



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 for procedural review is dismissed.

Introduction and background

1. The applicant sustained a right shoulder tendons tear and subacromial bursitis in the course of his employment as a Sales Director on 17 July 2017. The insurer accepted liability and he was continuously in receipt of weekly payments of workers compensation.
2. The insurer made a work capacity decision on 22 June 2018, assessing the applicant's PIAWE at \$1,369.23. The PIAWE calculation was based on the contents of the applicant's most recent tax return, there being no payslips made available to the Insurer. Given the date of injury, it seems that the tax return for the financial year 2016-17 might provide the "best evidence" of PIAWE. Assuming the truth and accuracy of the tax return, the insurer made the simple calculation that the applicant's taxable income (\$71,200) when divided by 52 weeks came to a PIAWE of \$1,369.23.
3. The applicant sought an internal review, alleging error on the part of the insurer. The insurer conducted an internal review and arrived at a slightly adjusted PIAWE of \$1,367.31. This was based on a combination of the 2016-17 tax return and a letter from the applicant's accountant, which said that the relevant taxable income was in fact \$71,100, not \$71,200. Once again the insurer was not provided with payslips. The applicant was advised that the revised PIAWE would be applied from 9 November 2018.
4. Despite the miniscule difference in the two PIAWE figures the applicant sought merit review by the Authority. On 17 August 2018 the applicant was advised of the outcome of merit review, which was that his PIAWE was adjusted by \$0.19 per week upwards to \$1,367.50. The merit



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

reviewer noted that while both the tax return and the letter from the accountant assessed his income for the year 2016-17 as \$71,100, and the letter from the accountant specified a recurring fortnightly payment of \$2,735 (which, divided by two, would equal \$1,367.50 per week), the applicant had submitted a PIAWE form alleging payment of \$1,600 per week for the relevant period.

5. The applicant then made an application to this Office for procedural review received on 28 August 2017. I am satisfied that the application has been made within time and in the proper form.
6. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *Work Capacity Guidelines* (Guidelines).

Submissions by the applicant

7. Section 44BB (1) (c) of the Workers Compensation Act 1987 (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.”*
8. In addition to making an application for procedural review the applicant has made the following submission:

- The PIAWE is not correct.

Submissions by the Insurer

9. The Insurer made no submissions in response to the application.

Decision

10. The submission made by the applicant is unsupported by any collateral evidence. The tax return for the year 2016-17 shows a taxable income of \$71,200, minus \$100, being the “cost of managing tax affairs.”
11. This is the only evidence provided to the insurer and the Authority, apart from a PIAWE form. The Authority was correct to prefer the evidence of the tax return and the letter from the accountant to the evidence of the



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PIAWE form. In the circumstances there is no basis for challenging the insurer's decision on procedural grounds.

Finding

12. There are no procedural errors identifiable in the decision. The Insurer has complied with the Guidelines and relevant legislation.

RECOMMENDATION

13. The application for procedural review is dismissed.

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
02 October 2017