

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-18-110**

- PANEL:** Pamela Reilly, Chairperson
- APPEARANCES:** The Appellant, [text deleted], did not attend;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Daniel Reimer.
- HEARING DATE:** April 21, 2021
- ISSUE:** Whether the Appellant has failed to diligently pursue  
his appeal.
- RELEVANT SECTIONS:** Section 182.1(1) and 182.1(2) of The Manitoba Public  
Insurance Corporation Act (the 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 facts:**

The Appellant suffered a C6/C7 fracture as a result of a June 20, 2004 motor vehicle accident (MVA), which resulted in quadriplegia.

In 2018, the Appellant requested that MPIC provide him with life insurance for the benefit of his family, and for which he no longer qualified through private insurance. MPIC denied this request which was upheld by an Internal Review Decision ("IRD") dated June 28, 2018. The matter proceeded through mediation before arriving at the Commission on March 7, 2019.

On March 13, 2019, the Commission emailed to the parties and sent a letter to the Appellant advising that a Case Conference would be set. The Commission then attempted to contact the Appellant to offer the scheduling date of June 25, 2019. The Appellant did not respond.

On May 16, 2019, the Commission spoke with the Appellant by telephone. The Appellant advised that he was in [text deleted] and wished time to review his information before scheduling a case conference.

On May 22, 2019, the Commission again contacted the Appellant by telephone who requested a call back because he was driving. The Appellant reiterated he was unavailable for June 25, 2019 because he was in [text deleted] and not returning to Manitoba until the third week in August.

On June 10, 2019, the Commission sent the Appellant an email proposing a case conference date in July at which he could participate by telephone (“teleconference”), and requested he respond by June 12, 2019. The Appellant did not respond.

On June 13, 2019, the Commission sent an email to the Appellant enquiring as to his availability in July to attend a teleconference. The Appellant responded by email that he would be away until the end of August.

On June 18, 2019, the Commission sent a letter to the Appellant by both regular and email outlining the prior efforts made to schedule a teleconference, and offered the specific dates of July 23 or 24, 2019. The letter notified the Appellant that if the Commission did not receive his response, the teleconference would be set for July 24, 2019. The Commission further advised that it would contact him by telephone at the scheduled teleconference time, which would proceed irrespective of whether or not he answered his phone. The Appellant did not respond.

A Notice of Case Conference dated June 18, 2019 was sent to the Appellant via regular mail, Xpresspost, and as an email attachment. The Notice of Case Conference set out the date and time for attending the July 24, 2019 teleconference and notified the

Appellant that failure to attend may result in the Commission setting a date for a hearing of the issue.

On July 24, 2019, the Appellant participated in the teleconference at which time the parties discussed, among other things, the issue, procedural matters and the Appellant's right to free representation through the Claimant Advisor Office ("CAO"), including the CAO contact information. The parties agreed to the next Case Conference date of October 3, 2019. On August 20, 2019, the Commission provided the Appellant with his copy of the indexed file.

On October 1, 2019, the Appellant contacted the Commission and requested contact information for the CAO. He then sent an email requesting an adjournment of the October 3<sup>rd</sup> case conference in order to obtain representation.

On October 2, 2019, the Commission's letter to the parties granted the adjournment and set a deadline of October 31, 2019 by which the Appellant should advise the name of his representative. The letter noted that the Appellant was provided with CAO information on July 24<sup>th</sup>, and that if a representative was unavailable, the Appellant should attend the next scheduled case conference, which the Commission proposed be set for November 20, 2019. The Appellant did not respond.

On October 4, 2019, the Commission's email to the Appellant requested he confirm his participation in the November 20, 2019 case conference, to which the Appellant did not respond.

On October 7, 2019, the Commission spoke with the Appellant by telephone at which time he confirmed receipt of the Commission's emails. The Appellant agreed to schedule a case conference for November 20, 2019 and advised he would not attend should he retain a representative. The Commission's follow up letter confirmed the November 20<sup>th</sup> case conference date. The letter also reminded the Appellant of his obligation to advise the Commission of the name of any representative and that if he did not retain a representative, he must attend the November 20<sup>th</sup> case conference.

On October 21, 2019, the CAO notified the Commission it had been retained by the Appellant. On November 20, 2019, the CAO representative attended the case conference but advised that despite several attempts he had not yet been in contact with the Appellant nor received instructions. The parties discussed basic procedural matters. A further case conference date was set for December 17, 2019.

At the December 17, 2019 case conference, the parties discussed further refinements to the issue. The parties discussed the applicable legislation and potential witnesses, among other matters. A further case conference date was set for March 10, 2020 at which time a list of seven outstanding substantive matters must be considered and resolved before the matter could proceed to hearing.

On February 25, 2020, the CAO requested an adjournment of the March 10<sup>th</sup> case conference on the basis that the Appellant had another MPIC matter pending review which could potentially be appealed, proceed to mediation, and then come before the Commission. The CAO also advised that the Appellant was out of the country until May 2020. The Commission's February 27, 2020 response reviewed the history of proceedings, the outstanding substantive matters, and the CAO's ability to communicate with the Appellant notwithstanding his location outside the country. Therefore, the March 10<sup>th</sup> case conference should be utilized to move this matter forward, irrespective of other MPIC matters, and the Commission denied the request for an adjournment.

