

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.

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 8 August 2014. The decision advised the applicant that his weekly payments would cease. The applicant sought internal review of the decision and the Internal Review Decision was dated 25 November 2014. The applicant then sought Merit Review from the Authority on 3 December 2014 and they delivered a decision dated 6 January 2015.
2. The applicant subsequently applied to this office for procedural review on 10 March 2015. The original application was both unsigned and undated. A further application was received on 17 March, this time purportedly dated 11 March 2015 and still unsigned. It appears from conversation with this office that the applicant has literacy issues, which may explain the missing signature.
3. I am not satisfied that the applicant has made the application for Procedural Review in the proper form and within time.

Submissions by the applicant

4. 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 has made submissions going to the merits of the case and additionally says he was unaware that his payments would cease when they did. Presumably the latter point arises due to the payments made by the Insurer during the course of merit review pursuant to the stay now in

operation by virtue of clause 30 of Schedule 8 to the *Workers Compensation Regulation 2010*.

Submissions by the Insurer

5. The Insurer made the following submissions in response to this application:

[The Insurer] wishes to make a submission that [the Applicant] is outside the required 30 day timeframe for his application to WIRO.

- Original decision notice on 8 August 2014, with a termination date of the 25 November 2014
- Internal application received [on] 27 October 2014 – being 79 days from original decision
- Internal responded with same decision on the 25 November 2014, no stay applied as outside required timeframes
- Merit application received 4 December 2014 – being 9 days
- [Insurer] provided the stay entitlement for the period of review – 32 days.
- Entitlement to weekly compensation payments were terminated on the 7 February 2015.
- [The Applicant] submitted his application to WIRO 17 March 2015 – being 69 days from Merits decision.¹

The Decision

6. The *Workers Compensation Act 1987* has no discretionary element in the relevant part. Section 44(3)(a) is in the following terms:

(a) an application for review must be made **within 30 days after the worker receives notice in the form approved by the Authority of the Insurer's decision on internal review of the decision (when the application is for review by the Authority) or the Authority's decision on a review (when the application is for review by the Independent Review Officer).**²

7. The Act allows for no leeway in relation to late applications. It is possible that if a worker were unconscious or under a legal disability the law

¹ The original application was dated 10 March 2015, being 62 days following merit review. Allowing 4 days for postal service, 58 days had elapsed.

² Emphasis added.



might operate so as to deem receipt of the earlier decision to be at a later time for the purposes of section 44(3)(a), but that is not the case here. In the present circumstances the applicant has tarried to an extent beyond the time limitation in the legislation and has thereby forfeited his right to procedural review.

8. I am aware that the applicant has reading and writing difficulties and this might in other circumstances be a paradigm case in which some discretion might be exercised, particularly since legal representation is discouraged in the course of section 44 review. While that might be a reform proposal at some time in the future, it cannot assist this applicant.

Finding

9. There is no power vested in this Office to consider an application for procedural review made out of time. This application was clearly made out of time.

Recommendation

10. The application for procedural review is dismissed.

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