

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-132

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: April 28, 2010

ISSUE(S): Whether the Appellant can reinstate his appeal.

RELEVANT SECTIONS: Sections 174(1) and 182(3) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Decision

The Appellant, [text deleted], is seeking to reinstate his appeal from the decision of the Internal Review Officer dated May 5, 2004.

The Appellant's original Notice of Appeal was filed with the Commission on August 5, 2004. On December 18, 2009, the Commission received a Notice of Withdrawal from the Claimant Adviser Office on behalf of the Appellant confirming that the Appellant was withdrawing his appeal. On December 24, 2009, the Claimant Adviser Officer contacted the Commission to advise that the Appellant wanted to rescind his Notice of Withdrawal and proceed with his appeal of the Internal Review Decision dated May 5, 2004.

MPIC objected to the Commission allowing the Appellant to rescind his Notice of Withdrawal and reinstate his appeal.

A hearing was convened on the issue of whether the Appellant could rescind his Notice of Withdrawal and reinstate his appeal on April 28, 2010. The Appellant did not attend the hearing. Counsel for MPIC argued that when a Notice of Withdrawal is filed, the Commission no longer has jurisdiction over the matter. In support of this position, counsel for MPIC cited *Winnipeg (City) et al. v. Board of Revision (Winnipeg) and Lakeview-National Hotels Inc.* 88 Man. R.(2d) 130. In that case, two taxpayers applied to the Winnipeg Board of Revision for revision of their property tax assessments. Shortly before the hearing date, the taxpayers withdrew their application. Later, the taxpayers advised the Board that the withdrawals were the result of a misunderstanding. They requested a new hearing date and the Board complied with the request. The City of Winnipeg then applied for an order declaring that the Board had no jurisdiction to proceed and prohibiting the Board from proceeding. The Manitoba Court of Appeal found that the taxpayers' withdrawal left the Board of Revision with no application to hear and therefore no jurisdiction to proceed. The Court of Appeal further found that the appeal process is at an end unless the application can be reactivated within the statutory time period.

Counsel for MPIC also submits that, absent any evidence of mistake, duress, or fraud, then an Appellant should not be able to rescind a Notice of Withdrawal. Counsel for MPIC argues that in this case, no reasonable explanation has been provided by the Appellant for rescinding his Notice of Withdrawal and reinstating with his appeal. Counsel for MPIC contends that the Commission and MPIC require certainty and reliability in how proceedings are handled. MPIC has to be able to rely on a Notice of Withdrawal and know that will be the end of a proceeding. Otherwise, counsel for MPIC argues that an

Appellant could simply change their mind and come back to the Commission to reinstate their appeal, thereby creating uncertainty in the process.

Discussion:

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.

Commission to determine its practice and procedure

[182\(3\)](#) The commission shall determine its own practice and procedure and shall give full opportunity to the appellant and the corporation to present evidence and make submissions.

The withdrawal by the Appellant of his appeal left the Commission without any jurisdiction to adjudicate the matter. The request by the Appellant to reinstate his appeal has re-established the jurisdiction of the Commission to consider his request and determine the procedure to be followed in this instance. As noted by the Court of Appeal in the *Lakeview* decision, when legislation is silent on the effect of a withdrawal (as is the MPIC Act), an Appellant can always re-file an appeal, so long as he or she is still within the time allowed to file an appeal. (In other words, the previous withdrawal is not binding, and what essentially amounts to a new appeal can always be filed within the legislated time allowed).

Section 174(1) of the MPIC Act creates a two-pronged appeal limitation. First, an appellant is given a 90-day period to file an appeal as of right. Second, after that time period has expired, an appellant can always petition the Commission to ask for an extension of time to file an appeal. In fact, Section 174(1) of the MPIC Act states that the only limit on the Commission's power to extend the time to appeal is that the extension is to be "within such further time as the Commission may allow". This is a very wide

discretion. Generally, in exercising that discretion, the Commission must be satisfied that there is a good reason to do so.

Upon a consideration of the totality of evidence before it, and upon a consideration of the relevant factors surrounding the Appellant's request to reinstate his appeal, the Commission finds that the Appellant has not provided a reasonable basis upon which the Commission should exercise its discretion to extend the time to file the appeal. The Commission notes that, once an appeal has been withdrawn or abandoned, it should not be reopened, except in exceptional circumstances. The Appellant did not attend the hearing of this matter and submitted no evidence to the Commission in order to establish any compelling reason why the appeal should be reinstated. As a result, the Commission will not permit the Appellant to reinstate his appeal of the Internal Review Decision dated May 5, 2004.

Dated at Winnipeg this 17th day of May, 2010.

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.