Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [APPELLANT]
AICAC File No.: AC-18-068

PANEL:	**Laura Diamond, Chair** **Leona Barrett** **Nikki Kagan**
APPEARANCES:	**The Appellant, [Text Deleted], was represented by [text deleted];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Andrew Robertson.**
HEARING DATE:	**June 22, 2022 and June 23, 2022**
ISSUE(S):	**Whether the Appellant filed an appeal within the timelines under the Act;** **If not, whether the Commission should grant an extension for the Appellant to file an appeal.**
RELEVANT SECTIONS:	**Sections 174 (1) (2) and 183 (2) (7) and 184.1 (2) of The Manitoba Public Insurance Corporation Act ('the Act').**

Reasons For Decision

Background

The Appellant was involved in a motor vehicle accident (MVA) on September 28, 2004. On March 4, 2005, he reported to MPIC that he had been injured in the MVA. He filed an application for payment from MPIC for personal injuries which he listed. He claimed compensation for income lost through working time missed at his job as a [text deleted].

The Appellant's MPIC case manager investigated and reviewed his file. On March 24, 2006, the case manager decided that, based upon the medical information on file, the Appellant's reported

symptoms were not related to the MVA and did not impair his function such that he was unable to perform his work duties. Therefore, he was not entitled to receive Income Replacement Indemnity (IRI) or other benefits under the Personal Injury Protection Plan (PIPP).

The Appellant sought internal review of this decision with MPIC. An Internal Review Decision (IRD) was issued on November 15, 2006, upholding the case manager's decision. That decision included information regarding the Appellant's right to appeal the decision to this Commission within ninety (90) days.

It is from this decision that the Appellant has appealed.

Appeal

On June 12, 2018, the Appellant filed a Notice of Appeal (NOA) form with the Commission. It was not filed within the time limits for appeal set out in the Act. It is the Commission's practice in such cases to request that reasons for the late filing be submitted for review.

The NOA referred to previous efforts he had made to appeal the IRD in 2006. The Appellant took the position that he had contacted the Commission by email in 2006, and investigation by the Commission found correspondence between him and the Commission at that time.

The Appellant took the position that this contact met the requirement for timely appeal under the Act.

In the alternative, he asked that the Commission exercise its discretion under the Act to relieve against time limits and grant an extension for the Appellant to file an appeal.

MPIC opposed both of these positions.

The panel held a hearing into the matter. Due to pandemic considerations, the Commission and parties agreed to hold the hearing by video-conference. A panel of Commissioners reviewed the documentary evidence on file and heard the testimony of the Appellant and submissions of the parties at the hearing.

Issue

The issue for the panel to determine was whether the Appellant had filed an appeal within the timelines under the Act, and if not, whether the Commission should grant an extension for the Appellant to file an appeal.

Disposition

Upon review of the material, testimony and submissions, the panel found that the evidence failed to establish that the Appellant filed an appeal within the timelines set out by the Act. The panel also determined that the Commission would not exercise its discretion to extend the timelines for filing an appeal, and the Appellant's appeal was dismissed.

Evidence

In preparation for the hearing, the Commission compiled an Indexed File, which contains all documents agreed upon by the parties as evidence to be relied upon at the hearing. These documents are numbered for ease of reference by the parties and the panel. Attached to these reasons and marked as Schedule "A" is a copy of the Indexed File Table of Contents.

The Appellant testified and was cross examined during the hearing. He was asked questions about the various documents in the Indexed File, his medical condition, initial contact with the Commission, response to the Commission's inquiries and the NOA form he ultimately filed.

Testimony of the Appellant

The Appellant described the MVA of September 28, 2004, which occurred while he was on his way to work. He described his injuries and shaky condition after the event, which led him to leave work and go home early.

The Appellant described some of the health issues he had before the MVA, including previous injuries to his head, neck and cervical spine, and brachial plexis injuries which required surgery. He was already using medication such as NSAIDs before the MVA, but the MVA made his condition much worse and he started using opiates such as oxycontin, hydromorphone and methadone, after that. He described the side effects he felt from the "oxy", which included cognitive effects where his thinking slowed and he could not think properly or process things normally. He had some memory problems, which he never had before. He was on these drugs, which were prescribed for him at the pain clinic, for a few years.

