

**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 his weekly payments at the rate applicable prior to 13 May 2015.**
- c. The payments are to be back-dated from 13 May 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 3 February 2015. The insurer advised the applicant that his weekly payments of compensation would cease from 13 May 2015. The applicant sought internal review on 11 February 2015 and the Internal Review Decision was dated 2 March 2015 and confirmed the original decision.
2. The applicant then sought Merit Review from the Authority on 9 March 2015 and they delivered a decision dated 8 April 2015. The finding was that the applicant did not satisfy the special requirements of Section 38(3) of the *Workers Compensation Act 1987* (the 1987 Act).
3. The applicant applied to this office for procedural review on 20 April 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.

4. The applicant had previously sought procedural review of a work capacity decision dated 3 December 2013. The applicant was successful and the work capacity decision was set aside by an earlier recommendation of this office<sup>1</sup>.
5. The facts and circumstances concerning the background of this claim are set out in the aforementioned recommendation and need not be repeated.
6. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines).
7. The relevant version of the Guidelines was dated 4 October 2013 and came into effect on 11 October 2013.

### **Submissions by the applicant**

8. 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.*” The applicant has requested a procedural review.
9. The applicant has not made any specific submissions other than for WIRO to ensure that his interests are protected.

### **Submissions by the Insurer**

10. The Insurer has not made submissions in response to this application.

### **The Decision**

11. In accordance with Guideline 5.3.2 the Insurer advised the applicant that work capacity assessments were completed on 2 December 2013 and

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<sup>1</sup> Reported and numbered as 16414

30 January 2015. The applicant was advised of the work capacity decision by letter dated 3 February 2015.

12. The same Guideline requires the Insurer to explain the relevant entitlement period. The Insurer informed the applicant that he had received 553 weeks' worth of payments of compensation at the time that the work capacity decision was made.
13. The applicant was then informed that his entitlement to ongoing weekly payments must be assessed under Section 38 of the 1987 Act and that he must comply with the special requirements of that section. The insurer has then set out the requirements of that section on page 4 of the work capacity decision noting that the amount referred to in Section 38(b) has been indexed from \$155 per week to \$173 per week.
14. At page 9 of the work capacity decision the insurer confirmed the applicant has been certified fit to perform suitable duties for 15 hours per week by the nominated treating doctor. At the time of the work capacity decision the applicant was working between 9.5 and 14 hours per week. The insurer did not consider the applicant to be incapable of undertaking further additional employment or work that could increase his weekly earnings.
15. The insurer made a decision that the applicant had not complied with the special provisions of Section 38(3) of the 1987 Act and was therefore not entitled to ongoing weekly payments of compensation.
16. By explaining the relevant entitlement periods and referring to Section 38 the insurer has complied with the Guideline 5.3.2 and the legislation.
17. The applicant was the subject of an award of compensation in the order of 21% whole person impairment as per a Certificate of Determination dated 5 November 2014.
18. The insurer has correctly advised the applicant that his entitlement to reasonable medical and related treatment expenses will continue until he reaches retirement age. The applicant's entitlements being subject to Schedule 8 Part 1 Clause 28 of the *Workers Compensation Regulation 2010*.

19. Guideline 5.3.2 also requires the insurer to state the impact of the decision on the applicant in terms of his weekly payments and the date upon which the decision will take effect.
20. 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(2)(a) and (b) of the *Interpretation Act 1987*. In this decision the Insurer has referenced and explained both sections of each piece of legislation. As a result the applicant was advised that his payments would cease from 13 May 2015 which is in excess of the required notice period. Again the insurer has complied with the Guidelines and legislation.
21. The insurer has also informed the applicant that job seeking support and assistance will continue until 12 May 2015. This is in accordance with the Guidelines.
22. The decision of the Insurer dated 3 February 2015 has displayed a careful consideration of the requirements of the Guidelines and the legislation.

## **Finding**

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

## **RECOMMENDATION**

24. The application for procedural review is dismissed.
25. The applicant is to be reinstated to his weekly payments at the rate applicable prior to 13 May 2015.
26. The payments are to be back-dated from 13 May 2015 in accordance with clause 30 Schedule 8 to the Workers Compensation Regulation 2010.
27. Such payments are to continue until the receipt of this recommendation.



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