



**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 bilateral knee injuries in the course of his employment as a Meter Reader. It is common ground that the date of injury was 31 July 2018. The insurer accepted liability and made weekly payments for all relevant periods.
2. On 30 October 2018 the insurer made a work capacity decision, which varied the original assessment of PIAWE. Weekly payments continued.
3. As a result of internal review, the insurer once again varied the PIAWE figure and notified the applicant by letter dated 14 January 2019. Once again weekly payments continued, but they were now based on a PIAWE which had been reduced from \$1,032.22 (per 30 October 2018 decision) to \$951.42.
4. The applicant received the written notice of the internal review decision on 16 January 2019. He applied to the Authority for merit review on 14 February 2019, and was therefore within time.
5. The Authority took six weeks to make findings. This delay was caused by a series of requests for clarification of particulars provided by both parties. To quote directly from the merit reviewer (at paragraph 13): "The Authority requested further information and called for further submissions in this matter on multiple occasions."
6. The Authority made the following finding on 1 April 2019:
  - [The applicant's] PIAWE is \$926.82.



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7. The merit reviewer made no consequential recommendation.
8. An application for procedural review was received by this Office on 08 April 2019. I am satisfied that the application has been made within time and in the proper form.

### **Submissions by the applicant**

9. Section 44BB(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 provided submissions which might fairly be summarized as follows:

- He worked full-time but on a casual basis for more than one year. His final six weeks were part-time. For this reason he believes that his PIAWE should be calculated over a period of 72 weeks rather than the statutorily mandated 52 weeks;
- He provided a list of periods when he was on unpaid leave; and
- He is of the view that it is unfair for casual employees to be discriminated against in the calculation of PIAWE on the basis that they do not receive paid holidays;

### **Submissions by the Insurer**

10. The Insurer responded in the following terms:
  - [The applicant's] submissions relate to the current construction and interpretation of legislation;
  - [The applicant's] submissions only relate to the merits of his case which have already been reviewed by the Authority;
  - [The applicant] has identified no specific procedural issue in relation to the review of his PIAWE; and
  - In applying a reduction to [the applicant's] PIAWE as a result of the internal review outcome, the insurer ha[s] provided [the applicant] with proper notice as required by section 54(2) of the *Workers Compensation Act 1987* and section 76(1) of the *Interpretation Act 1987*.



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## Decision

11. The submissions made by the applicant were addressed in large part in the course of merit review. For the sake of clarity I might add that the 52 week period for calculation of PIAWE is not a discretionary element subject to variation in particular cases. The statutory treatment of casual employees was fully covered by the merit reviewer and need not be canvassed further.
12. I accept the submissions made by the insurer. The applicant appears to be debating the merits of the legislation rather than making any specific complaint about the procedures adopted by the insurer in the course of making decisions about PIAWE. It also appears that the applicant is seeking to challenge the decision of the Authority. This Office has no power to undertake a review of the Authority's decision. To the extent that there may be any doubt about the merits of the Authority's decision, the applicant would be required to challenge that decision in the Supreme Court of NSW.

## Finding

13. I find that the insurer complied with all procedural requirements in the course of making decisions about the applicant's PIAWE. Accordingly, there being no identifiable errors or omissions on the part of the insurer, it is appropriate that this application be dismissed.

## RECOMMENDATION

14. The application is dismissed.

A handwritten signature in blue ink, appearing to read "Wayne Cooper".

Wayne Cooper  
Delegate of the Workers Compensation  
Independent Review Officer



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30 April 2019