The Appellant also described sleep issues that began right after the MVA. At first he slept more than normal, which he described as hyper-somnolence. Later, he had difficulty sleeping enough and never felt rested. This led to effects on his cognition, to his muscles hurting more and to being more dysfunctional. He lived alone and was limited in what chores he could do around the house. He could only attempt to do things like laundry etc. on days when he was feeling better.

He said that his ability to do paperwork and things connected with his MPIC claim were affected and that he "didn't want to do it, so he didn't do stuff for awhile" because he "knew that it was going to be a real hassle dealing with MPIC". The last thing anyone wants to do when they are sick is to have adversarial conflict, so he "avoided it like the plague". He felt stressed knowing that he had to report his situation to MPIC, fill out reports, make doctor appointments, and go for tests.

He eventually got some help with his NOA and claims from the CAO, but could not recall when he first became aware of the CAO.

Cross-Examination of the Appellant

Although he indicated he did not recall when he received the case manager's decision or if he read it, the Appellant acknowledged that he had filed an application for review from that decision.

Although he then received the IRD, he did not recall reading it, but said that he must have. He was not sure if he read the section of the IRD which advised of appeal rights and time limits for that, but said that he probably did read it, and that if he read that, he must have realized that the time limit for appealing was 90 days. He did recall that he read the section about possible assistance from the CAO, but that he didn't know about that office and had the feeling that they wouldn't help him because they probably worked for MPIC, so he was not keen on it. This was because, even though the IRD said that the CAO and the Commission were independent, he was quite skeptical. Because of some situations he had experienced with MPIC where they weren't very good to him, he had a bad feeling and a lack of confidence about the whole thing. Eventually he did contact the CAO, although he was not sure when.

The Appellant was asked why the email he sent to the Commission in February 2007 said that he wished to appeal, and asked for advice on how to proceed in order to appeal, suggesting that he did not think this email opened an appeal with the Commission. He said it wasn't about opening it, he just didn't know how to go about it. There wasn't as much information on the Commission's website then as there is today and nothing about the CAO, so he was "just asking what am I supposed to do now, how do I do this, that's all".

Although he had copied the CAO on this email, he did not remember if he ever heard back from them.

The Appellant was asked a number of questions about whether he checked the Commission's website. His answers were contradictory. He said he could not remember if he had checked the website and had no memory of it, even though he had said there was nothing about the CAO on there. He later stated that he had never been on the website, although in his email he had noted that there was no information available on the website. When asked where he found the Commission's email address in order to send his email in February 2007, if not by looking on the website, he said he had no memory of that either.

The Appellant was asked several questions about his receipt of the Commission's letter to him sent in response to his email and dated March 15, 2007, which followed up on his request to provide him with a Notice of Appeal form to complete and return. He remembered getting the letter but did not open it. A lot was going on in his life at the time (daughter having a baby, separation and divorce from his wife) and he put it on a pile on top of his hutch and forgot about it, because it slipped down into a space between the hutch and the wall. He said that he probably thought that with all these other issues he couldn't deal with this right now, so he would just put

it up on the shelf. He did not find it again until many years later, perhaps around 2011 or 2012, when he was wiring some equipment in that space and found it on the floor. He opened and read it then.

The Appellant could not recall having any other contact with AICAC between March 2007 through June 2018 when he filed his NOA. He did not send any follow up emails to AICAC or call to discuss how to open an appeal with staff members. He did not recall contacting the CAO in that period.

The Appellant was asked what steps he took or planned to take to gather additional documentation. He explained that he did not submit or take any steps to obtain medical documentation during that period, because he probably thought that was going to be really hard. He said that in those days it was not easy to get doctor's reports. Doctors didn't want to give them. It was harder and a big deal then and was too stressful. He did not have much motivation to do it because he already felt sick enough and didn't want to add to his problems.

The Appellant was asked about his comment where he stated that he intended to submit supporting materials which were not currently available. He was asked what he had intended to submit and why he was able to file the NOA without medical documentation in hand even though he thought he had to file a complete package. He stated that he did not have an answer or explanation for that; it didn't really make sense and he must have been confused or something at the time.

The Appellant was asked why he did not file an appeal when he later found the letter behind the hutch. He said he knew the rule was 90 days and that he was way past that by months and years.

