

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-17-033**

PANEL: Laura Diamond, Chair

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

HEARING DATE: May 26, 2021

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”)

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 injured in a motor vehicle accident (MVA) on June 23, 2013. As a result, he was awarded Permanent Impairment (PI) benefits by MPIC in a case management decision dated October 11, 2016. He sought internal review of this decision, and following investigation, an Internal Review Officer (IRO) for MPIC provided an Internal Review Decision (IRD) dated March 10, 2017, which awarded an additional 2% PI award for restriction of range of motion for each ankle.

The Appellant was not satisfied with this decision and filed a Notice of Appeal (NOA) with the Commission on March 20, 2017, indicating that he was represented by the Claimant Adviser Office (CAO). The CAO withdrew its representation on February 20, 2019 and provided an address to contact the Appellant directly.

The file was returned from mediation on May 22, 2019. Commission staff then compiled the relevant documents into an indexed file (Index). Copies were provided to the Appellant and MPIC on August 21, 2019. The parties were asked to review the documents in the Index and advise the Commission by October 4, 2019, whether the issues were properly identified, and whether there were any further documents they wished to add.

When the Appellant did not provide a response, Commission staff attempted to contact the Appellant by telephone on October 10, 2019 and October 15, 2019, leaving messages. The Appellant did not reply.

On October 17, 2019, the Commission wrote to the Appellant advising that as the Appellant had not replied, the Commission would assume that he did not wish to file further documentary evidence. A Ready to Set Hearing form was provided, which the Appellant was asked to complete and return by November 7, 2019. The Appellant did not provide a response.

On November 13, 2019, Commission staff contacted the Appellant by telephone to discuss his appeal, but he advised that he had not yet completed his review of the Index. The Commission requested him to complete his review and advised that he would be contacted again in 1 month. On December 13, 2019, Commission staff attempted to contact the Appellant by telephone and left a message. He did not reply.

On January 21, 2020, the Commission wrote to the Appellant advising that it would like to schedule a case conference to discuss the status of the appeal. This was followed up with another call to the Appellant on February 25, 2020. A message was left asking him to call the Commission to schedule the case conference. He did not reply.

A similar message left on March 2, 2020 did not receive a reply, so the Commission wrote to the Appellant on March 3, 2020 requesting additional contact information. He did not reply.

On April 22, 2020, the Commission wrote to the Appellant, detailing the efforts which the Commission had made to move his appeal forward, and providing a Notice of Withdrawal (NOW) form. He was asked to complete and return the form within 3 weeks if he did not wish to proceed with his appeal. If the form was not received, then the matter would be held in abeyance for 6 months. The Appellant was advised that if he did not contact the Commission within the next 6 months, the Commission advised that it may take steps to schedule the matter for hearing to determine whether the Appellant had failed to diligently pursue his appeal, and the appeal should be dismissed pursuant to s. 182.1(1) of the MPIC Act. He did not reply.

The Commission wrote to the Appellant again on November 19, 2020 advising that since the Appellant had not taken steps to pursue his appeal or provide any explanation for failure to do so, the Commission would schedule a hearing to determine whether he had failed to diligently pursue his appeal and if so, whether the Commission would dismiss the appeal. He did not reply.

The Hearing

The Commission scheduled the matter for hearing on May 26, 2021.

The Appellant was provided with a Notice of Hearing (NOH) dated February 22, 2021.

The NOH was sent to the Appellant by regular mail to his last known address, which his former representative (CAO) had provided to the Commission on February 20, 2019, when he withdrew representation. It was also delivered via Canada Post Xpresspost with a scanned delivery date and signature of the Appellant dated March 1, 2021.

The hearing convened on May 26, 2021 at 9:30 a.m.

Counsel for MPIC appeared via video-conference.

The Appellant did not attend.

The Commission provided a grace period of 15 minutes and re-convened the hearing at 9:45 a.m.

The Appellant failed to appear.

The hearing continued on without him, and the Commission heard submissions from counsel for MPIC.

Issue

The issue before the Commission is whether the Appellant failed to diligently pursue his appeal and if so, whether the Commission will dismiss the appeal.

Determination

After considering the documents on the Appellant's Index and the submissions of counsel for MPIC, the Commission has determined that the Appellant has failed to diligently pursue his appeal and that the appeal should be dismissed.

