



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 seeks procedural review of a Work Capacity Decision made by the Insurer in relation to a lower back injury sustained on 25 March 2008. Subsequent injuries have also occurred in the course of the same employment, but are the subject of separate claims.
2. Despite the date of injury, the applicant was not an existing recipient of weekly payments immediately prior to 1 October 2012. Accordingly the transitional rate does not apply.
3. The Insurer made a work capacity decision on 12 August 2016 finding the applicant fit for suitable duties as a Customer Services Representative or Inquiry Clerk. A consequent decision was made to cease weekly payments, since the applicant (who is unemployed) did not meet the special requirements in section 38(3).
4. In the course of internal review conducted on 28 July 2017 the Insurer made the same findings and confirmed the original decision to cease payments.
5. The applicant sought Merit Review from the Authority in an application received on 28 August 2017. The Authority found that the applicant has no current work capacity. A consequent recommendation directed the insurer to calculate and pay the outstanding entitlements owed to the applicant back-dated from the date of the original decision on 12 August 2016.
6. An application to this office for procedural review was received on 09 October 2017.



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Decision

7. A complicating factor in the present matter is the existence of a concurrent and disputed claim in relation to other injuries. They are both dealt with by the same insurer under different claim numbers and they have been allocated a 53%-47% liability split.
8. While ostensibly irrelevant to the present proceedings, it has been drawn to my attention that as recently as yesterday (2 November 2017) the Authority also upheld the applicant's objections to the work capacity decision made about the other injuries. Therefore the applicant is to be in receipt of back-pay for all relevant periods on the basis of having no work capacity.
9. In the circumstances it appears that there is no utility in conducting a procedural review. The applicant could gain no advantage and could receive no more compensation than she will already receive as a result of her two successful merit reviews.

Finding

10. There being no possible benefit to either party in this Office conducting a procedural review, I decline to conduct a review.

RECOMMENDATION

11. The application is dismissed.

A handwritten signature in blue ink, appearing to read "Wayne Cooper", with a long horizontal flourish extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
03 November 2017