At that point he was not aware that the Commission had the discretion to extend the time, so there was no hope for anything to happen. He didn't do much until he later found out by accident (while discussing a separate matter with the CAO) that he could ask for an extension. In the time period between finding the letter and when he actually did something he was in a pretty bad way, suffering from mental confusion, cognitive dysfunction, bad memory and other side effects from his meds ("oxy, hydro and methodone").

When asked which of the symptoms and health conditions he had listed were related to the MVA, he said given his whole health picture that would be very difficult to sort out.

When asked which of these health conditions caused him to be too unwell to file his NOA within the time limits, he explained that his brain wasn't functioning well and it was a really bad time in his life. At that time, not only were the opiates making his life miserable, but he was also sleep deprived. He was just barely able to manage his own hygiene and self care with basics such as feeding himself. He was barely able to pay his bills on a "borderline" basis and was procrastinating and behind on his taxes.

He agreed that it was certainly possible that dealing with the letter from AICAC was another thing that he wasn't keen on doing and procrastinated and put off. In error, he thought that he would have to file a complete package with all the documents and he didn't have a lot of motivation for doing that. Although he planned to ask for medical reports from his doctors, this was a difficult process which took time. He eventually had some doctor appointments, he got some reports together. When asked how he was able to do this in spite of his symptoms, the Appellant said that he did it in the same way he gets food and groceries and showers, no matter how difficult.

When asked whether, in terms of things he had to do, filing an NOA or contacting the Commission wasn't a priority for him, the Appellant said that the whole time lapse was because of the fact that he was past 90 days and didn't know you could get extensions. He had basically given up and let it go until he happened to learn of the possibility of extension requests from the CAO.

Re-Examination of the Appellant

On re-examination, the Appellant clarified that his health issues continue today. He confirmed that he felt he had procrastinated because of the stress, anxiety and bad emotions he felt around dealing with these subjects, especially when it comes to MPIC, as it is not the easiest place to get stuff done. He knew he was going to have this kind of stress and so with the other symptoms, illness and family problems, he put this on the back burner.

Although gathering reports was stressful, it is a lot easier now then it was back then when doctors were not as forthcoming. Because it was harder back then, he did not have the motivation to do that on top of the problems he already had.

Submission for the Appellant

Counsel for the Appellant submitted two (2) written submissions, which was appreciated.

The first written submission dealt with the question of whether the Appellant's email to the Commission of February 15, 2007 could be considered to meet the deadline to appeal the review decision.

This submission indicated that in the email the Appellant had:

- Identified himself;

- Provided an electronic mailing address;
- Expressed his intention to appeal prior to the 90-day deadline;
- Identified the MPI claim number;
- Identified the date he received the IRD;
- Requested advice on how to proceed with his appeal.

It was submitted that electronic correspondence sufficed as valid evidence and in this case it produces the same effects of the document it is intended to mirror. Since the Commission is not bound by the rules of law respecting evidence applicable to judicial proceedings, none of a defect in form, technical regularity or a lack of formality can be used in order to invalidate a proceeding before AICAC, as per sections 183(2) and 183(7) of the Act.

The submission cited an earlier appeal at the Commission in *AC-04-104* where the Appellant sent a letter to the Commission saying she was appealing an IRD. After the Commission replied by enclosing an NOA form for her to complete and return, she wrote to the Commission again to express that she was withdrawing the appeal. She then sought CAO assistance and filed an NOA form over a year later. The Commission, in attempting to determine whether she had withdrawn her appeal and it should be dismissed, identified the first date as the date when her appeal was initiated, with the later form submission comprising merely a procedural step. The Commission then went on to discuss and determine whether the appeal had been abandoned or discontinued.

Accordingly it was submitted that the Appellant had appealed the IRD on time to AICAC via email. The panel should follow the decision in *AC-04-104* and accept another form of communication other than an NOA form to initiate an appeal, and that the Appellant's use of the words "I wish to appeal" in the first sentence of his email is analogous to initiating the appeal

process. This is within the Commission's powers under s. 184.1 of the Act regarding how the process may take place.

The second submission focussed upon the Appellant's health issues as his reason for late filing and why the Commission should therefore exercise its discretion to extend the time limit. Counsel pointed to the Appellant's testimony of his lengthy course of medication with side effects which included cognitive issues, slow thinking and memory problems. Sleep became a huge issue for him.

