

## **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-19-010**

**PANEL:** Pamela Reilly, Chairperson

**APPEARANCES:** The Appellant, [text deleted], represented himself (but did not appear);  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Steve Scarfone.

**HEARING DATE:** December 14, 2021

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

**RELEVANT SECTIONS:** Sections 182.1(1) and 184.1 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:**

The Appellant was injured in a motor vehicle accident (MVA) on November 6, 2017. He received Income Replacement Indemnity (IRI) benefits. On April 9, 2018, a case management decision (CMD) terminated the IRI based upon the Appellant's completion of his work hardening, rehabilitation program. The Appellant filed an Application for Review of the CMD, which resulted in a January 9, 2018 Internal Review Decision (IRD) that upheld the CMD.

On January 3, 2019, the Appellant contacted the Commission and advised that he knew his IRD was forthcoming and despite not yet receiving a copy, he wished to appeal. The Commission provided the Appellant with a Notice of Appeal (NOA), which the Appellant signed January 3, 2019 and returned to the Commission on January 4, 2019. The NOA requested mediation. On or about August 15, 2019 the Mediation Office returned the file to the Commission to process the appeal. The Commission delivered the Indexed File to the Appellant's address by courier in October 2019. The Indexed File is compiled by the Commission Appeals Officers to contain all documents relevant to the issue(s). The courier returned the Indexed File the same day, as unclaimed.

The Commission sent emails to the Appellant dated November 7<sup>th</sup> and 19<sup>th</sup>, telephoned on December 12, 2019 and mailed a letter on January 2, 2020 requesting a response by January 17, 2020. The Appellant returned the call on January 16, 2020. He provided a new phone number and confirmed the address which the Commission had on file. The Commission also provided the Appellant with the contact phone number for the Claimant Advisor's Office (CAO) as he stated that he wanted assistance.

On February 21, 2020, the Appellant advised the Commission that he was still reviewing the Indexed File and requested the Commission follow up with him on February 26, 2020. The Commission left voice mail messages for the Appellant on February 26<sup>th</sup> and March 18<sup>th</sup>, with no response from the Appellant.

The Commission made the following further attempts to contact the Appellant:

- April 1, 2020 the Commission sent a letter to the Appellant requesting a response by April 24<sup>th</sup>; but received no response;
- May 7, 2020 the Commission sent an email to the Appellant requesting a response by May 28<sup>th</sup>, but received no response;
- May 27, 2020 the Commission left a voice message for the Appellant requesting a response. The Appellant left a return voice message stating that he had questions and would call back. No call back was received;
- June 30, 2020 the Commission left a voice message, but received no call back;

- July 22, 2020 the Commission sent a letter to the Appellant requesting a response by August 7<sup>th</sup>, but received no response;
- August 28, 2020 the Commission sent a letter to the Appellant which enclosed a Notice of Withdrawal (NOW). The letter also warned that if the Appellant did not respond within 6 months, his matter would be scheduled for a hearing to determine if he had failed to diligently pursue his appeal pursuant to s. 182.1(1) of the MPIC Act, which could result in dismissal of his claim;
- March 11, 2021 the Commission sent a letter to the Appellant advising that his appeal would be scheduled for a Failure to Pursue (FTP) Hearing;
- August 11, 2021 the Commission used regular mail and Xpresspost to deliver the Notice of Hearing (NOH) to the Appellant, which scheduled the FTP hearing for December 14, 2021. The regular mail was not returned. The Xpresspost delivery was returned to the Commission as unclaimed by the Appellant;
- November 18, 2021 the Commission Secretary spoke with the Appellant on the telephone. The Commission Secretary confirmed that his correct address was on file, confirmed that he was aware of the FTP date, and explained the nature of a FTP hearing. The Appellant advised he did not have video conferencing capability to attend on December 14, 2021. The Appellant confirmed his telephone number and ability to attend the FTP hearing by teleconference;
- November 18, 2021 the Commission sent the Appellant a second NOH for December 14, 2021, which included instructions for attendance by teleconference. The NOH was delivered by Xpresspost and regular mail. The post office confirmed delivery of the Xpresspost on November 22, 2021.

The FTP hearing convened at the scheduled date and time of December 14, 2021 at 9:30 a.m. The Appellant did not come on the line. After waiting approximately 15 minutes, the Commission proceeded with submissions from MPIC. Upon the completion of MPIC submissions, the Commission again enquired if the Appellant was on the line, and received no response. The hearing concluded at 10:00 a.m. Since the hearing, the Appellant has not contacted the Commission.

**Issue:**

Whether the Appellant failed to diligently pursue his appeal.

**Decision:**

The Commission finds that the Appellant has failed to diligently pursue his appeal and therefore dismisses his appeal in its entirety.

