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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 seeks procedural review of a Work Capacity Decision made by the Insurer on 14 April 2016. The Decision informed the applicant that his weekly payments of compensation would cease on 26 July 2016. This decision was maintained following internal review. Since internal review was not sought until 6 July 2016, the stay under section 44BC did not apply to his weekly payments in the course of internal review. Since the internal review decision was dated 1 August 2016, it appears that weekly payments ceased during the course of internal review.
2. The applicant sought Merit Review from the Authority by way of application received 8 August 2016. The Authority delivered its Findings and Recommendations dated 8 September 2016. The Authority made findings the applicant has current work capacity, and does not satisfy the special requirements in section 38(3)(2) because he does not work for at least 15 hours per week.¹ Despite making these findings, the merit reviewer saw no reason to make a recommendation of any kind, thus rendering the status of the document issued "non-binding."²
3. An application was made to this Office for procedural review dated 26 September 2016 and was received via email on 27 September 2016. I am satisfied that the application was made within time and in the correct form

¹ The applicant does not currently work.

² Section 44BB(3)(g) says that recommendations are binding on the Insurer, whereas there is no similar statement in section 44BB(3)(e) and (f) concerning the findings on which recommendations are based.



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4. The applicant suffered a right shoulder injury³ in June 2013. He has undergone considerable treatment including operations, but continues to suffer ongoing symptoms including pain and weakness. With the exception of a work trial earlier this year, he has not returned to work. As at 26 July 2016, the applicant had received 131 weekly payments.

Submissions by the applicant

5. Section 44BB (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.”*
6. The applicant makes the submission that the insurer should continue paying him until he finds employment and/or he recovers from his injury. Otherwise the system is unfair. He requests a review of the SIRA (merit review) decision.
7. Procedural review does not exist for the purpose of re-running merit review. I can only conduct a procedural review of the work capacity decision made by the insurer.

Submissions by the Insurer

8. The Insurer provided a useful summary of the history of the claim and repeated the conclusion that the applicant does not comply with the requirements of section 38(3).
9. Neither the applicant nor the insurer made submissions relevant to procedural review.

Decision

10. The Insurer advised the applicant that a work capacity assessment was completed on 13 April 2016.

³ Torn supraspinatus tendon.



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11. The applicant was found fit to work for 30 hours per week. This accords with the certification from the applicant's own Nominated Treating Doctor [NTD].
12. The applicant was advised that he had received 116 weeks of payments, and that by the time the decision became effective on 26 July 2016 he would have received 131 weeks, taking him past the second entitlement period. The entitlement periods were explained and the effect of section 38 was also set out and explained.
13. The applicant was advised that due to having less than 10% whole person impairment he would continue to be able to receive medical treatment for a further two years after the cessation of his weekly payments. Section 59A(2) and (3) were clearly explained.
14. The medical evidence relied upon in the decision-making process was current and included work capacity certificates from the NTD.
15. The relevant notice period in section 54(2)(a) was given.
16. Considerable effort was made by the Insurer setting out the reasons why work as a Packer, a Process Worker or a Sales Assistant was thought to be suitable in accordance with section 32A. The applicant himself agrees that he could perform work as a Packer or Process Worker, but cavils with the idea of performing Sales Assistance. He had a one month work trial earlier in 2016, and the only reason he does not work fulltime (or at all) in that same job is that the company was downsizing and did not require extra workers. There is no known reason why he could not perform the same work with a different employer.
17. There appear to be no procedural errors committed by the Insurer in this case.

Finding

18. The Insurer seems to have complied fully with the legislative requirements and with the guidelines and accordingly the application should be dismissed.

RECOMMENDATION



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19. 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
24 October 2016