

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 8 July 2014. The insurer advised the applicant that his weekly payments of compensation would cease. The applicant sought internal review of the decision and the Internal Review Decision was dated 01 September 2014. The original decision was upheld. The applicant then sought Merit Review from the Authority on 24 September 2014 and they delivered a recommendation dated 24 October 2014. This also resulted in no change to the original decision. The applicant then applied to this office for procedural review on 22 January 2015.
2. I am not satisfied that the applicant has made the application for Procedural Review in the proper form and within time.

Submissions by the applicant

3. Section 44(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.*" The applicant has requested a procedural review with no grounds specified. Despite making the application for procedural review more than 30 days after receipt of the merit review recommendation, the applicant makes no reference to unusual or mitigating circumstances.

Submissions by the Insurer

4. The Insurer has made submissions in the following terms:
 - a. [The applicant] seeks procedural review of a work capacity decision made by [the Insurer] on 8/07/2014. [The applicant] sought internal

review from [the Insurer] on 5/08/2014. An internal review decision was made on 1/09/2014.

- b. [The applicant] then sought Merit Review on 26/09/2014 and the Merit Review Authority made a decision on 24/10/2014. [The applicant] was advised by email of the decision on the same date.
- c. The application for procedural review from [the applicant] was dated 22/01/2015.
- d. Section 44(3)(a) of the *Workers Compensation Act 1987* requires the applicant to make an application for review to the Independent Review Officer within 30 days of receipt of a decision in the form *approved by the Authority*.
- e. We note that [the applicant] did not apply for a procedural review until 90 days after the Merit Review correspondence. We therefore consider that the application has not been made within the proper time frame.

Consideration

5. Section 44(3)(a) is in the following terms:

(3) The following provisions apply to the review of a work capacity decision when the reviewer is the Authority or the Independent Review Officer:

(a) an application for review must be made **within 30 days after the worker receives notice in the form approved by the Authority of the insurer's decision on internal review of the decision (when the application is for review by the Authority) or the Authority's decision on a review (when the application is for review by the Independent Review Officer)**

It is notable that there is no provision in the section for a discretionary allowance which might enable an application to be made out of time in certain circumstances. The section is strictly worded and must be interpreted in the same way. It follows that since the current application was made more than 30 days after receipt by the applicant of the merit review recommendation, it is out of time and this office has no power to conduct a procedural review.



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Finding

6. I find that the application for procedural review was made after the expiration of the time limit set out in section 44(3)(a) of the 1987 Act. The application for procedural review must be dismissed.

RECOMMENDATION

7. The application for procedural review is dismissed.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
03 February 2015