

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 is dismissed.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 14 November 2013. The insurer advised the applicant that his weekly payments of compensation would cease. On 24 February 2014 the applicant sought internal review of the decision and the Internal Review Decision was dated 20 March 2014. The original decision was upheld. The applicant then sought Merit Review from the Authority on 15 April 2014 and they delivered a recommendation dated 23 September 2014. This also resulted in no change to the original decision. The applicant then applied to this office for procedural review on 10 February 2015.
2. I am not satisfied that the applicant has made the application for Procedural Review within time.

Submissions by the applicant

3. Section 44(1)(c) of the 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.*" The applicant has requested a procedural review with no procedural grounds specified. Despite making the application for procedural review more than 30 days after receipt of the merit review recommendation, the applicant makes no reference to unusual or mitigating circumstances. Further, the applicant seems to be under the misapprehension that this Office has the power to review recommendations of the Merit Review Service of the Authority. It does not.

Submissions by the Insurer

4. The Insurer has made submissions in the following concise terms:
 - a. The Insurer submits that this application for procedural review is out of time.
 - b. The Internal Review Decision was issued 18 March 2014. The Merit Review Decision was issued 23 September 2014.
5. It might fairly be assumed that this is an attempt to say that the application for procedural review is made more than 30 days after receipt by the worker of the recommendation of the merit review service of the Authority, and therefore is out of time because it breaches section 44(3)(a) of the 1987 Act.

Consideration

6. Section 44(3)(a) is in the following terms:

(3) The following provisions apply to the review of a work capacity decision when the reviewer is the Authority or the Independent Review Officer:

(a) an application for review must be made **within 30 days after the worker receives notice in the form approved by the Authority of the insurer's decision on internal review of the decision (when the application is for review by the Authority) or the Authority's decision on a review (when the application is for review by the Independent Review Officer)**

It is notable that there is no provision in the section for a discretionary allowance which might enable an application to be made out of time in certain circumstances. The section is strictly worded and must be interpreted in the same way. It follows that since the current application was made more than 30 days after receipt by the applicant of the merit review recommendation, it is out of time and this office has no power to conduct a procedural review.

Finding



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7. I find that the application for procedural review was made after the expiration of the time limit set out in section 44(3)(a) of the 1987 Act. The application for procedural review must be dismissed.

RECOMMENDATION

8. The application for procedural review is dismissed.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
12 February 2015