The Appellant testified that at the time, there were a lot of things happening in his life and with his family. He believed that he had to gather evidence prior to filing his NOA and that it would take him a long time to get these things.

Counsel noted that the Appellant also talked about how other areas of his life were affected, how he was behind on his taxes and "borderline" keeping up with his bills. Counsel submitted that the Appellant had given a genuine account of the difficulties he was facing during the relevant time period and that if the panel did not find that the email initiated the appeal process, the Commission should find that the Appellant's health conditions prevented him from properly understanding the appeal process and that he should be granted an extension under s. 174(1) of the Act.

Submission for MPIC

Counsel for MPIC also provided a written submission, which was appreciated.

MPIC took the position that the Appellant's email did not constitute the filing of an appeal and that he did not actually file an appeal until the June 12, 2018 NOA.

The email did not contain any instruction to file an appeal. The standard practice of the Commission is that the first step to filing an appeal is the completion and filing of a NOA. This is consistent with both s 174(2) of the Act which requires that appeals must be made in writing and include the Appellant's address, and s. 182(3) which gives the Commission the power to determine its own practice and procedure. The IRD clearly set out how to initiate an appeal and how to reach the Commission.

Most importantly, it was submitted, neither the actions of the Appellant or the Commission after the Appellant's email was sent were consistent with either party believing that an appeal had been opened.

He sent the email on February 15, 2007 and then took no other steps in relation to the supposed appeal until 2018. He did not follow up with the Commission about the status of the appeal, or with the CAO, who was copied on the email. On cross-examination, he could not remember contacting AICAC to follow up either by phone or email.

After receiving the email, the Commission also did not act as one would expect them to do after an appeal had been opened. No appeal file was opened in 2007 and no Appeals Officer was assigned. The Commission's response was to send the letter of March 15, 2007, instructing the Appellant on what he should do if it was his intention to file an appeal, by submitting a NOA.

After the Appellant received the Commission's letter, he did not respond by filing an NOA and left the letter unopened until 4-5 years later. Even after opening the letter and seeing the Commission had requested that he file an NOA, he did not do so for another 6-7 years. If the Appellant had really believed that an appeal had been opened, it would have been reasonable to open the letter from the Commission and to at least contact them to ask about the status of his appeal when he finally did open the letter. He admitted on cross- examination that he knew the rule was for 90 days and that was way past, showing that he didn't actually think that an appeal had yet been filed.

Counsel distinguished the decision in *AC-04-104* which dealt with an issue of whether that appellant had withdrawn her appeal. There is no indication that submissions were heard on the point of whether her first contact with the Commission constituted filing an appeal, and little discussion of this point by the Commission. It appeared to be more of a stepping stone to dealing with the actual question of the withdrawal. Further, the appellant in that case had behaved in a way more consistent with having filed an appeal than the Appellant did here, by responding to the Commission and contacting the CAO, showing a belief that she had begun an appeal. Here, the Appellant's behavior has shown the opposite.

Counsel noted other cases, such as *AC-03-22*, where simply contacting the Commission for instruction on how to proceed with an appeal did not constitute the opening of an appeal. He also relied upon *AC-06-164* where a telephone call to the Commission within the 90 day time period still required the Commission to exercise its discretion regarding the subsequent late-filed NOA.

Counsel submitted that an NOA form should be completed to initiate the appeal and this is not a circumstance where that requirement should be waived.

In regard to whether the Commission should grant an extension of time, counsel reviewed the factors typically considered by the Commission in such cases. These include:

1) The actual length of the delay compared to the 90 day time period set out in s. 174
2) The reasons for the delay
3) Whether there has been prejudice resulting from the delay
4) Whether there has been any waiver respecting the delay
5) Any other factors which argue to the justice of the proceedings

He noted that there had been an 11 year delay which is lengthy and substantial. In addition to the prejudice inherent in delay, the Appellant's testimony and submission made it clear that since 2006 he suffered from multiple additional MVAs and non-accident related conditions, making it difficult, if not impossible, to determine what conditions related to this MVA, given the intervening time and significant reported conditions.

