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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 is dismissed.**

##### **Introduction and background**

1. The applicant suffered a right ankle injury in the course of her employment as a Council Ranger on 23 August 2016. The insurer accepted liability and made weekly payments for all relevant periods. The applicant has not returned to work.
2. The insurer made a work capacity decision on 5 January 2018. As a result the insurer advised that weekly payments would reduce to \$0.00 from 12 April 2018. After an internal review conducted on 7 March 2018 the Insurer once again arrived at the same decision. I might mention in passing that at paragraph 28 of the internal review the insurer made the peculiar observation that it was "satisfied" that the applicant was an existing recipient of weekly benefits, as defined in Clause 1 of Part 19H of Division 2 of Schedule 6 to the 1987 Act. It is hard to see precisely how it is that a person who was not even injured until 2016 could have been in receipt of weekly compensation payments immediately prior to 1 October 2012. No doubt the insurer has a credible explanation somewhere, but since the observation was completely irrelevant to the task at hand, no time ought be wasted in search thereof.
3. Having not received the internal review decision until 13 May 2018, the applicant sought Merit Review by application received by the Authority on 24 May 2018. The Authority made the following findings on 28 June 2018:
  - Between 5 January 2018 and 15 April 2018 the applicant had 'current work capacity' in accordance with the definition under section 32A of the 1987 Act;



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- Between 5 January 2018 and 15 April 2018 the applicant was able to earn \$1,121 per week in suitable employment;
  - From 16 April 2018 the applicant has ‘no current work capacity;’
  - The amount of the applicant’s PIAWE is \$1,341.51.
4. The merit reviewer made the following consequential recommendation:
- From 5 January 2018 the insurer is to determine and pay the applicant’s entitlement to weekly payments of compensation in accordance with the findings above (subject to any required notice period).<sup>1</sup>
5. An application to this office for procedural review was received on 27 July 2018. I am satisfied that the application has been made within time and in the proper form.

### **Submissions by the applicant**

6. Section 44BB(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 somewhat terse grounds for seeking a review:
- Treatment by insurer;
  - Pre-injury employment earnings versus customer service; and
  - Amount of money paid from 5<sup>th</sup> January 2018 to 15<sup>th</sup> April 2018.
7. The first submission makes no specific allegation. The second appears to be a complaint about the identification of suitable employment, which was addressed in the course of merit review. The third, to the extent that any error was made, was corrected in the course of merit review.

### **Submissions by the Insurer**

8. The Insurer responded in the following terms:

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<sup>1</sup> There has been no such “required notice period” for increased payments since the repeal of the former clause 21 of the *Workers Compensation Regulation 2010*.



- We have no submissions to make other than to point out that the worker has already been paid at 80% of her PIAWE for the period she is querying (5/1/18 to 15/4/18) in her request for procedural review.

9. The insurer's submission is not without force.

### **Decision**

10. The submission of the insurer makes it difficult to identify a live issue between the parties. While the applicant seems to be unhappy with the way she was "treated" by the employer, there are no particulars given and in any event I can have no regard to such considerations in the course of procedural review.
11. The Insurer gave the applicant 'fair notice' of an impending decision by letter dated 12 December 2017. This is in accordance with the relevant *Guidelines*.
12. The decision set out the relevant elements of a work capacity decision as enumerated in section 43(1)(a)-(e).
13. Section 59A(2) was explained, as were the relevant entitlement periods and sections 37 and 38.
14. The correct notice period was advised.
15. The notice issue and section 59A(2) have now been overtaken by events, given the finding by the Authority that the applicant has 'no current work capacity' from 16 April 2018 and therefore has a continuing entitlement thereafter.

### **Finding**

16. There are no relevant errors of a procedural nature.

### **RECOMMENDATION**

17. The application 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  
17 August 2018