

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-04-175

PANEL: Ms Laura Diamond, Chairperson
Dr. Arnold Kapitz
Ms Susan Sookram

APPEARANCES: The Appellant, [text deleted] (deceased), was formerly represented by Ken Kaltornyk from the Claimant Adviser Office;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Anthony Lafontaine Guerra.

HEARING DATE: July 11, 2019

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 ('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, [text deleted], was in a motor vehicle accident (MVA) on December 7, 2000. An MPIC case management decision of January 7, 2003 advised that the evidence did not support a causal connection between the Appellant's injury complaints and his MVA. The Appellant filed an Application for Review of the case manager's decision on March 6, 2003. On July 13, 2004,

an Internal Review Officer for MPIC upheld the case manager's decision, concluding that the Appellant's complaints were not causally related to the MVA.

On October 7, 2004, the Appellant filed a Notice of Appeal with the Commission in regard to this Internal Review Decision. The appeal was filed on his behalf by legal counsel.

The Appellant's counsel was replaced by the Claimant Adviser Office (CAO), who was representing him in his appeal before the Commission when the Appellant passed away on January 25, 2017.

On January 26, 2017, the CAO advised the Commission that the Appellant had died and that it did not appear he had a will. Inquiries were being made as to who would be appointed to deal with the Appellant's estate.

On April 19, 2017, the CAO advised the Commission that the Appellant's homecare worker was trying to assist him to locate family members, but that he was estranged from his children and had not been in contact with family members.

On September 6, 2017, the CAO advised the Commission that he was seeking assistance from the Appellant's social worker to attempt to contact family members.

On December 11, 2017, the CAO advised the Commission that no family members had yet come forward with regard to the Appellant's estate.

The CAO also provided a copy of the Appellant's obituary notice.

A case conference was held by the Commission on May 9, 2019 at 10:30 a.m. to discuss the issue. The Appellant's CAO representative attended with the Director of the CAO. Counsel appeared for MPIC. The Commission was advised that despite numerous inquiries by the CAO, no one had stepped forward to represent the estate. The CAO advised the Commission that the Appellant's healthcare worker was assisting in attempting to locate any family members who wished to deal with the matter but had advised that the Appellant may be estranged from his children and did not have contact with any other family members.

Counsel for MPIC submitted that the best course of action was for the appeal to be dismissed for failure to diligently pursue the appeal.

On May 14, 2019, MPIC provided the Commission with a copy of the Appellant's Funeral Director's Certificate Death dated January 30, 2017. A copy is attached hereto as Appendix "A".

The Commission fixed a hearing date for July 11, 2019 at 9:30 a.m. and issued a Notice of Hearing dated May 9, 2019, indicating that the Commission would consider whether the Appellant had failed to diligently pursue his appeal and therefore whether the appeal should be dismissed.

On Saturday May 18, 2019, the Commission placed the following Notice of Public Hearing in the [Newspaper 1]:

TAKE NOTICE

IN THE MATTER OF AN APPEAL FILED UNDER THE MPIC ACT BY [TEXT DELETED] (Deceased), the Automobile Injury Compensation Commission has set a hearing for Thursday, the 11th day of July, 2019 at 9:30 a.m., at 301-428 Portage Avenue, Winnipeg, MB R3C 0E2.

DATED at Winnipeg, Manitoba, this 13th day of May, 2019.

Inquiries can be made to the Automobile Injury Compensation Appeal Commission:

301-428 Portage Avenue
Winnipeg, MB R3C 0E2
Phone: (204) 945-4155
Toll Free: 1-855-548-7443
Fax: (204) 948-2402
Email: autoinjury@gov.mb.ca

On Wednesday May 22, 2019, the Commission placed a Notice of the Hearing containing the same information in the [Newspaper 2].

The Commission staff has advised that no contact or inquiries were made to the Commission in response to these notices.

A hearing was convened on July 11, 2019 at 9:30 a.m. Counsel for MPIC appeared. The CAO representative and the Director of the CAO appeared as previous counsel, seeking to withdraw representation, in the absence of anyone representing the estate to instruct them. The CAO representative advised that he had gone through the Appellant's file and sent correspondence to the Appellant's address on file, addressed to the executor of the estate. The correspondence advised that the CAO was representing the Appellant on appeal and requesting that a representative for the estate contact their office. No response was received.

The CAO also advised that he had gone through the [text deleted] telephone book to try to find relatives of the Appellant but any phone numbers he could find were no longer in service. He had attempted to find the Appellant's children, but met with no success. The director of the CAO had

also inquired as to whether any estate or probate applications had been filed, but was advised that nothing had been filed.

