



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 applicant is making his third application for procedural review of a work capacity decision by the same employer.
2. The background to the application remains as it largely appears in previous recommendations of this office numbered and reported as **2714** (5 February 2014) and **12714** (27 August 2014). Put shortly, the applicant sustained injury in the course of his employment as a cleaner in 2006 and has remained off work since an unsuccessful attempt at returning to work in the same year. The employer (a licensed self-insurer) accepted liability and made weekly payments for all relevant periods. There is no dispute that the applicant is an existing recipient as that term is defined in the *Workers Compensation Act 1987* (1987 Act).
3. On the two previous occasions the applicant approached this office for review he succeeded in having the work capacity decisions overturned due to procedural irregularities.
4. The most recent work capacity decision was dated 10 October 2014. As a result of that decision, weekly payments were to once again cease. The applicant sought internal review, which upheld the original decision. On 30 December 2014 the Authority received an application for merit review and they handed down a recommendation dated 29 January 2015. The Authority determined that on the merits the Insurer had made the right decision in terminating weekly payments.
5. On 4 February 2015 this office received an application for procedural review, which was within time and on the correct form.

SUBMISSIONS OF THE APPLICANT

6. The applicant makes the following submissions:
 - He has not seen a report of the insurer's doctor following an examination.
 - No mention is made that the employer will not re-hire him due to the nature of his injuries, but that the same employer claims that he is fit to work for other employers, whoever they may be.
 - Other employers are not interested in hiring him due to injuries and age.

SUBMISSIONS OF THE INSURER

7. The Insurer did not make submissions.

Discussion

8. The grounds of review relied upon by the applicant all go to the merits of his case and were canvassed in their entirety by the Authority in the course of merit review. The "missing" IME report concerned an injury to a knee, which is currently the subject of a dispute under section 74 and therefore irrelevant to procedural review.
9. As a result of previous recommendations from this office (at least in part) it appears that the Insurer has corrected some earlier practices and is no longer in breach of the *Guidelines* issued by the Authority or the relevant legislation. Specifically,
 - The legislation is correctly referenced.
 - The correct notice period is given under section 54(2)(a) of the 1987 Act.
 - The reasoning behind the decision is clearly explained.
 - The evidence for the decision is outlined.
 - The impact of the decision on the applicant's entitlements has been fully explained, including the effect of section 59A(2) and (3).

FINDING



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10. I find that the Insurer has correctly followed the procedures as set out in the WorkCover *Guidelines* which is required by Section 44A of the 1987 Act. The Insurer has also correctly applied the 1987 Act and the *Workers Compensation Regulation 2010*.

RECOMMENDATION

11. The application for procedural review is dismissed.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
06 March 2015