

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 work capacity decision dated 22 April 2013 has not been the subject of merit review by the Authority therefore pursuant to Section 44(1)(c) of the *Workers Compensation Act 1987* WIRO has no jurisdiction to make a recommendation.**

Introduction and background:

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 22 April 2013. The decision advised the applicant that his weekly payments would cease on 22 July 2013. The applicant sought internal review and the Internal Review Decision (IRD) was dated 4 August 2014. That decision reinstated the applicant's payments after finding that the applicant had no capacity for work.
2. The applicant then sought Merit Review on 12 August 2014. The application for Merit Review advised that there was no issue between the parties on the question of the worker's incapacity for work. This would indicate that the applicant accepted the IRD of 4 August 2014. The applicant's legal representative advised that the only issue between the parties was whether the worker was correctly transitioned to the new legislation. The submissions on this issue referred to the work capacity decision dated 22 April 2013.
3. The Merit Review recommendation determined that Merit Review had no jurisdiction to determine the review application as it did not refer to a dispute under *Section 43(1)* of the 1987 Act. The application for merit review confirmed that there was no dispute between the parties on the merits of the insurers work capacity decision.
4. *Section 44(1)(c)* of the 1987 Act states that the applicant may refer a work capacity decision of an insurer for review to the Independent Review Officer but not until the dispute has been the subject of an



internal review by the insurer **and** merit review by the Authority (emphasis added).

5. The decision upon which the applicant is seeking procedural review is the decision dated 22 April 2013. That decision has not been the subject of merit review by the Authority in accordance with *Section 44(1)(c)* of the 1987 Act.

Recommendation

6. The work capacity decision dated 22 April 2013 has not been the subject of merit review by the Authority therefore pursuant to *Section 44(1)(c)* of the Workers Compensation Act 1987 WIRO has no jurisdiction to make a recommendation.

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