



## **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. The applicant sustained a fractured right radial bone, causing symptoms to manifest in both the forearm and the wrist, as a result of a frank episode which occurred on 15 March 2013 in the course of his former employment as a Farm Hand. The Insurer accepted liability and made weekly payments for all relevant periods.
2. In a work capacity decision dated 25 May 2017 the Insurer advised that the applicant would cease receiving weekly payments on and from 1 September 2017, due to his failure to meet the special requirements of Section 38(3)(b) and (c). Those requirements are, first, that a worker be employed for at least 15 hours per week and earn a minimum of (at that time) \$183 per week and, secondly, that the insurer be satisfied that such a worker as complies with the first requirement is likely to continue to be unable to undertake "further additional employment or work that would increase the worker's current weekly earnings." Since the applicant did not fulfil the working hours and monetary earnings requirements set out in section 38(3)(b), the relevance of section 38(3)(c) might be thought obscure.
3. Since the applicant had at the time already received weekly payments for a period well exceeding 130 weeks (217 weeks, to be precise) there can be no dispute that section 38 applied.
4. Equally, since the applicant did not at the time work in any capacity, it cannot be in dispute that he failed to meet the requirements of section 38(3)(b) and, for the sake of completeness, (c).



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5. The insurer went on to find that the applicant had current work capacity and could in fact work for 8 hours per day, 5 days per week as a Meter Reader. The finding was consistent with current certification from the applicant's Nominated Treating Doctor. That same doctor had rejected employment in the roles of Console Operator/Petrol Station Attendant and Car Park Attendant as "unsuitable" for the applicant, given the restrictions arising from his right forearm and wrist injury.
6. An Internal Review Decision was dated 05 September 2017. That decision upheld the original decision.
7. The applicant sought Merit Review from the Authority. The application was received by SIRA "within 30 days" of the applicant's receipt of the Internal Review, and the Authority's Findings and Recommendations were issued on 22 November 2017.
8. The Authority made the following findings:
  - The applicant:
    1. Is able to return to work in suitable employment;
    2. Has current work capacity; and
    3. Does not satisfy the special requirements for continuation of weekly payments of compensation after the second entitlement period pursuant to section 38(3).
9. An application was made to this office for procedural review dated 21 December 2017 and received on 03 January 2018. I am satisfied that the application has been made within time and in the proper form.
10. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the relevant *Guidelines*.

### **Submissions by the applicant**

11. 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.*"



12. The applicant made extremely lengthy submissions, although they seem to have been dealt with in full in the course of merit review, where I suspect SIRA was the recipient of very similar submissions under a different heading. The concerns raised go to the merits of the decision, not the procedures used by the insurer.

### **Submissions by the Insurer**

13. Despite the irrelevance of the applicant's submissions, the Insurer took the trouble to respond at length. I am satisfied that no issue raised by the applicant in the course of submissions was likely to lead to any finding of invalidity, but the insurer showed to my satisfaction that it had relied upon recent, relevant reports and had provided copies of all relevant documents to the applicant, despite assertions to the contrary. It is clear from the text of the merit review that exactly the same arguments were ventilated in that forum, with the same result.

### **The Decision**

14. The applicant was given adequate notice for the purposes of section 54(2)(a).
15. The correct entitlement period was applied and explained.
16. The decision was based on current available evidence provided by the applicant's own doctors.
17. The Insurer explained the effect of section 59A(2) and advised that pre-approved medical, hospital and related treatment expenses could be paid until 1 September 2019. There does not appear to be any question of WPI in excess of 10%.
18. I can identify no errors of a procedural nature.

### **Finding**

19. The work capacity decision dated 25 May 2017 complies with the legislation and the guidelines and was therefore validly made.



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## RECOMMENDATION

20. The application is dismissed.

A handwritten signature in blue ink, which appears to read "Wayne Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne Cooper  
Delegate of the Workers Compensation  
Independent Review Officer  
18 January 2018