

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. The applicant seeks procedural review of a work capacity decision made by the Insurer on 18 March 2015. The insurer advised the applicant that her weekly payments of compensation would cease on 26 June 2015. The applicant sought internal review on 13 April 2015 and the Internal Review Decision was dated 5 May 2015 confirming the cessation of the applicant's weekly compensation payments.
2. The applicant then sought Merit Review from the Authority. However the applicant did not make the application until 18 June 2015.
3. By virtue of Sections 44(3)(a) and 44(3)(b) of the Workers Compensation Act 1987 the Merit Review Service 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 5 May 2015 and the application being made for merit review on 18 June 2015.
4. The Authority informed the applicant by letter dated 9 July 2015:

"There are no provisions within the 1987 Act that allows the Authority to accept a late application for merit review or grant an extension of time for applications for merit review."
5. The applicant then made application for procedural review to this office on 13 July 2015. I am satisfied the applicant has made the application within time and using the correct form.

The Decision

6. Section 44 of the 1987 Act regulates the review of work capacity decisions. Section 44(1)(c) stipulates that I can review the insurer's procedures in making the work capacity decision but not until the dispute has been the subject of internal review by the insurer **and merit review by the Authority.**

7. Section 44(1) of the 1987 states:
 - (1) *An injured worker may refer a work capacity decision of an insurer for review:*
 - (a) *by the insurer (an "internal review") in accordance with the WorkCover Guidelines within 30 days after an application for internal review is made by the worker, or*
 - (b) *by the Authority (as a merit review of the decision), but not until the dispute has been the subject of internal review by the insurer, or*
 - (c) ***to the Independent Review Officer (as a review only of the insurer's procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer in making the decision), but not until the dispute has been the subject of internal review by the insurer and merit review by the Authority.***

8. The Authority declined to review the work capacity decision as it did not have jurisdiction to conduct the review as the applicant had not applied for merit review within the time limitation imposed by Section 44(3)(a) of the 1987 Act.

9. Therefore, as the Authority has not conducted a review of the decision I am unable to conduct a review as a result of section 44(1)(c) of the 1987 Act.

Finding



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

Recommendation

11. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
11 August 2015