



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 suffered a twisting injury to the back in March 2011. He continued to work in suitable duties until he resigned his employment in July 2012. Thereafter he received weekly payments of compensation for 164 weeks.
2. The insurer made a work capacity decision on 12 May 2016, resulting in payments ceasing on 21 August 2016. The applicant sought internal review and by decision dated 5 July 2016 the insurer upheld the original decision. The applicant, who is currently unemployed, does not meet the requirements of section 38(3)(b) and (c).
3. An application for merit review was received by the Authority on 4 August 2016 and the authority issued findings and recommendation on 1 September 2016. The Authority found that the applicant has current work capacity and is able to return to work in suitable employment, but does not satisfy the requirements of section 38(3)(b) and (c). For obscure reasons the Authority declined to make a recommendation, thus rendering the findings made "non-binding."
4. The applicant sought procedural review by application received by this Office on 4 October 2016. Taking into account time for postal delivery, I find that the application was made within time and on the correct form.
5. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines).



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Submissions by the applicant

6. 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.*”
7. The applicant has provided three typed pages of largely incoherent submissions, which seem to be suggesting that:
 - the workers compensation system is unfair;
 - he cannot do the work the insurer and the merit review service and (to be fair) his own Nominated Treating Doctor all say he can do; and
 - he finds it impossible to find another job when he discloses his prior injury and claim to prospective employers.
8. My review is limited to ensuring that the Insurer has followed proper procedures in making the work capacity decision. I have no power to revisit issues already determined in the course of merit review or to debate the merits of the legislation. The applicant has made no submissions relevant to procedural review.

Submissions by the Insurer

9. The Insurer made no submissions.

The Decision

10. Guideline 5.2 requires the insurer to give the worker fair notice of at least two weeks duration that an adverse work capacity decision may be forthcoming. The applicant was told by telephone on 21 March 2016 that an assessment leading to a decision was underway. This was confirmed in a letter of the same date.
11. In the notice dated 12 May 2016, the Insurer set out the relevant legislative provisions with an explanation of how they affected the decision-making process. The applicant was taken through sections 38, 54(2)(a), 60, and 59A(1)-(3). The various reports relied upon in making



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the decision were then set out, followed by an explanation of section 43(1). The definitions of “current work capacity” and “suitable employment” were fully set out. The method for calculating ongoing entitlements was correctly and fully explained.

12. It was clearly explained that the applicant’s own doctor believes that he could perform suitable work as either an Assembler or a Webster Packer (Light) for 30 hours per week. While the Insurer preferred the former, the Authority in conducting merit review preferred the latter. This is a question to be resolved by the merit reviewer, not in the course of procedural review.

13. I can identify no errors of a procedural nature in this work capacity decision.

Finding

14. The work capacity decision was validly made.

RECOMMENDATION

15. The application is dismissed.

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
1 November 2016