



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 is dismissed.**

Introduction and background

1. The applicant sustained a particularly serious injury in 2010 known as a takotsubo cardiomyopathy and has remained susceptible to recurrence ever since. The condition has the alternative name of "broken heart disease" and is caused and exacerbated by stressful events, which might include bullying and harassment. The applicant made a successful claim for compensation based on the events of 2010 and has made a subsequent claim arising out of events which occurred with the same employer on or about 7 June 2016. The Insurer accepted liability and made weekly payments for all relevant periods.
2. On 9 July 2018 the insurer made a work capacity decision, finding that the applicant was capable of working as a teacher, although it conceded that she could not work at the same work-site which caused the injury due to the presence of parties who may have contributed to the applicant's condition. The insurer went on to find that the applicant had current work capacity and could in fact work for 8 hours per day, 5 days per week. The applicant was advised that her weekly benefits would cease altogether from 15 October 2018. This is the correct notice period under section 54(2)(a), as it then was.
3. In the course of internal review dated 30 August 2018 the insurer maintained its original decision, this time extending the notice period to 7 December 2018.
4. According to the chronology of events set out by the Authority, the applicant applied for merit review on 29 September 2017, which must be



an error. The insurer advises that it received the application for merit review on 5 October 2018. This makes it likely that the Authority received the application on 29 September 2018. It took the Authority until 12 December 2018 to issue Findings and Recommendations following merit review. This exceeds seventy (70) days and the delay is nowhere explained.

5. Despite the unexplained delay the Authority had good news for the applicant, finding that the insurer had erred in concluding that she had work capacity. The precise Findings issued by the Authority are as follows:

- [The applicant] has no current work capacity; and
- The role of an “English as an additional language or dialect” teacher is not suitable employment for the applicant.

6. The Authority made the following Recommendation:

- The insurer is to calculate [the applicant’s] entitlement to weekly payments of compensation in accordance with [the] findings above from 9 July 2018.

7. The applicant made an application to this office for procedural review received on 14 January 2019. I am satisfied that the application has been made within time and in the proper form.

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

Decision

9. The notice of cessation of payments given under section 54(2)(a) was stayed until the completion of the review process under section 44BB.

10. I am advised by the insurer that payments to the applicant never ceased. Following the merit review outcome the work capacity decision dated 9 July 2018 was rescinded. It follows that there is no utility in conducting a procedural review of a decision which is no longer in force in circumstances where the applicant was paid all entitlements for all relevant periods.



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11. The applicant received a standard letter from the Authority which included advice that she might seek procedural review from WIRO, despite the obvious outcome of merit review being that she had already 'won' her argument with the insurer. It is hard to see the utility of providing such advice in the circumstances. The applicant spent anxious days seeking assistance from her Union and from SIRA, trying to find out how to apply for procedural review. The anxiety might have been avoided if the outcome of the merit review had been properly explained.

Finding

12. Because there is no possible benefit to either party, I decline to conduct a procedural review under section 44BB(3)(c).

RECOMMENDATION

13. The application 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
21 January 2019