



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 seeks procedural review of a work capacity decision made by the Insurer on 7 August 2015. The decision informed the applicant that he was entitled to weekly payments of compensation. The figure of \$1,037.26 per week was determined to be the applicant's pre-injury average weekly earnings (PIAWE) and was to be used in calculating his weekly compensation entitlements.
2. The applicant sought Internal Review and then Merit Review from the Authority. The issue in dispute was the calculation of the applicant's PIAWE. The Merit Review decision was dated 11 November 2015. The Authority found the applicant's PIAWE to be \$1,195.20 per week.
3. The applicant then made an application to this office for procedural review by way of application dated 1 December 2015. I am satisfied that the application has been made within time and in the proper form.

Submissions by the applicant

4. The applicant has made the following submission:

"I would like to be paid my correct pay and back pay from the day my PIAWE was made. As the merit review board made the decision that they calculated it should be 18 weeks of work not 20 weeks which the [name of insurer] made. My pay was short \$144.06 gross per week in the first 52 weeks. Then \$115.20 per week after that."

5. I cannot review any discretion or judgment exercised by the insurer when they are making a decision in respect of the merits of the



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calculation of a worker's PIAWE. I can only review the procedures undertaken by the Insurer in making the actual work capacity decision.

Submissions by the Insurer

6. The Insurer provided a copy of an email sent to the Authority advising that a back payment would be made to the applicant. The Insurer also provided a copy of the email in response received from the Authority dated 2 December 2015. This post-dates the application for procedural review from the applicant. The Authority has advised the Insurer that that they had discussed the applicant's complaint with him regarding back-pay and other entitlements. The complaint was dealt with to the Authority's satisfaction and they closed the file.

Decision

7. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
8. The work capacity decision by the Insurer has informed the applicant that he is entitled to weekly payments of compensation. The basis for the change in the calculation of the applicant's weekly payments of compensation is a change in the method of calculation of the applicant's PIAWE.
9. As the applicant's weekly compensation payments have not ceased the Insurer is not required to provide notice under Section 54(2)(a) of the *Workers Compensation Act 1987* (1987 Act).
10. The Insurer has correctly informed the applicant that pursuant to Section 54(6) of the 1987 Act they are not required to provide notice of a change in payments when the reduction is as a result of *'the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable.'*
11. In accordance with Guideline 5.3.2 the Insurer has informed the applicant of the processes available for requesting a review and how to access the required form.



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12. The Insurer has displayed an adequate understanding of the legislation and Guidelines in making this work capacity decision.

Finding

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

RECOMMENDATION

14. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
21 December 2015