

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.**

Recommendation

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 30 August 2013. The applicant sought merit review and the Authority issued the merit review recommendation on 11 July 2014. The applicant made application to this office on 29 August 2014.
2. *Section 44 (3) 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*.
3. The applicant advises that he did not receive the decision from the Authority when it was sent by email as *'attempts to utilise this email address have caused emails to bounce back'*. The applicant submits that he has not received a copy of the work capacity decision and that the time frame in which he can apply for a review should not have yet commenced to run.
4. Later in the applicant's submissions he concedes that the insurer advised him of the merit review recommendations under cover letter dated 18 July 2014. The applicant's further submission is that if time is to run then this is the appropriate date from which time should commence.
5. The insurer advises in its submissions that its letter dated 18 July 2014 informed the applicant of his options to seek a procedural review and advised of the appropriate time frame.



6. The applicant was given notice of the merit review decision in the insurer's letter dated 18 July 2014 and by accepting the applicant's submission this is the appropriate date from which time should commence for the purpose of *Section 44(3)* of the 1987 Act.
7. The applicant did not apply for a procedural review until 42 days after the notification by the insurer of the Merit Review Recommendation.

Recommendation

8. 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.

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