But the most important factor is the reason for the delay and counsel submitted that the Appellant's claim that he felt he needed to first gather evidence, and therefore failed to focus on the 90 day deadline, was not reasonable. The IRD clearly laid out the 90 day timeline, including contact information for both AICAC and the CAO. There was no evidence that the Appellant contacted either to get instructions on whether he needed to first gather medical information. As the Commission wrote in *AC-19-047,* the Appellant has the onus of proof and as such has an obligation to become informed of the process and advance her case in accordance with the rules. The Appellant here has failed in that obligation. He acknowledged on cross–examination that his belief that an appeal file could not be opened without supporting documentation was not reasonable. Additionally, there is no evidence that the Appellant actually did gather medical information during the 11 year period in question.

Counsel noted that the appeal form is a one page form and simple to complete. The Appellant was able to complete the Application for Review of the case manager decision. Nor was there any evidence provided to show how the Appellant's health condition may have prevented him from filling out the NOA form over the 11 year period. It was not reasonable to say that he was not able to find some time in those 11 years to review correspondence from the Commission and complete the NOA. He quoted from the Commission's decision in *AC-16-046* regarding the lack of medical or other evidence to establish that the appellant suffered from a condition which might prevent her from pursuing her appeal in the way she had pursued her internal reviews. Her argument that she suffered from no energy and had given priority to other considerations in her life was rejected by the Commission, and the same considerations should apply in this case. The Appellant admitted that he was able to do many other things. He simply had not made the appeal a priority and this was not a reasonable excuse for the late filing.

Finally, counsel submitted that the Appellant's position that he had not filed an appeal in 2011-2012 because he did not know that an extension of time was possible, is not reasonable. As the Commission noted in *AC-17-047* he had an obligation to become aware of the process. As in *AC-10-049*, the belief that one would not be successful is not a reasonable excuse for the late filing of an appeal. Counsel referred to the MPIC Act, and submitted that its specific provisions requiring an NOA to be in writing and provide a mailing address should be given priority over its general power to override formality. The Commission can determine its own practice and procedure as long as it is consistent with the sections of the Act. This applies to the opening of files and appeals and the Commission properly used this authority when it sent a letter to the Appellant advising how to file an NOA.

Discussion

The MPIC Act provides:

> **Appeal from review decision**
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> 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.
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> **Requirements for appeal**
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> 174(2) An appeal of a review decision must be made in writing and must include the claimant's mailing address.
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> **Commission not bound by rules of evidence**
>
> 183(2) Evidence may be given before the commission in any manner that the commission considers appropriate, and the commission is not bound by the rules of law respecting evidence applicable to judicial proceedings.
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> **Effect of lack of formality in proceedings**
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> 183(7) No proceeding before the commission is invalid by reason only of a defect in form, a technical irregularity or a lack of formality.
>
> **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.

Did the Appellant file an appeal within the timelines under the MPIC Act?

The Appellant did not file an NOA within the 90 day timeline, but is asking the Commission to treat his email as an appeal, notwithstanding the lack of formality. Although s. 174(2) of the Act requires that an appeal be made in writing and provide a mailing address, he submits that a written email and electronic mailing address are sufficient.

MPIC argues that the Commission is the master of its own procedures and has the power to require that he complete a NOA form and a physical, non- electronic mailing address.

The panel has reviewed the cases submitted by counsel.

We conclude that the decisions in *AC-03-22*, where the appellant contacted the Commission but then took a year to file the appeal, and in *AC-06-104* where the appellant requested a form but did not submit the appeal, are more similar to the case at hand. We have reviewed the decision in *AC-04-104* as well, but find some clear factual distinctions there. It was not clear in that case whether the appellant had provided a mailing address with her letter to the Commission. There was no consideration of whether an email or electronic address met the requirements of the Act. The Commission therefore did not focus on the question of whether that appellant‘s letter was an appeal, but instead, due to the follow up by the appellant, placed its focus on the question before it of whether the appellant had then withdrawn her appeal.

As a result, the panel agrees with counsel for MPIC that the decision in *AC-04-104* did not provide an analysis of the same factors in the case before us as and is not as helpful to the panel. Further, it is important to note that a lack of formality and the format of the appeal is not the only factor to be considered.

The Appellant argues that his email mirrored his intent to file an appeal.

The panel has examined how this email was treated by the Appellant and the Commission.

