



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 dated 9 February 2016 is dismissed.**

Introduction and background

1. The applicant seeks procedural review of a "work capacity decision" made by the Insurer on 17 June 2014. The decision informed the applicant that his pre-injury average weekly earnings (PIAWE) calculated at that time were \$495.00 per week. The applicant requested an internal review from the Insurer and the Internal Review Decision was dated 2 November 2015. That review determined the PIAWE to be \$520.00 per week (taking into account indexation).
2. The applicant sought Merit Review from the Authority on 19 November 2015. The Authority delivered recommendations and findings dated 4 February 2016. The Authority made a finding that the applicant's PIAWE was \$520.00 per week (as at 4 February 2016).
3. The applicant then made an application to this office for procedural review by way of application dated 9 February 2016. I am satisfied that the application has been made within time and in the proper form.
4. The applicant had previously sought procedural review of a Work Capacity Decision dated 30 June 2014 (i.e., a decision made 13 days *prior to* the decision the subject of the current process). The applicant was successful and the work capacity decision was set aside by an earlier recommendation of this office.¹
5. The facts and circumstances concerning the background of this claim are set out in the aforementioned recommendation and need not be repeated.

¹ Reported and numbered as 8915



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

6. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the WorkCover Work Capacity Guidelines (Guidelines).

Submissions by the applicant

7. The applicant has submitted that the Insurer has incorrectly calculated his PIAWE by not taking into consideration Section 44C(3) of the *Workers Compensation Act 1987* (1987 Act).

Submissions by the Insurer

8. The Insurer has not made submissions in response to the application.

Decision

9. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
10. On 3 June 2015 a recommendation was made by this office setting aside a Work Capacity Decision dated 30 June 2014 and recommending a further Work Capacity Decision be made by the Insurer.
11. The Work Capacity Decision which is the subject of this procedural review pre-dates the Work Capacity Decision which was set aside.
12. Based upon the documentation before me I am unable to ascertain whether the recommended further Work Capacity Decision has been made.
13. I am unable to perform a procedural review of the decision dated 17 June 2014 as there was a subsequent Work Capacity Decision dated 30 June 2014 which would subsume the earlier decision. The later decision has already been the subject of procedural review and was set aside.
14. Furthermore, the issue which is sought to be reviewed is the calculation of PIAWE which is an issue to be determined by the Insurer and can be



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reviewed at Merit Review by the Authority. It is not an issue which is the subject of procedural review.

Finding

15. I cannot conduct a procedural review of a purported "Work Capacity Decision" which pre-dates a Work Capacity Decision which I have already set aside.

RECOMMENDATION

16. The Application for Procedural Review dated 9 February 2016 is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
29 March 2016