

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-031**

PANEL: Ms Jacqueline Freedman, Chair
Dr. Lorna Turnbull
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], did not attend the hearing;
Manitoba Public Insurance Corporation (“MPIC”) was
represented by Mr. Matthew Maslanka.

HEARING DATE: August 21, 2019

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

RELEVANT SECTIONS: Sections 182.1 and 184.1 of The Manitoba Public Insurance
Corporation Act (“MPIC Act”)

Reasons For Decision

Background:

The Appellant, [text deleted], was the driver of a vehicle involved in a motor vehicle accident on June 10, 2000 (the “MVA”). He suffered injuries as a result of the MVA and received benefits pursuant to the Personal Injury Protection Plan (“PIPP”) provisions of the MPIC Act, including Income Replacement Indemnity (“IRI”) benefits.

On June 7, 2001, the Appellant’s case manager issued a decision which stated that based on the medical information, there was no causal relationship between his current back complaints and the

MVA. Therefore, MPIC would no longer be providing any further IRI benefits or funding for medication.

MPIC subsequently conducted a review of updated file information, and the case manager issued another decision dated June 6, 2013. That decision stated that after further review, MPIC maintained its position that the Appellant was not entitled to further IRI benefits or reimbursement costs for medications, on the basis that his back and leg symptoms were not causally related to the MVA. An Internal Review decision was issued dated November 22, 2013, which upheld the case manager's decision.

The Appellant filed an appeal of the Internal Review decision with the Commission, on February 7, 2014. A lengthy case management process then ensued in the Appellant's appeal.

On October 18, 2016, a Case Conference was held. Although the Appellant had signed to accept service of the Notice of the Case Conference, he did not attend. Several attempts were made by the Commission to contact the Appellant subsequent to that Case Conference, but they were unsuccessful. The Commission held three further Case Conferences, which the Appellant did not attend.

The Commission then wrote to the parties on March 12, 2019, 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:

The Commission's records indicate that when he filed his Notice of Appeal, the Appellant was initially represented by counsel from a local law firm. Subsequently, the Claimant Adviser Office (CAO) became the representative for the Appellant. The CAO attended at two Case Conferences as representative for the Appellant, on December 15, 2015, and February 11, 2016.

On April 4, 2016, the CAO advised the Commission that they would no longer be representing the Appellant, and that he would be retaining a lawyer. By letter dated April 5, 2016, the Commission adjourned the Case Conference that had been scheduled for April 6, 2016, and asked the Appellant to advise of his new representation by May 9, 2016. The Appellant did not provide the Commission with an update on his representation within the allotted time. The Commission contacted the Appellant on June 10, 2016, and he confirmed a new Case Conference date of August 9, 2016.

The Appellant did not attend the August 9, 2016, Case Conference in person, but he did participate by telephone. He verbally advised that he had a new address of [address #1], (the address on his Notice of Appeal is [address #2]). He also agreed to a further Case Conference date of October 18, 2016. The Commission confirmed all matters discussed at the Case Conference by letter to the

parties dated August 10, 2016. In the letter, the Appellant was asked to confirm his new address in writing, and he was provided with a change of address form, as well as a stamped, return address envelope; however, he did not complete and return the form to the Commission.

A Notice of Hearing for the October 18, 2016, Case Conference was sent to the Appellant by Canada Post Xpresspost and regular mail, to both the address on his Notice of Appeal ([address #2]), and the new address he had provided verbally ([address #1]). An acknowledgement of receipt of the Canada Post Xpresspost sent to [address #1] was signed by “[the Appellant]” on August 22, 2016.

Counsel for MPIC attended the Case Conference on October 18, 2016, but the Appellant did not. The Commission attempted to contact the Appellant by phone. The Appellant did not answer and his mailbox was full. In accordance with the Commission’s practice, after waiting 15 minutes, the Case Conference proceeded in his absence. At the Case Conference, the Commission set a further Case Conference date, for December 6, 2016.

A Notice of Hearing for the December 6, 2016, Case Conference was sent to the Appellant by Canada Post Xpresspost and regular mail, to both the address on his Notice of Appeal ([address #2]), and the new address he had recently provided verbally ([address #1]). Both of the Canada Post Xpresspost packages were returned to the Commission unclaimed. The Notices of Hearing sent to the Appellant by regular mail were not returned to the Commission.

Counsel for MPIC attended the Case Conference on December 6, 2016, but the Appellant did not. The Commission attempted to contact the Appellant by phone. The Appellant did not answer and his mailbox was full. In accordance with the Commission’s practice, after waiting 15 minutes, the

Case Conference proceeded in his absence. At the Case Conference, counsel for MPIC advised that there may be further documents on MPIC's claim file relevant to the appeal. It was determined that a further Case Conference may be required once MPIC forwarded the relevant documents to the Commission.

Subsequently, counsel for MPIC submitted to the Commission three medical reports for inclusion to the indexed file, and the Commission determined that a further Case Conference would be required. The Commission sent two of these medical reports to the Appellant by letter dated April 5, 2017, with a request that the Appellant contact the Commission to discuss his appeal. Commission staff further attempted to contact the Appellant by telephone to schedule the Case Conference date, but either his voice mail was full, or alternatively, he did not return the message that was left for him. Accordingly, the Commission peremptorily set a Case Conference for August 15, 2017.

