

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.**
- b. The applicant is to be reinstated to her weekly payments at the rate prior to 9 March 2015.**
- c. The payments are to be backdated from 9 March 2015 in accordance with clause 30 Schedule 8 to the Workers Compensation Regulation 2010.**
- d. Such payments are to continue until the receipt of this recommendation.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 28 November 2014. The insurer advised the applicant that her weekly payments of compensation would cease from 9 March 2015. The applicant sought internal review of the decision. The Internal Review Decision was dated 15 January 2015 and confirmed the original decision.
2. The applicant then sought Merit Review from the Authority on 3 February 2015 and they delivered a decision dated 25 February 2015 making a recommendation and finding that the applicant is not entitled to weekly payments of compensation in accordance with Section 38(3) of the *Workers Compensation Act 1987* (the 1987 Act).
3. The applicant then applied to this office for procedural review on 24 March 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. The applicant suffered injury to her neck, back and left shoulder in the course of her employment. The deemed date of injury was 26 September 2008. The applicant was unable to return to her pre-injury employment. The applicant obtained part time employment as an

administrative assistant and was performing these duties at the time of the work capacity decision. The applicant was also receiving weekly payments of compensation.

5. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines). The relevant version of the Guidelines came into effect on 11 October 2013.

Submissions by the applicant

6. 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.*”
7. The applicant has requested a procedural review. The applicant’s submissions were that insufficient evidence was relied upon by the insurer to make the work capacity decision and that an unrelated medical condition had affected her ability to work 40 hours per fortnight. The latter of these submissions is not relevant to procedural review. The first submission is addressed below.

Submissions by the Insurer

8. The Insurer has made submissions received 26 March 2015 in response to this application including copies of file notes.

The Decision

9. The relevant WorkCover Guidelines were dated 4 October 2013 and came into effect on 11 October 2013.
10. Section 44 of the 1987 Act provides that the Independent Review Officer can review a Work Capacity Decision after it has been referred to or the subject of an internal review by the insurer. There is no reference to any review of the internal review decision. Therefore this review is limited to the work capacity decision dated 28 November 2014.

11. Guideline 5.3.2 requires the Insurer to advise the date of the work capacity assessment. The insurer has advised the applicant that the work capacity assessment was completed on 26 November 2014. The applicant was informed of the work capacity decision by letter dated 28 November 2014. The Insurer has complied with the Guideline.
12. The same Guideline requires the Insurer to explain the relevant entitlement periods. The Insurer has informed the applicant that she has received 338 weeks' worth of compensation payments. Therefore her ongoing entitlements would be assessed pursuant to Section 38(3) of the 1987 Act.
13. Section 54(2)(a) of the 1987 Act requires at least three months and four working days' notice be given if payments are being reduced or ceased having regard to Section 76 of the *Interpretation Act* 1987. In this decision the Insurer has referenced the relevant sections of both pieces of legislation and have provided the correct notice period by informing the applicant that her weekly payments will be reduced from 9 March 2015.
14. The Insurer has informed the applicant that she is an "*existing recipient*" in accordance with Schedule 6 Part 19H Clause 1 of the 1987 Act. It was also explained that the applicant is subject to the transitional amount when calculating his pre-injury earnings which was \$972.90 at the relevant time.
15. The Guideline also requires the insurer to advise the applicant of the impact the decision has on her entitlement to medical and related treatment expenses. The insurer has referenced and explained Section 59A(2) and (3) and has informed the applicant that she will be able to claim medical and related treatment expenses for a period of 12 months after her entitlement to weekly payments cease.
16. In dealing with the applicant's submission that insufficient evidence was used to make the work capacity decision I note that Guideline 5.3.2 requires the insurer to outline the evidence considered in making the decision noting the author, date and key information. In this decision the insurer has informed the applicant, under the heading "*Reasons for the Decision*" that they are relying upon an Earning Capacity Assessment and in particular the Functional Capacity Assessment aspect of that



report dated 20 June 2014. The insurer accepted in accordance with that report that the applicant had the capacity to work up to 30 hours per week in suitable employment. The insurer has complied with the appropriate Guideline.

17. The decision of the Insurer dated 28 November 2014 has displayed a careful consideration of the requirements of the Guidelines and the legislation.

Finding

18. There are no procedural errors identifiable in the decision. The insurer has complied with the Guidelines and relevant legislation.

RECOMMENDATION

19. The application for procedural review is dismissed.

20. The applicant is to be reinstated to her weekly payments at the rate prior to 9 March 2015.

21. The payments are to be backdated from 9 March 2015 in accordance with clause 30 Schedule 8 to the Workers Compensation Regulation 2010.

22. Such payments are to continue until the receipt of this recommendation.

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
8 May 2015