

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 of the work capacity decision of the Insurer dated 1 August 2014 is dismissed.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 1 August 2014. The Insurer determined to cease further payments. Having gone through the process of internal review and merit review, the applicant made application to this office for procedural review on or about 14 December 2014.
2. I am not entirely certain of the reason for the application, since no procedural grounds are relied upon and the submissions of the applicant seem to go no further than stating that there is an industrial issue with the employer and that the Insurer requires her to look for paid work at the same time that Centrelink requires her to perform voluntary work.

Submissions by the applicant

3. Section 44(1)(c) of the *Workers Compensation Act 1987* (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 submissions:
 - She has not been terminated by her employer, which caused a problem with Centrelink;
 - She is working 15 hours per week on a volunteer basis at the behest of Centrelink;
 - The volunteer work makes it hard to look for paid work, attend rehabilitation, visit her own doctor, her own psychologist and doctors and psychologists arranged by the Insurer;

- She says that she was “bullied out of the workplace” and now has no recourse.

Submissions by the Insurer

4. The Insurer made the following submission:

Please be advised as follows:

- The merit review service findings and recommendations were issued on 14 October 2014.
- The worker submitted an *application for procedural review* by the WorkCover Independent Review Officer (WIRO) on 15 December 2014.

We note that the worker must lodge an *Application for Procedural Review* by the WorkCover Independent Review Officer (WIRO) within 30 days of receiving the Merit Review decision in accordance with Section 44(3)(a) of the *Workers Compensation Act 1987*.

Based on the above, it is our view that the worker has failed to lodge her within the 30 day timeframe as required.

The Decision

5. The submission by the Insurer is completely correct. There can be no consideration given to an application for procedural review received out of time, since the legislation allows for no discretion to be exercised. In an unusual circumstance such as the worker being unconscious in hospital or otherwise indisposed it might be possible to argue that since the worker was unable to fill in and submit the form then they were under a disability which might have caused time to not run for the relevant period, but that is not the case here.
6. In the event that the applicant has an industrial issue with the employer that might be the subject of independent legal advice, but can be of no consequence in the procedural review process.

FINDING

7. I find that the application is out of time.



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RECOMMENDATION

8. The application for procedural review of the work capacity decision of the Insurer dated 1 August 2014 is dismissed.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
19 January 2015