**Legislation:**

The applicable sections of the MPIC Act are s. 182.1 and s.184.1, 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, 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.

**MPIC submissions:**

MPIC Counsel provided and referred to the prior AICAC decision in AC-17-033, which sets out four factors the Commission has previously considered under s.182.1. These factors are:

- 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 went through each of the above factors. First, Counsel reviewed the historical facts as set out above that describe the efforts made by the Commission to contact the Appellant about his appeal. Counsel noted that the Appellant confirmed that his address had not changed and he was specifically made aware of the FTP hearing date during the November 18, 2021 telephone conversation, which was then followed up with written notice by both regular and Xpresspost. These were not returned. Therefore, the Appellant received proper notice, and factor one is satisfied.

On the second factor, MPIC Counsel submitted that the Appellant did not diligently pursue his appeal. In fairness, Counsel noted that the Appellant requested mediation in his NOA and therefore the Commission's focus should begin after August 2019 when Mediation returned the file to the Commission. However, even starting at this later date, the Appellant had almost 2 ½ years to pursue his appeal and in that time he essentially did nothing. Of note is that in November 2019 the Appellant failed to claim the Indexed File the Commission prepared for his appeal.

Counsel pointed out that in January 2020 the Appellant contacted the Commission and, in response to Appellant's comment about assistance, the Commission provided the Claimant Advisor Office (CAO) contact information. Yet, the Appellant apparently did nothing further to move his appeal forward.

Counsel submitted that the Commission's March 2021 letter stipulated a six month warning period. In fact, given the scheduled date of December 14, 2021, the Appellant received nine months grace period in which he failed to provide an adequate response. Therefore, the evidence shows that the Appellant has failed to diligently pursue his appeal, and the second factor is satisfied.

With respect to the third factor, Counsel submitted that the onus is on the Appellant to provide an adequate explanation. The FTP hearing specifically provides the Appellant with this opportunity, which he failed to attend. Counsel noted that although the Appellant commented in January 2020 that he was still in the process of reviewing his Indexed File, he has provided no further explanation in almost two years as to why he has not pursued his appeal. As such, the Appellant has failed to provide an adequate, or any explanation. Therefore, the third factor is satisfied.

Finally, in considering the fourth factor as to whether there is some reason why the appeal should (or should not) be dismissed, Counsel submitted that it is helpful to consider the merits of the appeal. In this case, the Appellant appealed the termination of his IRI benefits. However, the IRD stated that at discharge from his rehabilitation program, the Appellant was at a “very heavy strength demand capacity” and cleared to return to his pre-accident employment. Counsel reiterated that the onus is on the Appellant to show why the appeal should not be dismissed, and he has failed to do so.

MPIC Counsel submitted that in consideration of the four factors, the Commission should conclude that the Appellant has failed to diligently pursue his appeal, and therefore dismiss his appeal.

**Discussion:**

The onus is on the Appellant to submit, either in writing or verbally, why the Commission should not dismiss his appeal for failure to diligently pursue.

In reviewing the documents and the facts as set out above, and in hearing the thorough submissions by MPIC Counsel, the Commission first finds that the Appellant received verbal notice of the hearing on November 18, 2021 and written notice of the hearing on November 22, 2021 in accordance with s.184.1(1). He therefore received proper notice of the hearing.

Second, the Commission finds that over the course of approximately 23 months, the Appellant has failed to respond to numerous voice messages, emails and letters,

despite being warned in August 2020 that his appeal was in jeopardy of being dismissed. Essentially, he did nothing to move it forward once mediation had ended in August 2019 beyond confirming that he received the Indexed File. He did not respond to Commission requests that he confirm his satisfaction with the Index; whether he wished to provide additional evidence; or, whether he wanted to pursue the appeal. As was stated in AC-17-033, the onus requires careful and persistent application or effort by the Appellant to pursue his appeal. That is not the case here and therefore the Commission finds that the Appellant failed to diligently pursue his appeal.

Thirdly, the Appellant provided no explanation for his failure to pursue. He did not attend the hearing to take advantage of the opportunity to explain, despite the Commission formatting the hearing to accommodate the Appellant's attendance by teleconference. The Commission therefore finds that he has not provided an adequate, or any, explanation for his failure to pursue his appeal.

Finally, there is no evidence to dissuade the Commission from dismissing the entire appeal. The Appellant provided no explanation or reason for appealing the IRD when he submitted his written Notice of Appeal. The IRD clearly sets out the evidence, standard of proof and rationale for upholding the CMD. Therefore, the Commission finds there is no impediment to dismissing the entire appeal.

**Disposition:**

All of the factors for consideration under s. 182.1 have been met and the Commission dismisses this appeal in its entirety.

Dated at Winnipeg this 20<sup>th</sup> day of December, 2021.

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**PAMELA REILLY**