



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 for procedural review is dismissed.

Decision

1. The applicant has made an application for procedural review dated 23 December 2015. The applicant's legal representative who has made submissions on the applicant's behalf is labouring under the misapprehension that I am able to perform a review of the Merit Review Decision by the Authority dated 7 December 2015.
2. I refer to Section 44BB(1)(c) of the *Workers Compensation Act 1987* (1987 Act) which states that an injured worker may refer a work capacity decision of an insurer for review to the Independent Review Officer as a 'review only of the insurer's procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer in making the decision.'
3. I am unable to review the Merit Review Decision dated 7 December 2015. I am only in a position to review the Insurer's procedures in making the work capacity decision.
4. Section 44BB(1)(c) of the 1987 Act states that an injured worker may refer a work capacity decision of an insurer for review to the Independent Review Officer but not **until the dispute has been the subject of internal review by the insurer and merit review by the Authority.**
5. The Authority issued a decision dated 7 December 2015 that, as the application for Merit Review was not made within time, the Authority was unable to conduct a merit review under Section 44BB(1)(b) of the 1987 Act.



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6. As the Authority has not conducted a merit review I do not have jurisdiction to perform a procedural review of the work capacity decision as a result of Section 44BB(1)(c) of the 1987 Act.

RECOMMENDATION

7. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
22 January 2016