



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 an injury to the lumbar spinal region on 1 June 2011 in the course of his employment as a General Labourer. Since that time he has received weekly payments of compensation. He is currently certified medically as capable of working for 40 hours per week in suitable employment. Such suitable employment is not to include lifting or carrying more than 15 kg, nor should it require pushing or pulling more than 15 kg.
2. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 26 November 2015. The decision terminated the applicant's weekly payments from 11 March 2016. The decision was based on non-compliance with section 38(3).
3. The applicant sought internal review on 27 September 2016, more than 10 months after the original decision. The Internal Review Decision was dated 18 October 2016. The Internal Review Decision confirmed the original Work Capacity Decision.
4. The applicant sought Merit Review from the Authority by way of application received on 17 November 2016. The Authority delivered its Findings and Recommendations dated 16 December 2016. The Authority made findings that the applicant: (i) has the capacity for some type of employment for 8 hours per day, 5 days per week; (ii) is able to return to work in suitable employment as a Forklift Operator/storeperson; (iii) has current work capacity; and (vi) does not satisfy the special requirements in section 38(3) for the continuation of weekly payments



beyond 130 weeks. The Authority did not make any recommendations in this matter, thereby causing considerable doubt to be cast over the purpose of the merit review.

5. The applicant made an application to this office for procedural review received on 5 January 2017. I am satisfied that the application has been made within time and in the proper form.
6. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the Guidelines. The relevant Guidelines came into effect on 11 October 2013.

Submissions by the applicant

7. 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.”*
8. The applicant made submissions to the effect that the Insurer should get reports from “better doctors” who will accept that his problems all stem from his work-induced back symptoms. These problems are said to include a self-described “anger disorder” which has resulted in aggressive behaviour towards his family.
9. I note that the Insurer has issued a section 74 Notice declining liability for a “psychological injury”.
10. There are no specific submissions about the procedures of the insurer when making the work capacity decision.

Submissions by the Insurer

11. The Insurer made no submissions in reply.

Decision

12. The work capacity decision dated 26 November 2015 refers to earlier fair notice given of the impending decision on 2 November 2015. The



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applicant was advised that the assessment process was completed on 26 November 2015.

13. The notice given under section 54 was adequate, since it exceeded three months by more than the required period for postal delivery of the decision.
14. The applicant was taken through sections 43(1)(a),(b) and (f).
15. Sections 59A(2) and (3) were clearly explained and he was advised that his right to pre-approved medical expenses would continue for two years until 11 March 2018.
16. The relevant entitlement periods were fully explained. The applicant had received 227 weeks of payments, clearly placing him in the period following the second entitlement period which expires after 130 weeks.
17. On the applicant's own medical case he can work for 40 hours per week. This of course ignores the impairment said to be caused by the alleged "psychological" injury for which the Insurer does not accept liability. The applicant however has no evidence beyond his own testimony that any such injury is disabling. According to the medical evidence available to the Insurer and the merit reviewer, he has capacity to perform the work described in the work capacity decision, with which the merit reviewer agreed.
18. The decision made on 26 November 2015 complies with the procedural requirements of the legislation, the Guidelines currently in force and the Regulations.

Finding

19. There are no procedural errors identifiable in the decision dated 26 November 2016.

RECOMMENDATION

20. The application for procedural review is dismissed.



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A handwritten signature in blue ink, which appears to read "Wayne Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
10 February 2017