A Notice of Hearing for the August 15, 2017, Case Conference was initially sent to the Appellant by Canada Post Xpresspost and regular mail, to the new address he had provided verbally ([address #1]). An acknowledgement of receipt of the Canada Post Xpresspost sent to [address #1] was signed by "[the Appellant]" on June 26, 2017.

Subsequently, but prior to the Case Conference, Commission staff became aware that inadvertently, only 2 of the 3 medical reports recently provided by MPIC had been forwarded to the Appellant. As well, the Notice of Hearing had not been sent to the address on the Appellant's Notice of Appeal. Accordingly, an amended Notice of Hearing for the August 15, 2017, Case Conference was sent to the Appellant by Canada Post Xpresspost and regular mail, to both the address on his Notice of Appeal ([address #2]), and the new address he had provided verbally

[address #1]). Included with the Notice of Hearing was a letter to the Appellant, including the third medical report recently provided to the Commission by MPIC. Both of the Canada Post Xpresspost packages were returned to the Commission unclaimed. The Notices of Hearing sent to the Appellant by regular mail were both returned to the Commission. Both were marked “moved/unknown”.

Counsel for MPIC attended the Case Conference on August 15, 2017, but the Appellant did not. In accordance with the Commission’s practice, the Appellant was permitted a 15 minute grace period. The Commission then attempted to contact the Appellant by phone. The Appellant did not answer and although a message was left for him, he did not return it. The Case Conference did not proceed; the Commission determined to hold this matter in abeyance.

The Commission’s records indicate that in April 2018, the Appeals Officer contacted MPIC to determine whether MPIC had alternate contact information for the Appellant. MPIC provided the following address: [address #3]. The Commission then wrote to the Appellant at that address and asked him to contact the Commission to discuss his appeal. No response was received. A Notice of Withdrawal was enclosed with that letter, but the Appellant did not complete and return the Notice of Withdrawal.

In December, 2018, the Commission determined that a further Case Conference would be required. Commission staff further attempted to contact the Appellant by telephone to schedule the Case Conference date, but all phone numbers on the Commission’s file for the Appellant were not in service at that time. Accordingly, the Commission peremptorily set a Case Conference for March 12, 2019.

A Notice of Hearing for the March 12, 2019, Case Conference was sent to the Appellant by Canada Post Xpresspost and regular mail, to the address on his Notice of Appeal ([address #2]), the new address he had provided verbally ([address #1]), as well as to the address that MPIC had provided ([address #3]). All three of the Canada Post Xpresspost packages were returned to the Commission unclaimed. The Notices of Hearing sent to the Appellant by regular mail to both of the [street] addresses were returned to the Commission. The Notice of Hearing sent to the Appellant by regular mail to [address #3] was not returned to the Commission.

Counsel for MPIC attended the Case Conference on March 12, 2019, but the Appellant did not. In accordance with the Commission's practice, after waiting 15 minutes, the Case Conference proceeded in his absence.

Following the Case Conference, on March 12, 2019, the Commission wrote to the parties, advising that the Appellant had not provided any further documentation or been in contact with the Commission. Therefore, a hearing would be scheduled 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 further attempted to contact the Appellant by telephone to schedule the Hearing date, but all phone numbers on the Commission's file for the Appellant were not in service at that time, or alternatively, were no longer a number at which he could be reached. Accordingly, the Commission preemptorily set the Hearing for August 21, 2019.

A Notice of Hearing for the August 21, 2019, Hearing was sent to the Appellant by Canada Post Xpresspost and regular mail, to the address on his Notice of Appeal ([address #2]), the new address

he had provided verbally ([address #1]), as well as to the address that MPIC had provided ([address #3]). The two Canada Post Xpresspost packages sent to both of the [street] addresses were returned to the Commission unclaimed. An acknowledgement of receipt of the Canada Post Xpresspost sent to [address #3] was signed by “[the Appellant]” on June 24, 2019. The Notices of Hearing sent to the Appellant by regular mail to both of the [street] addresses were returned to the Commission. The Notice of Hearing sent to the Appellant by regular mail to [address #3] was not returned to the Commission.

The Notice of Hearing 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.

Counsel for MPIC attended at the Commission on the hearing date, but the Appellant did not attend. In accordance with the Commission’s practice, after waiting 15 minutes, the hearing proceeded in his absence.

At the hearing, counsel for MPIC submitted two documents from the MPIC database as evidence. A screenshot of the Appellant’s current contact information was marked as Exhibit 1, and a printout of the Appellant’s dates and details of contact with MPIC and/or its agents was marked as Exhibit 2.

Relevant Legislation:

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.

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.

Submissions for MPIC:

Counsel for MPIC noted that section 182.1 of the MPIC Act empowers the Commission to dismiss an appeal when it is of the opinion that the Appellant has failed to diligently pursue it. He referred to the decision of the Commission in AC-13-143, in which the Commission stated that “section 182.1 of the MPIC Act does not require a consideration of the merits of an appeal. ... Thus, the only issue for consideration is whether the appellant has failed to diligently pursue the appeal”.

