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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. On or about 17 June 2011 the applicant sustained injury to her right ankle in the course of her employment. She has not worked since. The Insurer accepted liability for all relevant periods and the applicant was in receipt of weekly payments immediately prior to 1 October 2012, as a result of which she is both an "existing recipient" and an "existing claimant" for all relevant purposes.
2. The applicant seeks procedural review of a work capacity decision made by the Insurer on 4 July 2016. The decision informed the applicant that her weekly payments of compensation would cease on 10 October 2016.
3. The applicant sought internal review and the Internal Review Decision, dated 25 August 2016, maintained the original decision. The applicant was thought by the Insurer to be capable of working in suitable employment, but did not meet the special requirements of section 38(3), since she is currently unemployed.
4. The applicant applied to the Authority for Merit Review, received on 22 September 2016 and they delivered findings and recommendations dated 26 October 2016. The Authority found that: (i) the applicant has no current work capacity; (ii) does meet the requirements of section 38(2), allowing for the continuation of payments beyond the first 130 weeks; and (iii) is entitled to ongoing payments at 80% of the transitional rate, being payments in the weekly sum of \$811.52.



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5. Clearly unaware that she had achieved a total victory at the merit review stage, the applicant then made an application to this Office, received on 23 November 2016. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
6. On 12 December 2016 I received an email from the applicant stating that the Insurer had made a new decision in the same terms as the merit review recommendation. The applicant seemed worried that the amount was too high, however as the merit reviewer pointed out at paragraphs 75-78 of the recommendation, she is entitled to 80% of the transitional rate by virtue of being an existing recipient. The correct figure is therefore \$811.52 per week.
7. The applicant also sought some kind of review of the procedures adopted by the Insurer in assessing whole person impairment and a review of her superannuation entitlements. Neither of these are relevant for present purposes and this Office has no power to conduct any such review.
8. If the applicant has queries about superannuation she should speak to the employer or to the Fair Work Ombudsman.
9. Since the applicant has achieved a maximal outcome following merit review and the Insurer's post-merit review decision, there is no utility in conducting a procedural review of a decision which has already been set aside.

Finding

10. There is no relevant decision to review.

RECOMMENDATION

11. The application for procedural review is dismissed.



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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
12 December 2015