



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 of a work capacity decision is out of time and accordingly dismissed.**
- b. No recommendation is made.**

Introduction and Background

1. The applicant seeks procedural review of a work capacity decision made by the insurer dated 21 June 2013. This decision terminated the applicant's weekly payments. The applicant sought internal review and ultimately sought merit review. The Authority issued a merit review recommendation on 2 September 2013.
2. The applicant claims to have not received the merit review recommendation via email (due to "hacking") or even via ordinary post "in a timely manner." The Insurer itself sent a copy of the merit review recommendation under cover of a letter dated 19 November 2013 to the private residential address of the applicant. It is alleged that the applicant had the decision posted out by the Authority on four occasions, in addition to the original email notification. No admission is ever made of the date on which the merit review recommendation was received.
3. I accept the submissions of the Insurer which are supported by copies of correspondence sent via Australia Post to the applicant. On the basis of those submissions it is impossible to accept that the applicant did not receive a copy of the merit review recommendation from either the Authority of the Insurer or both of them before the end of 2013.
4. The application for procedural review was dated 17 August 2014. This is exactly 50 weeks after the date of the merit review recommendation.



5. Section 43(3)(a) of the *Workers Compensation Act 1987* (1987 Act) requires an application to be made within 30 days of receipt of the merit review decision by the Authority. No evidence has been provided by the applicant that the merit review decision was received on or after 19 July 2014.

FINDING

6. I find that the application to this office for procedural review is out of time according to section 43(3)(a). It follows that there is no jurisdiction for this office to make a recommendation.

RECOMMENDATION

7. The application for procedural review of a work capacity decision is out of time and is accordingly dismissed.
8. No recommendation is made.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
29 September 2014