



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 was not made within time and WIRO has no jurisdiction.**
- b. The application is dismissed.**

Background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 21 November 2013. The applicant sought internal review from the Insurer which made a decision dated 11 September 2013. She sought Merit Review on or about 24 December 2013 and the Authority issued the Merit Review recommendation on 10 July 2014. The applicant made application to this office which was received on 21 August 2014.
2. The application for procedural review from the applicant was ostensibly dated 5 August 2014. It advised that the Merit Review decision was dated 3 July 2014. This is an error. The correct date is 10 July 2014.
3. The application for procedural review although dated 5 August 2014 on its face was not sent to WIRO until an email was received from [email address provided] at 12:44pm on Thursday 21 August 2014. No submissions were made by the applicant in respect of the discrepancy between the date of the application and the date it was emailed.
4. *Section 44 (3)(a) of the Workers Compensation Act 1987 (the 1987 Act)* 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*.
5. The date the application was "made" in this case is the date on which the email was sent, not the date hand-written on the application form.



The applicant therefore did not apply for a procedural review until 21 august 2014, being 42 days after the Merit Review Recommendation.

6. WIRO has no jurisdiction to make a recommendation since the application is out of time and there is no discretion within the section to allow for exceptions.

Recommendation

7. The application for procedural review was not made within time and WIRO has no jurisdiction.
8. The application is dismissed.

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
1 October 2014