

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 of a work capacity decision is dismissed.**
- b. **I recommend that the Insurer pay the applicant the weekly benefit to which he was entitled prior to 18 July 2014 until receipt of this recommendation, in accordance with clause 30 of schedule 8 to the *Workers Compensation Regulation 2010*.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 30 June 2014. The Insurer notified the applicant that his payments would cease from 9 October 2014, with the last date for which payment would be received being 8 October 2014. The applicant sought internal review and the Internal Review Decision was issued on 8 August 2014. That decision confirmed the original work capacity decision. The applicant then sought Merit Review and applied to the Authority on or about 22 August 2014. The Authority issued the Merit Review recommendation on 26 September 2014. The Authority also confirmed the original decision of the insurer. Following receipt of the Merit Review Service (MRS) recommendation, the applicant made application to this office on 16 October 2014. Accordingly I am satisfied that the application has been made within time and on the correct form.
2. The factual background to this application need not be repeated, having been fully set out in WIRO recommendation **6814**, dated 19 May 2014.

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's submissions largely go to the merits of the decision and the conduct of

the Insurer and the Authority and are therefore not relevant to a procedural review. Put shortly, the applicant is of the view that neither the Insurer nor the Authority are inclined to take much notice of his concerns and he is “going around in circles” while being ignored. He thinks that the Authority might have had more regard to the opinions of a treating doctor and a treating psychologist than they displayed in the course of their recommendation and he is decidedly ungenial in his description of the efforts made on his behalf by the various rehabilitation providers with whom he has had to deal, the final insult being that all such services were cut off with the termination of his weekly benefits.

Submissions by the Insurer

4. The Insurer made the following submissions:
 - In response to the worker’s submissions above [the Insurer] notes [the applicant] is seeking a review of the information considered and relied upon as part of both the Work Capacity Decision dated 30/6/2014 and the Merit Review Decision dated 26/9/2014. The question of suitability of employment and capacity for some type of employment is based on the merits of the decision.
 - Accordingly we consider a merit based review is outside of the jurisdiction of the WorkCover Independent Review Officer, who is limited to undertake a procedural review only.

The Decision

5. The decision is dated 30 June 2014 and was made following receipt by the Insurer of WIRO recommendation **6814** in May 2014. That recommendation had identified certain shortcomings in the original work capacity decision made in 2013. The Insurer has taken on board the commentary in that earlier WIRO recommendation and has corrected the following errors:
 - The date of work capacity assessment was disclosed to the applicant (assessment was completed on 30 June 2014);
 - Section 59A was adequately explained;

- The terms “current work capacity,” “suitable employment” and “no current work capacity” were explained and the legislation was relevantly referenced;
 - Relevant evidence was referred to, identified and described as either “not relied upon” or “relied upon” by the Insurer; and
 - The applicant was told that any documents not already provided could be provided upon request.
6. In addition to the points above, the Insurer explained the relevant entitlement periods and gave the applicant adequate notice prior to cessation of benefits in accordance with section 54(2)(a).

FINDING

7. I find that the Insurer has followed the procedures as set out in the *WorkCover Guidelines*, as required by Section 44A of the 1987 Act.

RECOMMENDATION

8. The application for procedural review of a work capacity decision is dismissed.
9. I recommend that the Insurer pay the applicant the weekly benefit to which he was entitled prior to 18 July 2014¹ until receipt of this recommendation, in accordance with clause 30 of schedule 8 to the *Workers Compensation Regulation 2010*.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
25 November 2014

¹ The date on which the insurer received the application for internal review.