The panel finds that the Commission did not treat this email as an appeal, but instead sent out an NOA form to the Appellant and asked that he complete it. Having then received no response from the Appellant, it did not open an appeal, assign an Appeals Officer or treat the email in any way as the initiation of an open appeal.

The Appellant did nothing further after sending his email in 2007, until 2018. He said he did not recall following up with an email or phone call to the Commission and there is no evidence that he did. It is reasonable to expect that if he felt he had filed an appeal he would have watched out for a response and when he received the Commission's letter a month later he would have opened the letter, and perhaps responded by filling out the NOA form or at least contacting the Commission. Instead, he put it on top of a hutch where he ignored it, even after 2011-2012, when he again found it, opened it and still did nothing.

The Appellant's testimony shows that he did not view the email as an appeal, stating that his email to the Commission was simply asking what to do. When he knew he was past the 90 days he said that he didn't know that he could have remedied that by seeking an extension. This supports MPIC's submission that he was aware of the timing problem and that he did not actually think that an appeal had already been opened.

Therefore, although the Commission may find in some cases that an appeal has been filed in spite of a defect in form, the panel finds that the Appellant's email was not intended to form or mirror an appeal in this case and accordingly was treated by both the Appellant and the Commission as a request for more information.

The evidence does not support the Appellant's contention that the email was intended to initiate an appeal and the actions of both the Appellant and the Commission confirm this finding. We find that the appeal was filed after the 90 day deadline.

Should the Commission grant an extension for the Appellant to file his appeal?

The panel has applied and considered the factors set out in the case law provided by the parties. In comparing the length of the delay to the 90 days set out in the Act, we find a very lengthy delay of 11 years and at least 5-6 years from the time the Appellant re-discovered the previously unopened letter from the Commission.

We find that this is a substantial and unreasonable delay.

We also agree with counsel for MPIC that such a lengthy delay has the potential to create both inherent and actual prejudice to MPIC in this case.

MPIC did not waive the time limit.

In considering the primary factor of the reasons for the delay, we have assessed the Appellant's submission that:

a) The Appellant did not file on time because he felt he needed to gather evidence before doing so.

   We note that this is inconsistent with his own assertion in the earlier- filed Application for Review, where he filed the application while indicating that he would still be gathering medical evidence.

There is no evidence that he ever contacted the Commission or the CAO regarding how to go about gathering evidence.

We find that this is not a reasonable position and one not established by the evidence.

b) The Appellant did not realize that the deadline for filing an appeal was 90 days.

We find that this is not a reasonable position .This deadline was clearly laid out in the IRD. The requirements for initiating an appeal, as noted by counsel for MPIC, are quite simple and the onus is on the Appellant to inform himself of the basic procedures

This argument also conflicts with his other contention that he knew the time limit was 90 days and that he was late, so he did not follow up or do anything, because of his frustration with that fact.

c) The Appellant argues that our discretion should be exercised because he had been unaware that he could apply for an extension of time.

The panel does not find this to be a reasonable excuse for failing to file an appeal.

d) The Appellant referred to his many health conditions as preventing him from filing his appeal on time.

There is, however, no sufficient medical evidence, if any, on file to support this claim.

In some areas, the Appellant delivered his evidence in an honest and straightforward manner. He was willing to admit that his bad feelings for MPIC were one of the reasons for his avoidance of the appeal process. He said that there were a lot of other things going on in his life at the time and admitted to procrastination and a lack of motivation.

However, there were also contradictions within his evidence and with the documents on file. There were several instances in his testimony, perhaps due to the passage of time, where he simply could not recall things and was unable to fully answer questions.

Overall, the panel was not able to conclude that his testimony was sufficiently reliable to provide a basis for his position.

Upon reviewing the evidence on file, the testimony of the Appellant and the submissions of the parties, the panel finds that the Appellant did not make the appeal a priority. We find that this is not a reasonable excuse for late filing.

Accordingly, the Commission finds that the Appellant failed to file his appeal within the 90 day deadline set out by the Act and has not established that the Commission should exercise its discretion to extend the timelines under the Act for the filing of his appeal.

His appeal from the Internal Review Decision of November 15, 2006 is hereby dismissed.

Dated at Winnipeg this 14th day of September, 2022.

LAURA DIAMOND

LEONA BARRETT

NIKKI KAGAN