In reviewing the evidence in this case, counsel noted that the MVA occurred almost 20 years ago. The Internal Review decision was issued on November 22, 2013, and the Appellant filed his Notice of Appeal on February 7, 2014, more than five years ago. Counsel argued that it is clear that the Appellant has failed to pursue his appeal. He has not done anything to further his appeal since August 9, 2016, when he participated by telephone in a Case Conference. Although the Commission sent him a letter the following day, enclosing a change of address form and a stamped return address envelope, he did not complete the form and return it to the Commission. The Appellant failed to attend the Case Conferences on October 18, 2016, December 6, 2016 and August 15, 2017. The Appellant did not respond to the Commission’s letter of April 13, 2018, which requested that he contact the Commission, nor did he complete and return the Notice of Withdrawal enclosed with that letter.

The Appellant failed to attend the Case Conference on March 12, 2019. Although the Commission wrote to the parties following the Case Conference and advised them that a hearing would be scheduled to determine whether the Commission should dismiss the Appellant’s appeal, the Appellant has not responded to that letter, nor has he indicated that he would oppose the dismissal of his appeal.

Counsel submitted that the Appellant failed to diligently pursue his appeal. He said that diligence requires that some steps be taken, and in this case, the Appellant has taken no steps in furtherance of his appeal in the last three years. The Commission has provided the Appellant with ample opportunity to communicate his wishes, but he has failed to do so. He did not even take the step of providing his change of address in writing to the Commission, although, as can be seen from Exhibit 1, a screenshot of the Appellant's current contact information in MPIC's database, it appears that he did provide his current address to MPIC. Counsel further pointed out that at the same time as the Appellant was not responding to the Commission's attempts to contact him, and failing to attending at Case Conferences and this Hearing, he was communicating with MPIC and/or its agents with respect to other matters, as identified on Exhibit 2, which, as noted above, is a printout of the Appellant's dates and details of contact with MPIC and/or its agents.

Counsel submitted that the Appellant had failed to diligently pursue his appeal. The Commission gave him the opportunity to make submissions regarding his failure to pursue his appeal and the dismissal of his appeal, as required by the legislation, but he failed to do so. Counsel submitted this case is precisely the situation that subsection 182.1(1) of the MPIC Act was enacted to deal with, and the Appellant's appeal should be dismissed.

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

Notice of Hearing for the August 21, 2019, Hearing was sent to the Appellant by Canada Post Xpresspost and regular mail, to the address on his Notice of Appeal ([address #2]), the new address he had provided verbally ([address #1]), as well as to the address that MPIC had provided ([address #3]). As indicated above, Exhibit 1, a screenshot of the Appellant's current contact information in MPIC's database, lists the Appellant's current address provided to MPIC as [address #3]. As indicated above, the Notice of Hearing sent by Xpresspost to [address #3] was accepted and signed for at that address on June 24, 2019. On September 13, 2019, Canada Post provided to the Commission a copy of the scanned signature of the recipient of the item, showing that the Xpresspost was received "BY: [THE APPELLANT]" on June 24, 2019.

We find 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 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. We find 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 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. He has not responded to the Commission's attempts to contact him, nor has he indicated that he would oppose the dismissal of his appeal. MPIC submits that the Commission should exercise its discretion to dismiss the Appellant's appeal.

In this case, the Appellant's last participation in his appeal was on August 9, 2016, when he participated in a Case Conference by telephone. Since that date, he has taken no steps to pursue his appeal. The Commission held four further Case Conferences, to afford the Appellant the opportunity to appear and be heard, but the Appellant did not attend any of these Case Conferences. The Commission has made numerous attempts to contact the Appellant, but the Appellant did not respond to any of those attempts. As counsel pointed out, the Appellant did not even keep the Commission updated as to his current address, although it appears that he did provide current information to MPIC. Exhibit 1 lists the Appellant's current address provided to MPIC as [address #3], which is the address where the Appellant recently accepted service of the Notice of this Hearing.

After the Appellant's failure to attend the March 12, 2019 Case Conference, the present hearing was then scheduled. 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. He did not provide any explanation for his failure to appear or for his failure to respond to the Commission's attempts to contact him. On the contrary, as indicated, at the same time as the Appellant was not responding to the Commission's attempts to contact him, and failing to attending at Case Conferences and this Hearing, he was communicating with MPIC and/or its agents with respect to other matters. For example, service of Notice of this Hearing was accepted by the Appellant on

June 24, 2019, and this Hearing was held on August 21, 2019. Exhibit 2 indicates that on July 16, 2019, the Appellant contacted an agent of MPIC. The record for that date states: “client lost his DL requested for replacement”. It is apparent that the Appellant was clearly able to communicate with MPIC, but chose not to communicate with the Commission during the same period. We see 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.

Disposition:

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

Dated at Winnipeg this 26th day of September, 2019.

JACQUELINE FREEDMAN

SANDRA OAKLEY

DR. LORNA TURNBULL