

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.**

Background

1. The application for procedural review of a work capacity decision dated 25 November 2014 requests a *“review of the date when the weekly compensation should be reinstated.”*

The Decision

2. The Independent Review Officer does not have jurisdiction to review the findings and recommendations on merit review from the Authority. The only jurisdiction the Independent Review Officer has is to review the work capacity decision made by the Insurer. The date on which payments might be resumed following a merit review recommendation is not a matter which might be “reviewed” on procedural grounds. In passing it is noted that the recommendations of the Authority following merit review are binding on the Insurer.
3. Section 44(1) of the *Workers Compensation Act 1987* states an injured worker may refer a work capacity decision of an insurer for review:
 - (a) *by the insurer (an “internal review” in accordance with the WorkCover Guidelines within 30 days after an application for internal review is made by the worker, or*
 - (b) *by the Authority (as a merit review of the decision), but not until the dispute has been the subject of internal review by the insurer, or*
 - (c) *to the Independent Review Officer (as a review only of the insurer’s procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer making the decision), but not until the dispute has been the subject of internal review by the insurer and merit review by the Authority (emphasis added).*



WorkCover independent review office

Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

Finding

4. The Independent Review Office does not have the jurisdiction to review any aspect of the findings and recommendations made at merit review by the Authority.

Recommendation

5. **The application for procedural review is dismissed.**

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
24 December 2014