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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 is dismissed.**

#### **Introduction and background**

1. The applicant suffered injury on 23 December 2015 while working from home in the course of his employment as a Client Services Manager. When taking delivery of goods delivered to his home address, the applicant lifted a heavy box and injured his lumbar spinal region, with pain radiating down the back of his right leg as far as his foot. He returned to work on suitable duties until his employment was terminated on 1 March 2016. He does not currently work.
2. The Insurer accepted liability for all relevant periods until a work capacity decision was made on 16 May 2016. That decision advised the applicant that he was fit for full time work with a minor lifting restriction (nothing > 10kg). Accordingly he had earning capacity such that the formula under section 37(3) would result in his weekly payments ceasing from 23 August 2016.
3. The applicant requested an internal review on 25 October 2016 (i.e. considerably more than 30 days after being advised of the original decision) which application was sent to the claims branch of the former WorkCover Authority of NSW in Gosford. Eventually the application made its way to the Insurer, on or about 4 November 2016. By this time the applicant's payments were a thing of the past, having ceased about ten weeks earlier.
4. The Insurer did not get around to completing an internal review within thirty days, which led the applicant to apply for merit review, which application was received on 15 December 2016.



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5. The Authority issued findings and recommendations on 7 February 2017. The findings were that the applicant: (i) is able to work in suitable employment; (ii) has the “vocational options” of Production Manager, Project Manager and Marketing Co-ordinator for suitable employment; (iii) has current work capacity; and (iv) is able to earn \$1,472.95 per week in suitable employment as a Project Manager.
6. The Authority made no consequent recommendation.
7. An application was subsequently made to this Office for procedural review, received on 9 March 2017. I am satisfied that the application has been made within time and in the proper form.

### **Submissions by the applicant**

8. 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.*”
9. The applicant made various submissions, concluding with the following:
  - I feel that my case has been neglected by [the Insurer] irrespective of medical advice. I have been ignored by all my case managers who have failed to act fairly and transparently in the management of my case. I believe [the Insurer] has not complied with obligations or actioned or given considered medical advice in assisting me to transition back to the workforce.
  - Therefore I request a fair go from WIRO to act on my behalf to provide resolution and clarification in the effective management of my case. All the documents referred to by SIRA are from March 2016 and do not take into account my relapse of injury in June 2016.
  - I would appreciate if WIRO can review my work capacity decision and consider providing me a fair go in transitioning back into the work



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force and ensure [the Insurer] takes responsibility in managing the case professionally, on time and appropriately.

10. These submissions are irrelevant in their entirety. The first bullet-point goes to the management of the claim, not the making of a work capacity decision. The Insurer bears no onus to provide medical advice to injured workers. Secondly, WIRO does not “act on behalf of” any parties. The reason the medical evidence is so old is because the applicant delayed seeking a review of the original decision for so long. The original decision was made nearly eleven [11] months ago. The final submission once again goes to the management of the claim and has nothing to do with the making of a work capacity decision.

### **Submissions by the Insurer**

11. The Insurer made no submissions in reply.

### **Decision**

12. The applicant was given fair notice of an impending work capacity assessment and decision by telephone and letter on 22 April 2016. This complied with the relevant Guideline [5.2] in force at the time.
13. The Insurer advised the applicant that his PIAWE was \$1,177.88 and that he was currently entitled to 80% of this amount, being \$961.53, since he was in the second entitlement period.
14. The Insurer took the applicant through sections 43(1)(a)-(f). He was advised that the insurer had evidence that he could work for 38 hours per week with a restriction of not being able to drive for more than one hour without a break.
15. The applicant was advised that he could earn \$1,472.88 per week in the role of Production Manager. This was accepted by the SIRA merit reviewer.
16. Section 59A was both set out and explained. Since the applicant has not made a claim for Whole Person Impairment (WPI) and has no medical evidence suggestive of WPI exceeding 10% it was explained



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that he would be entitled to ongoing pre-approved medical expenses for up to two years from 23 August 2016.

17. The notice period of three months and seven days exceeds the statutory requirement set out in section 54(2)(a).

18. The Insurer itemised all documents relied upon in coming to the decision, including the most recent certificates of capacity tendered by the applicant. Copies of all reports were sent to the applicant.

### **Finding**

19. I find that the Insurer has made a decision based on relevant evidence and in accordance with the Guidelines and legislation.

### **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  
10 April 2017