



RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION 44BB(1)(c) OF THE *WORKERS COMPENSATION ACT 1987*.

SUMMARY:

a. The application for procedural review is dismissed.

Introduction and background

1. The applicant sustained injuries to his back, neck and shoulder in the course of his first day of employment, being 11 November 2015. About ten days later the employment was terminated. He was continuously in receipt of weekly payments of workers compensation.
2. The insurer made a work capacity decision on 24 July 2017, assessing the applicant's PIAWE at \$1,500. He was advised that 95% of this amount (i.e. \$1,425) would be paid as weekly benefits until such time as more information was provided by the employer about his PIAWE.
3. The applicant sought an internal review, which was never conducted. The insurer was never given the further information required from the employer.
4. More than thirty days having elapsed since the request for internal review, with no resultant review occurring, the applicant sought Merit Review from the Authority by way of application received on or about 8 January 2018.
5. The Authority made findings and recommendations on 9 March 2018 in the following terms:
 - The amount of [the applicant's] PIAWE pursuant to section 44C(2) of the 1987 Act is \$1,200 (subject to indexation).
 - The Insurer is to determine [the applicant's] entitlement to weekly payments of compensation in accordance with the above finding.



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

6. The applicant made an application to this Office for procedural review received on 6 April 2018. I am satisfied that the application has been made within time and in the proper form.

Submissions by the applicant

7. Section 44BB (1) (c) of the Workers Compensation Act 1987 (1987 Act) states that this review is *“only of the insurer’s procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer.”*
8. The applicant suggests that the PIAWE calculations of both the Insurer and the Authority fall well short of his actual pre-injury earnings, which he suggests are in the order of \$3,300 per week. Even if I assume that he means \$3,300 per fortnight, there is no evidence submitted by the applicant in support of this submission.

Submissions by the Insurer

9. The Insurer made the following submissions in response to the application:
 - The insurer believed at the time that the letter dated 24 July 2017 was simply a letter advising the applicant of the acceptance of liability and was not meant to be styled a “work capacity decision.”
 - No “internal review” was conducted for the reason appearing above, nor could it have occurred within time due to the failure of the employer to provide requested wage records.
10. It seems clear on the face of the letter that the insurer has a point. The letter dated 24 July 2017 clearly stated that the insurer was still waiting for more information from the employer prior to making a final decision about PIAWE. The letter appears to be no more than a courtesy extended to the applicant to let him know what was likely to happen, rather than an attempt to make a hard and fast decision. At best, it was an “interim” decision, subject to alteration. Despite this, the insurer does not appear to have made much of this argument at the merit review



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stage and that process was completed on the understanding that a work capacity decision had in fact been made.

Decision

11. The only issue in dispute between the applicant and the insurer is the amount of PIAWE. This was settled at the stage of merit review. No evidence was provided by the applicant to show why the figure was incorrect, nor was any allegation of procedural irregularity made.
12. The matter was remitted back to the insurer by the Authority in terms set out at paragraph 5 *supra*.
13. In the circumstances of the case there is no obvious utility in this Office conducting a procedural review.

Finding

14. I decline to conduct a procedural review in accordance with section 44BB(3)(c).

RECOMMENDATION

15. The application for procedural review is dismissed.

A handwritten signature in blue ink, appearing to read "Wayne Cooper", with a long horizontal flourish extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
04 May 2018