

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.**

Introduction

1. The applicant seeks procedural review of a work capacity decision made by the insurer dated 5 February 2014. This decision terminated the applicant's weekly benefits effective 13 May 2014. An internal review was conducted on 3 April 2014. This confirmed the original decision. The applicant sought merit review. Following receipt of the Merit Review Service (MRS) recommendation dated 20 May 2014, the applicant made an application to this office dated 10 September 2014.

CONSIDERATION

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 MRS recommendation is dated 20 May 2014. If the decision was posted to the applicant, the MRS recommendation is taken to have been received by the applicant on the fourth working day after the letter was posted, which in this case is 26 May 2014¹.
4. The applicant was provided with a *Work capacity – notification of WorkCover's decision on merit review of a work capacity decision of an insurer* form dated 20 May 2014 along with the MRS recommendation. This document informed the applicant of her options to seek a procedural review and advised of the appropriate time frame. The applicant's application for procedural review does not describe any delay in receiving the MRS recommendation.

¹ See Section 76(1) of the *Interpretation Act 1987*.



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5. The applicant did not apply for a procedural review until 10 September 2014, 106 days after the date she is deemed to have received the MRS recommendation.
6. 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.

Jeffrey Gabriel
Delegate of the WorkCover Independent Review Officer
16 October 2014