appeal the Internal Review decision of January 10, 2006 should be denied.

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing a review decision. Generally, it will do so where it is satisfied that the Appellant has provided a reasonable excuse for the delay, considering such factors as the length of time of the delay, the reasons for the delay and whether the

delay has been prejudicial to MPIC.

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 provided a reasonable excuse for his failure to appeal the Internal Review decision to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act. The Commission finds that the Appellant has demonstrated that there is an arguable issue to be determined, that being, whether or not he has the necessary qualifications to hold the determined employment. In these circumstances, we find that it was not until the Appellant proceeded through the job search process and interviews with prospective employers that he was able to ascertain that he may not have the necessary qualifications to hold the determined employment. As a result, the Commission will extend the time limit within which the Appellant may appeal the Internal Review decision dated January 10, 2006 to the Commission. The issue under appeal shall concern whether the Appellant's Income Replacement Indemnity benefits were properly terminated pursuant to Section 110(1)(d) of the MPIC Act on the basis that the Appellant could hold the determined employment as at January 12, 2006.

Dated at Winnipeg this 3rd day of January, 2007.

YVONNE TAVARES

* **Please see attached Notice.**

Notice

Appeal to Court of Appeal on Question of Law or Jurisdiction

Appeal to Court of Appeal

187(1) The Appellant or the Corporation may appeal the decision of the Commission to The Court of Appeal.

Appeal with Leave

187(2) An appeal under Subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a Judge of The Court of Appeal.

Application for Leave to Appeal

187(3) An application for leave to appeal shall be made within 30 days after the Applicant receives a copy of the decision of the Commission, or within such further time as the Judge allows.

Commission Entitled to be Heard

187(4) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.

Order of Commission Stayed

187(5) An appeal from a decision of the Commission stays the decision pending the hearing of the appeal, unless a Judge of The Court of Appeal orders otherwise.

Powers of Court on Appeal

187(6) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the Commission; or
- (c) refer the matter back to the Commission for further consideration in accordance with any direction of the Court.

Decision Not Subject to Appeal to Court

188 Except as provided in this Part, a decision of the Corporation or the Commission is final and binding and not subject to appeal or review by a Court.