



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 in the course of his employment as a bricklayer on 28 May 2015. The insurer accepted liability and made weekly payments for all relevant periods. The applicant has not returned to work.
2. The Insurer gave notice to the applicant of a work capacity decision on 28 July 2017. The insurer found that the applicant had capacity to work for 20 hours per week in the "suitable employment" of "Ticket Collector" earning \$640 per week. The applicant was in the second entitlement period, covered by section 37. The applicant's PIAWE was calculated to be \$898.55. He was found to have an ongoing entitlement in the sum of \$78.84 per week, commencing 3 November 2017. The reason for the latter figure being that $80\% \text{ of } \$898.55 = \718.84 . Since $\$718.84 - \$640 = \$78.84$, it followed that the entitlement was correctly calculated.
3. The Insurer came to a different conclusion following internal review, with the weekly entitlement being changed to \$258.84. While this would have represented 100% of the difference between PIAWE and earning capacity if the same figures had been used as in paragraph 2 *supra*, it appears that the insurer downgraded the applicant's earning capacity to \$460 per week instead of the previously found \$640. This was despite the insurer still saying the applicant could work for 20 hours per week, including in the role of "Ticket Collector."
4. The applicant sought Merit Review from the Authority by application received on 14 December 2017. The Authority made findings and recommendations dated 14 February 2018 in the following terms:



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- The applicant has no current work capacity;
- The applicant's ability to earn in suitable employment is nil.

5. The merit reviewer made the following recommendation:

"The Insurer is to calculate [the applicant's] entitlement to weekly payments of compensation in accordance [the] findings above. This recommendation must be given effect from 28 July 2017."

6. An application to this office for procedural review was received on 19 February 2018. I am satisfied that the application has been made within time and in the proper form.

Submissions by the applicant

7. 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 has provided the following submission:

- As advised by SIRA, I can request that you review the procedures of the insurer. I elect to have WIRO undergo (*sic*) a procedural review so that no other person has to endure this, this has caused me so much grief and I don't wish it on another person.

8. Despite the advice from SIRA that the applicant "can" request a procedural review, it is hard to see the point of the exercise, since the applicant won at the merit review stage. The outcome of any such review would have no bearing on whether or not any "other person has to endure" whatever it is the applicant has endured.

Submissions by the Insurer

9. The Insurer responded in the following terms:

- [The Insurer is] currently in the process of reviewing and determining any back payments that need to be paid to [the applicant] as a result



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of the merit review decision. [The applicant] continues to receive weekly benefits in accordance with the original work capacity decision however he will receive weekly benefits in line with the merit review decision from this week.

10. The submissions by the Insurer do not fill me with confidence that they fully understand the gravamen of the Authority's recommendation. The Authority found as a fact that the applicant has no current work capacity and also recommended that a new decision be made, with applicability back to 28 July 2017. It follows that there must be a considerable back-payment owing to the applicant, since the insurer had previously found the applicant fit to work for 20 hours per week, whereas the Authority found this to be incorrect with the applicant being capable of no work at all.

Decision

11. Leaving aside the reservations expressed in paragraph 10, it is clear that the applicant has already won his dispute with the insurer and will be paid all outstanding monies.

12. In the circumstances there is no utility in conducting a further review of the insurer's decision. In accordance with section 44BB(3)(c) I decline to conduct a procedural review.

Finding

13. There being no utility in conducting a further review, I decline to proceed further.

RECOMMENDATION

14. The application is dismissed.

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

Wayne Cooper
Delegate of the Workers Compensation



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Independent Review Officer
16 March 2018