Issue

The issue which requires determination is whether the Appellant and/or his estate have failed to diligently pursue his appeal, and, if so, whether the Commission should dismiss the appeal.

Decision

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

Submission for MPIC

Counsel submitted that there are 3 factors which the Commission should consider when determining whether to exercise its discretion to dismiss all or part of an appeal under section 182.1(1) of the MPIC Act. These are:

1. Whether the Appellant has in fact failed to diligently pursue his/her appeal;
2. If they have, whether the Appellant has a reasonable excuse for failing to do so;
3. Despite the answer to the above, whether there is some other reason why the appeal should/should not be struck, in whole or in part.

Counsel took the position that it would not be appropriate to consider the merits of the appeal as a factor, as doing so would defeat the purpose of this type of hearing, which was enacted under amendments made through the Red Tape Reduction and Government Efficiency Act 2018, S.M. 2018, chapter 29 (the Red Tape Act). The purpose of the amendment was to reduce or eliminate regulatory requirements or prohibitions and to streamline government operations.

Counsel referred to a decision of Worker's Compensation Appeal Tribunal of British Columbia dated August 30, 2017 (WCAT-2007-02651). In that decision, the WCAT found the Appellant's excuse of failing to attend a hearing because of car problems out of town was inadequate and dismissed the appeal on that basis.

Counsel noted that in the case at hand, the Appellant filed his appeal in October 2004, seeking to overturn a decision dated July 13, 2004. The last case management conference in the appeal was held on April 6, 2016.

The Appellant passed away on January 25, 2017 as evidenced by communication from the CAO, the certificate of the funeral director and the [Newspaper 1] obituary.

After January 25, 2017, the CAO (with the assistance of the Appellant's healthcare worker) attempted to locate a potential representative of the estate without success. It appears the Appellant may have died intestate as there was no evidence of a will. To date there is no evidence that anyone has applied to administer his estate. The evidence of the CAO was that no one contacted them seeking to continue pursuit of the appeal on behalf of the estate. Nor is there evidence of a response from anyone to the Notices of Hearing placed by the Commission in the [Newspaper 2] and the [Newspaper 1] and no one appeared at the hearing seeking to pursue the appeal on behalf of the estate.

Accordingly, counsel submitted that there was no evidence of any advancement of the appeal since the last case conference held in the matter on April 6, 2016. There is no evidence of a reasonable excuse for failing to diligently pursue the appeal, as the evidence is that the CAO could not obtain instructions from anyone on behalf of the Appellant's estate.

If the Commission decides not to dismiss the appeal, it would remain dormant, perhaps indefinitely, as the CAO has no one from whom it can obtain instructions. Considering that the documentation on the file is not ready for hearing and that the purpose of the Red Tape Act was to streamline government operations, counsel submitted that a hearing should not be conducted on the merits of the appeal. This would be unlikely to produce any practical benefit. There are no potential beneficiaries with an interest in the outcome of the appeal and minimal to no precedential value to the appeal, which involved a fact specific consideration of causation.

Counsel also noted that should a representative of the estate come forward in the future, they could provide information to MPIC and seek a fresh decision, pursuant to section 171.1 of the MPIC Act.

As a result, counsel for MPIC submitted that the Commission should dismiss the appeal in its entirety.

Discussion

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.

The panel agrees with counsel for MPIC that section 182.1 of the MPIC Act does not require a consideration of the merits of the appeal. This section was introduced pursuant to the Red Tape Act and was intended to streamline government operations. Section 182.1(1) requires that the Commission be of the opinion that the Appellant has failed to diligently pursue the appeal.

The Appellant is deceased and there is no evidence of a will or named executor. The panel has considered the information provided by the CAO regarding the lack of response to any of its inquiries. Despite this inquiry, there is no evidence that anyone has sought Letters of Administration to represent the estate.

No response or inquiries were received regarding the Notices of Hearings posted by the Commission in the [Newspaper 2] and the [Newspaper 1]. No one appeared at the hearing seeking to represent the Appellant's estate.

Accordingly, the panel has concluded that the Appellant and/or his estate have failed to diligently pursue the appeal. Pursuant to section 182.1 of the MPIC Act, the appeal shall be dismissed.

Dated at Winnipeg this 27th day of August, 2019.

LAURA DIAMOND

DR. ARNOLD KAPITZ

SUSAN SOOKRAM