



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. On 11 November 2017 the applicant suffered injury to the chest, arms, both shoulders and lumbar spine in the course of his "employment as a Taxi Driver." The inverted commas in the previous sentence are used because it also appears to be the case that in or about 2010 the applicant lost his taxi licence and was barred from working as a Taxi Driver for a period of 10 years.
2. The accident causing the injuries sustained in 2017 seems to have occurred on the applicant's first day of "work." Perhaps more to the point, the accident occurred about 9.5 hours into the applicant's shift. In the last hour he had earned \$94 as a result of one 40 minute fare. Despite the compelling mathematical certainty that, give or take a few flag-falls, the applicant was at the time of injury capable of earning no more than \$141 per hour ($[\$94/2] = \$47 \times 3 = \141), he alleges an ability to earn \$220 per hour as a Taxi Driver. This is no doubt predicated on two further assumptions, namely: first, that he was allowed to keep every cent of the fares collected; and secondly, that he was legally allowed to work in the industry. Both assumptions appear to be false.
3. The applicant seeks procedural review of a Work Capacity Decision made by the insurer on 24 November 2017. The insurer informed the applicant that his claim was accepted and weekly payments would be made at a rate of \$660.16 [95% of PIAWE of \$694.90] for the first 13 weeks. The PIAWE figure was arrived at as a result of applying an Award rate recognised by the Fair Work Commission. This was due to the failure of the applicant to provide any, or any sensible, payment records in support of his claim. Some documents purporting to be BAS Tax statements had been sent by



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the applicant, but all details identifying the tax payer were obscured. The only other records sent related to a three month period in 2008, some nine years prior to the date of injury, when the applicant was working legally for a different employer.

4. The applicant sought internal review. An Internal Review Decision dated 14 March 2018 advised that PIAWE was now calculated to be \$155 due to the application of section 44C(7), which is in the following terms:

44C(7) If the amount of a worker's pre-injury average weekly earnings is less than any minimum amount prescribed by the regulations as applicable to the worker, the amount of the worker's pre-injury average weekly earnings is deemed to be that minimum amount. Different minimum amounts may be prescribed for different classes of workers, including part-time and full-time workers.

5. The reason for applying section 44C(7) was said to be that, since the applicant was precluded from ever returning to the taxi industry as a driver (as a result of statutory amendment in 2017), he could not claim to have any economic loss from inability to work in that industry arising out of a compensable injury. Accordingly the maximum the insurer could pay must be the rate prescribed by the regulations, which at the relevant time was \$155 per week.
6. The applicant sought Merit Review from the Authority by way of application received on 28 March 2018. The Authority delivered its Findings and Recommendations dated 03 May 2018. The Authority made a finding that:
 - The amount of [the applicant's] PIAWE is \$749.42.
7. The merit reviewer made the following recommendation:
 - The insurer is to use the finding above as the basis for calculation of [the applicant's] entitlement to weekly payments of compensation and applied to [the applicant's] claim for weekly payments of compensation from 24 November 2017.
8. An application was made to this office for procedural review received on 28 May 2018. I am satisfied that the application has been made within time and in the proper form.



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9. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the relevant *Guidelines*.

Submissions by the applicant

10. Section 44(1) (c) of the 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.*”

11. The applicant made unusual submissions, including the following:

- SIRA would not accept my BAS certificate because I blocked my details for security reasons;
- I have sent all the previous forms by registered post but they went to Melbourne instead.

12. The reasons for blocking the personal details on the BAS statement and for the documents going to Melbourne might be better left unexplained. Neither event can be laid at the feet of the insurer. My role is not to conduct a review of the merit review performed by SIRA, but only to ensure that the insurer complied with the legislation, regulations and Guidelines when making a work capacity decision.

13. In the course of correspondence with the insurer and submissions with SIRA the applicant made wide-ranging, scurrilous allegations about the conduct of the regulator, the insurer, the NSW Police service and one or two government departments. None of these allegations would enhance the credibility of the applicant as a witness of truth. Although it was not put as a formal submission in the course of procedural review, the applicant has repeated in correspondence and in submissions to the merit reviewer that he believes his case to be worth no less than fifty million dollars.

Submissions by the Insurer

14. The Insurer made submissions concerning the relevance of section 44C, since the applicant had been employed for fewer than four weeks by the employer at the date of injury. The Insurer also said:



[The applicant's] Taxi Licence has been cancelled due to an incident 7 years ago that prevents him from working as a Taxi Driver for 10 years as outlined at [14] in the Internal Review Decision.

Decision

15. The applicant was advised by the insurer of his PIAWE and given a correct explanation for the calculations. It is no fault of the Insurer that the applicant declined to provide financial information about his PIAWE.
16. Any problems which might have arisen due to an incorrect calculation of PIAWE seem to now be fully corrected by the merit review service of SIRA, which has ordered back-payments to 24 November 2017 at the proper rate.
17. The insurer correctly explained the relevant periods of entitlement, notice periods and the effect of section 59A.
18. As far as can be determined, any shortcomings in the work capacity decision making process had their genesis in the conduct of the applicant himself, who took a combative attitude and refused to cooperate with the insurer when they sought necessary information from him.
19. The Guidelines and legislation were fully complied with and there are no procedural errors in the decision-making process.

Finding

20. The Insurer has made no errors of a procedural nature and the work capacity decision of 24 November 2017 was validly made.

RECOMMENDATION

21. The application for procedural review is dismissed.



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

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
18 June 2018