



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 is dismissed.

Introduction and background

1. The factual background to this matter was set out in recommendation 7416 (# 74 of 2016) and need not be repeated.
2. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 19 September 2016. The Decision informed the applicant that his weekly payments of compensation would cease from 29 December 2016 due to the algorithm in section 37 which applies to workers who have not returned to paid employment.
3. An internal review conducted on 4 November 2016 resulted in the same decision.
4. The applicant sought Merit Review from the Authority received on 1 December 2016 and the Authority delivered its Findings and Recommendations dated 13 January 2017. The Authority made findings that the applicant: (i) has current work capacity; (ii) is able to work as a Call Centre Representative or Data Entry Officer; and (iii) is able to earn \$600 per week in suitable employment. The merit reviewer recommended that the Insurer calculate the applicant's entitlement under section 37 in accordance with the above findings.
5. An application to this office for procedural review was received on 27 January 2017. I am satisfied that the application has been made within time and in the proper form.

Submissions by the applicant



6. 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 provided the following submissions:

- The insurer has not looked at all the available reports.
- The labour report is incorrect as they have not considered the current Award, which is lower than the amount quoted in the report.
- Some medical reports are old, from previous doctors no longer used by the applicant due to bad management of his injury.
- Other reports are from a doctor he only saw once, before any bone scans were done, and whose reports are demeaning and offensive to the applicant.
- At the conclusion of the work trial the job offered was not the same one which was performed during the work trial. The applicant is unable to do the work offered due to his injury and lack of skills.

7. In addition to the above submissions the applicant favoured me with a copy of a medical report dated 23 December 2016 assessing him with permanent Whole Person Impairment of 15%. Since it clearly post-dates the work capacity decision it is irrelevant for present purposes, but may have an impact in the future if the Insurer is assessing the applicant’s rights under section 59A(2).

Submissions by the Insurer

8. The Insurer has provided submissions in response to the applicant’s application. The Insurer has submitted that:

- The applicant has been paid weekly payments of compensation for 85 weeks and therefore any ongoing entitlement is subject to Section 37 of the 1987 Act.



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- The applicant does not currently work.
- His Nominated Treating Doctor [NTD] certifies the applicant as capable of working for 24 hours per week in a Certificate of Capacity dated 21 November 2016.
- A rehabilitation services provider found following contact with potential employers that the applicant would be able to earn \$624 per week in the suitable employment of Data Entry Operator.
- The NTD provided approval for the applicant to complete a work trial on 24 October 2016. The work trial lasted from 7 November to 2 December 2016.
- A different provider found after consultation with no less than three prospective employers that the applicant could earn \$624 per week @ \$26 per hour for 24 hours work.
- Medical evidence considered by the Insurer included certificates of capacity issued by the NTD on 26 September 2016 and 24 October 2016. [At best, this could only refer to the Internal Review, since neither certificate cited existed at the date of the work capacity decision.]
- Medical evidence on file at the time suggested WPI of less than 10%.

Decision

9. Section 44A of the *Workers Compensation Act 1987* (1987 Act) provides that a work capacity assessment must be conducted in accordance with the Guidelines.
10. The relevant Guidelines for the purposes of section 44A are the ***Guidelines for claiming workers compensation*** which came into effect on 1 August 2016. They replaced the previous Guidelines.
11. The Insurer advised the applicant that a work capacity assessment was completed on 13 September 2016 and that in the course of this



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assessment “all available and relevant information” was considered. It may be true that the applicant differs with the Insurer as to the relevance of certain documents, but there can be no dispute that the Insurer did consider the most recent medical reports and Certificates of Capacity tendered by the applicant. The decision by the Insurer is certainly consistent with the contents of those documents.

12. The applicant was advised that the Insurer assessed him as capable of working as a Call Centre Representative, with an ability to earn \$600 per week for 24 hours work. PIAWE was assessed at \$746.76.
13. The applicant was advised that he was in the second entitlement period, meaning that the algorithm in section 37 would apply to his case. Since he had not returned to work, his entitlement would be \$0.00 from 29 December 2016.
14. The Insurer took the applicant through section 43(1), section 32A and section 59A(2) and (3). It was explained that since the applicant had less than 10% whole person impairment, his medical expenses could be pre-approved for up to two years following 29 December 2016.
15. The medical evidence relied upon was fully set out and carefully explained.
16. The merit review service came to the same conclusion as the Insurer, with the additional finding that he could work as a Data Entry Officer (which has the same earning capacity as a Call Centre Representative).
17. The correct notice period was given under section 54.
18. I can find no procedural errors on the part of the Insurer.

Finding

19. The work capacity decision made by the Insurer on 19 September 2016 was validly made.

RECOMMENDATION

20. The application is dismissed.



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A handwritten signature in blue ink, which appears to read "Wayne Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
28 February 2017