At the March 10, 2020, case conference, the CAO advised that despite repeated voice mail messages to the Appellant, the CAO had been unable to obtain instructions on any of the substantive matters outstanding since the last case conference. In fact, since being retained, the CAO had only spoken directly with the Appellant, once. A further case conference was scheduled for July 7, 2020.

On April 30, 2020, the CAO advised the Commission that the Appellant had not responded to telephone calls or emails. On May 20, 2020, the CAO advised the Commission that it no longer represented the Appellant and provided the Appellant's contact information. This was the same contact information by which the Commission had previously communicated with the Appellant.

On May 28, 2020, the Commission's letter to the Appellant by both regular and email noted the CAO withdrawal from representation, and provided the Appellant with a Notice of Case Conference set for July 7, 2020 at which the Appellant may attend via teleconference. The Commission requested that the Appellant confirm receipt of the letter and Notice, to which the Appellant did not reply.

On June 30, 2020, the Commission's follow up letter delivered to the Appellant via email, repeated the July 7, 2020 case conference date, provided teleconference instructions, and notified him that the case conference would proceed irrespective of his attendance. The Commission requested his immediate response to confirm his availability to attend, to which the Appellant did not respond.

On July 7, 2020, the case conference proceeded with the Deputy Chief Commissioner and MPIC counsel waiting on the line for 20 minutes. The Appellant did not attend. On July 10, 2020 the Commission's letter to the parties, delivered via regular post and email, detailed the efforts by the Commission to move the Appellant's matter forward. The Commission enclosed a Notice of Withdrawal form and requested the Appellant return the signed form within three weeks, failing which, his appeal would be held in abeyance for a further three months.

The Commission also informed the Appellant of MPIC Act section 182.1(1) that allowed the Commission to dismiss his appeal if the Commission determined the Appellant had failed to diligently pursue his appeal. To avoid this process, the Appellant must contact the Commission to explain why he has not pursued his appeal.

On August 12, 2020, the Commission's letter notified the parties that it had not received the signed Notice of Withdrawal, nor the Appellant's explanation for the delay. The appeal would be held in abeyance for a further three months and, failing a response from the Appellant, a hearing would be set to consider section 182.1 and whether the Commission should dismiss the appeal.

On December 10, 2020, the Commission's letter, delivered to the parties via regular post and email, notified that a hearing would be scheduled to consider dismissal of the

Appellant's appeal. On February 22, 2021, a Notice of Hearing was delivered to the Appellant advising that the Commission had set April 21, 2021 to consider whether or not the appeal should be dismissed for the Appellant's failure to diligently pursue. Canada Post confirmed delivery of this Notice of Hearing on March 1, 2020.

On April 20, 2021, the Commission sent an email reminder to both parties of the April 21, 2021 hearing date. The Commission followed up with a voice mail message to the Appellant. The hearing proceeded on April 21, 2021. The Appellant did not attend the hearing, nor did he respond to the Commission's letters, emails or telephone messages.

**Issue:**

Has the Appellant failed to diligently pursue his appeal without reasonable explanation?

**Decision:**

The Commission finds that the Appellant has failed to diligently pursue his appeal. The appeal is dismissed pursuant to MPIC Act s. 182.1.

**Legislation:**

The applicable sections of the MPIC Act are 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.

**MPIC submissions:**

MPIC counsel referred to the Commission's decision AC-14-115 which established that a two step process shall be applied when considering section 182.1. First, the Commission must consider whether there has been a delay (i.e. a failure) in pursuing the appeal, and second, has the Appellant provided an adequate explanation for the failure to pursue.

MPIC counsel reviewed the history of delays and the Appellant's lack of response. MPIC counsel submitted that the evidence established the Appellant's failure to pursue his appeal. On the second part of the test, MPIC counsel submitted that the Appellant failed to provide any explanation for his failure to pursue. Therefore, the second part of the test is also met and, as such, the appeal should be dismissed.

**Discussion:**

The Commission agrees that s. 182.1 requires a two-step process. Section 182.1(1) allows dismissal if the Appellant fails to "diligently pursue" his appeal. Section 182.1(2) mandates the opportunity to be heard in respect of that dismissal. "Diligence" means that the Appellant must carry out his appeal with care and perseverance.

The Appellant's home address, email address and telephone number are the same as those written in his Notice of Appeal. There is no evidence that the emails and letters are not being delivered. Canada Post confirmed delivery of the April 21, 2021 Notice of Hearing. The Appellant's phone is not disconnected and voice mail messages have been recorded.

The evidence shows that, on numerous occasions, the Appellant has not taken care to respond to the Commission's or the CAO's requests for instructions. This matter is no further ahead after two years. Numerous substantive matters remain outstanding since the beginning of the appeal. The Commission finds, on a balance of probabilities, that the Appellant has not pursued his appeal with care and perseverance. The first step for s.182.1 is established.

The Appellant had the opportunity to be heard at the hearing. He failed to attend. The Appellant has not taken advantage of numerous opportunities to submit in writing why his appeal should not be dismissed. He has provided no explanation. Therefore, the Commission finds on a balance of probabilities that the second step of the test is met.

**Disposition:**

The Appellant has failed to diligently pursue his appeal pursuant to s.182.1 and therefore his appeal of the June 29, 2018 IRD is dismissed.

Dated at Winnipeg this 6<sup>th</sup> day of May, 2021.

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**PAMELA REILLY**