

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

SUMMARY:

- a. The application for procedural review is dismissed.**
- b. The applicant is to be reinstated to his weekly payments at the rate applicable at 20 May 2015.**
- c. The payments are to be back-dated to 21 May 2015.**
- d. The payments are to continue until such time as the applicant receives a copy of this recommendation, and should cease thereafter.**

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 11 February 2015. The decision determined to cease weekly payments on 21 May 2015. On 9 March 2015 the applicant sought internal review. The Internal Review Decision (IRD) was consistent with the original decision and was received by the applicant on 27 March 2015. On 23 April 2015 the applicant sought Merit Review by the Authority. The Merit Review decision was issued on 19 May 2015. I am satisfied that the application for procedural review dated 02 June 2015 was made within time and on the correct form.
2. The applicant had made a prior application to this Office with a recommendation issuing as 9514 (number 95 of 2014). The facts and circumstances surrounding the causation of injury and the sequelae thereto are set out in that earlier recommendation and need not be repeated here.
3. The Insurer made the work capacity decision in February 2015 following the earlier recommendation of this Office. At the time of the earlier decision by the Insurer, the relevant *WorkCover Guidelines* had referred to an unpublished *Best Practice Decision-Making Guide*, reference to which was subsequently deleted. Accordingly the unavailability of the document is no longer a relevant consideration.

4. The applicant was in receipt of compensation by way of weekly payments immediately before 1 October 2012 and is therefore able to be styled as an “existing recipient of weekly payments” as that term is defined in the 1987 Act.¹ Clause 8 of Part 19H of Schedule 6 to the 1987 Act required the Insurer to conduct a work capacity assessment for the purpose of facilitating the application of the amended weekly benefits provisions to the applicant.

Submissions by the parties

5. The applicant made a series of submissions, largely going to the alleged unfairness of the conduct of the Insurer. An example of this is the assertion by the applicant that he qualifies as a “seriously injured worker” (as that term is defined in the Act) and that, as a result, the Insurer is under an obligation to arrange an examination with an IME or an AMS to quantify the relevant whole person impairment as greater than 30%. This is despite the applicant having not a single medical report which agrees with that assessment. It may be a consequence of workers not being legally represented that some appear to have the entirely erroneous view that the Insurer has an obligation to prove the workers case.
6. Other submissions by the applicant concern communications between the insurer and report providers (based solely on supposition) and the broad assertion that the applicant “de facto” lost his part-time employment due to communications between the Insurer and his (then) employer. No evidence is provided to support this claim.
7. The Insurer made no submissions.

The Decision

8. *Guideline 5.3.2* requires the Insurer “to state the impact of the decision on the worker in terms of their entitlement to weekly payments, entitlement to medical and related treatment expenses and return to

¹ See clause 1, division 1, part 19H, schedule 6 to the 1987 Act.

work obligations". On this occasion the Insurer has correctly explained the effect of section 59A(2) and (3) on the applicant's entitlement to ongoing medical and related treatment expenses.

9. The correct notice period was given under section 54(2)(a), including the required time for postal service.
10. The relevant entitlement periods were explained.
11. Section 43 of the 1987 Act was explained and relevantly extracted.
12. Reasons were given for the decision, including showing the reasoning process, as required by the Guidelines.
13. The evidence relied upon was clearly set out and described. Medical evidence relied upon was current, including one report from December 2014 from an IME.

THE STAY

14. Clause 30 of Schedule 8 to the *Workers Compensation Regulation 2010* allows for a stay to operate in relation to a work capacity decision for the duration of any review under section 44 of the 1987 Act as long as the review concerns an "existing claim" (as that term is defined in the Schedule). The stay concludes upon the worker receiving the outcome of the relevant review. Accordingly in the present case the stay must operate to reinstate the payments which ceased on 21 May 2015, but only until receipt of this recommendation by the applicant.

FINDING

15. There are no errors of a procedural nature.

RECOMMENDATION

16. The application for procedural review is dismissed.
17. The applicant is to be reinstated to his weekly payments at the rate applicable at 20 May 2015.
18. The payments are to be back-dated to 21 May 2015.



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19. The payments are to continue until such time as the applicant receives a copy of this recommendation, and should cease thereafter.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
14 July 2015