



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.

Introduction and background

1. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 18 March 2016. The Decision informed the applicant that his weekly payments of compensation would cease on 25 June 2016. The applicant sought internal review by the Insurer on 15 April 2016. The Internal Review Decision was dated 6 May 2016 and confirmed the original Work Capacity Decision.
2. The applicant sought Merit Review from the Authority by way of application received 3 June 2016. The Authority delivered its Findings and Recommendations dated 5 July 2016. The Authority made a finding the applicant has no current work capacity and in accordance with Section 37(1) of the *Workers Compensation Act 1987* (1987 Act) the applicant is entitled to weekly payments of compensation in the amount of \$836.58 (subject to indexation pursuant to division 6A of part 3 of the 1987 Act).
3. Despite succeeding at Merit Review the applicant then made an application to this office for procedural review dated 3 August 2016. I am satisfied that the application has been made within time and in the proper form.
4. On 11 December 2012 the applicant sustained injury to his right ankle and shoulder during the course of his employment as a process worker. The applicant returned to duties and sustained further injury on 21 January 2013 when he fell off a platform and aggravated his ankle and shoulder injury. The applicant performed light duties until his employment was terminated on 19 January 2015. The applicant has been in receipt of weekly payments of compensation.



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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).

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.”* The applicant has applied for a procedural review.
7. In addition to applying for procedural review the applicant has made a submission that due to his condition he considers a procedural review is warranted.
8. I note that I am unable to consider the personal circumstances of the applicant and I can only review the procedures implemented by the Insurer in making the Work Capacity Decision. The submission is not relevant to procedural review.

Submissions by the Insurer

9. The Insurer made a submission by email dated 10 August 2016 that the legislation and Guidelines were followed.

Decision

10. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
11. The original Work Capacity Decision dated 18 March 2016 was overturned by the Authority at Merit Review and the applicant’s weekly payments were reinstated at the rate of \$836.58. Therefore any shortcomings in the original decision are of no consequence.
12. The decision from the Authority at Merit Review has restored the applicant’s weekly payments of compensation to the maximum he is able to receive in the present circumstances. Therefore performing a



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procedural review of the Work Capacity Decision is an act of futility as the decision has already been overturned in another forum.

Finding

13. The Work Capacity Decision has already been overturned by another forum and there is no utility in performing a procedural review. Section 44BB(3)(c) of the Workers Compensation Act 1987 Act empowers this Office to decline to conduct a procedural review in such circumstances.

RECOMMENDATION

14. The application for procedural review is dismissed.

A handwritten signature in black ink that reads "T. Emanuel".

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
11 August 2016