



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 is dismissed.

Introduction and background

1. On 4 October 2014 the applicant suffered bilateral shoulder injuries following a fall in the course of her employment as an inventory assistant. The insurer accepted liability and made weekly payments for all relevant periods.
2. The insurer sent a "fair notice" letter to the applicant on 3 May 2018 advising that it proposed to make a work capacity decision.
3. Since the applicant had received more than 130 weeks of payments, section 38(2) required the insurer to determine whether the applicant had current work capacity or no current work capacity.
4. The insurer made a work capacity decision and advised the applicant of the outcome by notice dated 24 May 2018, being 21 days following the date of the "fair notice" letter. The insurer decided that the applicant had no further entitlement to weekly payments, with payments to cease on 30 August 2018. I note this is adequate notice for the purposes of section 54(2)(a).
5. Specifically, the insurer found that the applicant had the ability to earn \$1,102 in suitable employment as a Customer Service Officer/Call or Contact Centre Worker, or Sales Assistant or Customer Service Manager. The applicant's PIAWE was found to be \$787.50.
6. Noting that the applicant had not returned to work in any capacity, the insurer advised that section 38(3) was not satisfied, since the applicant did not work for at least 15 hours per week, nor earn more than \$185 per week.



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7. The applicant sought internal review. On 12 July 2018 the insurer sent to the applicant a notice dated 9 July 2018 advising that the earlier work capacity decision had been affirmed following internal review.
8. The only slight difference between the original decision and the internal review decision is that in the original decision the insurer found the applicant capable of working “8 hours per day, 5 days per week,” whereas in the internal review the insurer found that the applicant could work for “38 hours per week.” Nothing turns on the difference.
9. The applicant sought merit review by the Authority, with the application received on 12 August 2018. In a notice dated 7 September 2018, the Authority made the following findings and recommendation:

Findings:

- The role of retail assistant constitutes suitable employment for the applicant;
- The roles of customer service officer/call centre worker and customer service manager do not constitute suitable employment for the applicant; and
- The applicant has an ability to earn \$850 per week in suitable employment.

Recommendation:

- The insurer is to determine the applicant’s entitlement to weekly payments of compensation (if any) in accordance with the findings above.
10. Given that implicit in “the findings above” is the obvious fact that the applicant does not have “no current work capacity,” and is therefore subject to section 38(3), the relevance of the recommendation is hard to see.
 11. An application to this office for procedural review was received on 10 September 2018. I am satisfied that the application has been made within time and in the proper form.



Submissions by the applicant

12. Section 44BB(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 provided the following ‘submissions:’

- The decision wrong in both fact and law

13. No particular fact is identified as more erroneous than any other, so I have no real idea where I am to find “error,” such as is asserted.

Submissions by the Insurer

14. The Insurer took the trouble to prepare a chronology of events, without specifically addressing the allegation of “error” made by the applicant.

Decision

15. The insurer gave the applicant fair notice as required.

16. The decision itself advised the applicant of her PIAWE, the relevant periods of entitlement, the relevant legislation and the effect of the legislation on the applicant’s ability to continue receiving weekly payments. Relevant medical reports and other supporting documentation were provided and referred to.

17. In so far as the Authority found the suitable work identified by the insurer to be unsuitable, there was error. However, that error has been corrected by the Authority. Further, the error was not such as to change the entitlement of the applicant to weekly payments.

18. On the face of the decision there are no identifiable relevant errors of fact or law.

19. There are no procedural errors.

Finding



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20. The work capacity decision by the insurer dated 24 May 2018 was validly made.

RECOMMENDATION

21. The application is dismissed.

A handwritten signature in blue ink, appearing to read "Wayne Cooper", with a long horizontal flourish extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
12 October 2018