Submission for MPIC

Counsel for MPIC provided and referred to several past decisions of the Commission on the issue of failure to pursue an appeal, including *AC-14-046*; *AC-04-175*; *AC-14-115*; and *AC-14-179*.

Based upon these decisions, he submitted that the Commission should consider the following:

- 1) Did the appellant receive proper notice of the hearing?
- 2) If so, did the appellant fail to pursue and/or diligently pursue their appeal?
- 3) If so, did the appellant provide an adequate explanation for their failure?
- 4) Despite the above, is there some reason why the appeal should or should not be dismissed, in whole or in part?

Counsel submitted that the Commission sent notice of the hearing to the proper address and complied with the requirement under s. 184.1(1)(b) of the MPIC Act to provide him with notice. As a result, the Commission should conclude that the Appellant received proper notice of the hearing and may continue to consider the remaining issues, notwithstanding the absence of the Appellant from the hearing.

Counsel also submitted that the background of events described above showed the efforts which Commission staff has made to contact the Appellant and move his appeal forward. Yet in spite of these multiple efforts over a 2 year period, the Appellant had not responded to any of the

fundamental questions asked of him by the Commission. He did not answer letters or telephone calls, even though he was warned by the Commission of the possibility that if he did not respond, his appeal may be dismissed for a failure to diligently pursue it.

Counsel emphasized that a simple pursuit of an appeal is not sufficient and that the pursuit must also be diligent. According to the Commission in *AC-17-179*, this requires “careful and persistent application or effort”. There is no evidence here, he submitted, to support a careful and persistent application or effort. The available evidence supports a complete lack of attention and interest by the Appellant in this appeal. He did not confirm the issues or documents, provide further documentation in support, attend the hearing or provide submissions.

Nor did the Appellant provide any explanation for such failure. No written or oral submissions were provided and there is nothing in the evidence before the Commission that may suggest the existence of a reasonable explanation.

Counsel for MPIC was also not aware of any other considerations that would weigh in favour of allowing the appeal to proceed. He noted the absence of any precedential value in a PI case, which is quite fact specific.

Counsel submitted that the purpose of s. 182.1(1) of the Act is to encourage the timely advancement of appeals to a resolution and to identify and remove from the docket those appeals that are otherwise doomed to languish, making room for other appeals involving appellants who are genuinely interested in their outcomes.

Accordingly he submitted that the Commission should find that the Appellant did not diligently pursue his appeal, has no explanation for his failure to do so, was aware (or ought to have been aware) of the hearing, and failed to attend. Therefore, the Commission should dismiss the appeal in its entirety.

Discussion

The MPIC Act Sections 182.1 and 184.1 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.

How notices and orders may be given to appellant

184.1(1) Under sections 182 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

(b) by sending the notice, decision or reasons by regular letter mail 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.

The Appellant was provided with notice of this hearing at the address provided by his counsel and signed the scanned delivery notice for the NOH which was provided by Canada Post Xpresspost.

The Commission agrees with counsel for MPIC that the Appellant was properly notified of this hearing and failed to attend or submit any evidence or arguments to support the continuation of the appeal.

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 was provided with an opportunity to be heard by the Commission but failed to attend the hearing or provide a written submission in regard to the question of whether he failed to diligently pursue his appeal.

A review of the history and documentation in the appeal file shows that the Appellant, after filing his NOA and participating in mediation, has done nothing to advance or pursue his appeal.

He has not answered queries from the Commission regarding the framing of the issue under appeal, or the adequacy of the documentation in the Index. He failed to file any further evidence or to advise of any intention to do so. He has not responded to numerous letters or telephone messages from Commission staff, or to written warnings that failure to participate may result in this consideration of whether he has failed to pursue his appeal.

He failed to attend this hearing or provide any comments or submission in support of his appeal.

I agree with counsel for MPIC that prior decisions of the Commission have established that there is an onus on the Appellant under s. 182.1 of the MPIC Act to diligently pursue his appeal by

careful and persistent application or effort. I also agree that the actions of the Appellant described above show that he has clearly failed to pursue his appeal in a careful, persistent or diligent manner.

Conclusion

Therefore, upon a consideration of the totality of the evidence and submissions, and upon consideration of the relevant legislation, the Commission finds that the Appellant has failed to diligently pursue his appeal.

Disposition

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

Dated at Winnipeg this 14th day of July, 2021.

LAURA DIAMOND