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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 for procedural review is dismissed.

Introduction and background

1. The applicant sustained a right shoulder injury in the course of her employment as a Meat Processor on either 26 September 2016 or 10 November 2016 (both dates appear at various places in various documents). She worked on light duties until her position was terminated. The insurer accepted liability and she was continuously in receipt of weekly payments of workers compensation.
2. The insurer made a work capacity decision on 12 October 2017, assessing the applicant's PIAWE at \$968.33. The PIAWE calculation was based on the contents of documents provided.
3. The applicant sought an internal review, alleging error on the part of the insurer. The insurer conducted an internal review and arrived at a slightly adjusted PIAWE of \$857.65. This was based on a combination of the earnings from two different employers, which appear to have either been averaged over 62 weeks or 50 weeks with one employer and 12 with another, with (perhaps) 10 of those weeks overlapping. It is not particularly clear. the applicant sought merit review by the Authority in any event.
4. The applicant sought merit review by the Authority. The applicant was advised of the outcome of merit review by decision dated 30 August 2018. The Authority made the following findings and recommendation:

SIRA Findings:



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- (i) The worker has a present inability arising from an injury such that she is not able to return to work in her pre-injury employment;
- (ii) The worker is able to return to work in suitable employment;
- (iii) The worker has current work capacity;
- (iv) The worker is able to earn \$288 per week in suitable employment; and
- (v) The amount of the worker's pre-injury average weekly earnings (PIAWE) is \$1,086.54.

SIRA Recommendation:

In accordance with section 37(3) of the 1987 Act, the worker's entitlement to weekly payments of compensation since 26 September 2016 (subject to any notice period required under section 54 of the 1987 Act) is \$581.23 (subject to indexation pursuant to division 6A of part 3 of the 1987 Act).

5. The applicant then made an application to this Office for procedural review received on 28 September 2018. I am satisfied that the application has been made within time and in the proper form.
6. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *Work Capacity Guidelines* (Guidelines).

Submissions by the applicant

7. Section 44BB(1)(c) of the Workers Compensation Act 1987 (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.*"
8. In addition to making an application for procedural review the applicant has made the following submissions:
 - The insurer incorrectly calculated PIAWE;
 - SIRA in the course of merit review repeated the same errors;
 - SIRA was asked to calculate PIAWE for the first 52 weeks and post-52 weeks, but they produced only one figure and it is not



clear whether it refers to first 52 weeks or the post-52 weeks period.

Submissions by the Insurer

9. The Insurer made no submissions in response to the application.

Decision

10. The submissions made by the applicant are simply incorrect. SIRA set out all the evidence provided to the insurer and the Authority and made a clear decision based on that evidence.
11. Paragraph 84 of SIRA's decision is a complete answer, in the following terms:

The insurer's reply states that the Worker had been paid 93 weeks of weekly payments. At the time of the insurer's decision about the Worker's PIAWE, the Worker had been in receipt of over 52 weeks of weekly payments. Overtime and shift allowances are therefore not permitted to be included in the calculation of the Worker's PIAWE.

12. To the extent that the insurer may have erred in calculating a lower PIAWE, that has been remedied in the course of merit review.

Finding

13. There are no procedural errors identifiable in the decision. The Insurer has complied with the Guidelines and relevant legislation.

RECOMMENDATION

14. The application for procedural review is dismissed.



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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
22 October 2018