

**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.**

Introduction and background

1. A work capacity decision issued on 16 July 2013. The applicant requested an internal review on 06 February 2015. The insurer issued an internal review decision dated 10 March 2015. That decision confirmed the work capacity decision.
2. The Internal Review decision was received by the applicant on or about 13 March 2015. Between 20 March and 14 April 2015 the applicant was in Hong Kong visiting a dying relative.
3. The applicant sought merit review by the Authority on 22 April 2015, and the application form was received by the Authority on 24 April 2015.
4. By virtue of sections 44(3)(a) and 44(3)(b) of the *Workers Compensation Act 1987* the Merit Review Service of the Authority concluded that it had no power to review the Insurer's decision, since more than 30 days had elapsed between receipt by the worker of the Internal Review Decision on 13 March 2015 and the application being made for merit review on 22 April 2015.
5. The letter to the applicant from the Authority was posted on 12 June 2015 and emailed again on 24 June 2015, since the applicant said she had yet to receive a "hard copy" of the letter dated 12 June 2015. Specifically, the Authority said this:

... the authority does not have jurisdiction to accept an application for merit review by the Authority¹ outside of the 30 day timeframe.

There are no provisions within the 1987 Act, or in the *Guidelines for Work Capacity Decision, Internal Reviews by Insurers and Merit Reviews by the Authority* that allows (*sic*) the Authority to accept a late application for merit review or grant an extension of time for applications for merit review.

6. The applicant then made application to this office dated 27 July 2015, received today. I am satisfied that the applicant has made the application for procedural review on the proper form.

A threshold point

7. Section 44(1)(a) allows a worker to seek procedural review of the Insurer's work capacity decision, but "not until the dispute has been the subject of internal review by the insurer **and merit review by the Authority.**"(emphasis added)
8. Since merit review was not conducted in this case, it follows that this Office has no power to conduct a procedural review.
9. Procedural review does not include scrutiny of the decisions, findings or recommendations of the Authority, and it follows that this Office cannot countermand recommendations made by that body.

Finding

10. There being no power to conduct a procedural review, the application must be dismissed.

RECOMMENDATION

11. The application for procedural review is dismissed.

¹ Presumably a reference to an application by the worker, rather than by the Authority.



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29 July 2015