



State Insurance Regulatory Authority

Workers Compensation

Merit Review Service

FINDINGS AND RECOMMENDATIONS ON MERIT REVIEW BY THE AUTHORITY

Worker:

Insurer:

Date of Review:

Date of Injury:

Claim Number:

Our Reference:

FINDINGS ON REVIEW

1. The State Insurance Regulatory Authority (the Authority) finds:
 - a. The Worker has "current work capacity" as defined in section 32A of the *Workers Compensation Act 1987* (the 1987 Act).
 - b. The Worker has the ability to return to work in "suitable employment" as defined in section 32A of the 1987 Act.
 - c. The vocational option of customer service assistant is suitable employment for the Worker.
 - d. The Worker's entitlement to weekly payments of compensation falls after the second entitlement period under section 38 of the 1987 Act.
 - e. The Worker does not meet the special requirements for a continuation of weekly payments of compensation after the second entitlement period (after week 130) in accordance with section 38(3) of the 1987 Act.

RECOMMENDATIONS BASED ON FINDINGS

2. The Authority does not make any recommendations to the Insurer for the reasons below.

BACKGROUND

3. The Worker suffered bilateral shoulder injuries whilst employed as a picker/packer.
4. The Worker is 63 years of age.
5. The Insurer made a number of work capacity decisions, deciding the Worker had capacity for some type of employment for 20 hours per week, the roles of receptionist, administrative assistant and customer service representative/assistant constituted suitable employment and that the Worker had an ability to earn \$500 per week. The Insurer reduced the Worker's entitlement to weekly payments of compensation to \$305.52 under section 38 of the 1987 Act.

6. The Insurer undertook an internal review in this matter and made a decision. The Insurer found that as the Worker did not meet the special requirements under section 38(3) of the 1987 Act and therefore her entitlement to weekly payments of compensation were reduced to nil.
7. The application for merit review was received by the Authority. The application was made within 30 days after the Worker received notice of the internal review.

LEGISLATION

8. The legislative framework governing work capacity decisions and reviews is contained in the:
 - *Workers Compensation Act 1987* (the 1987 Act);
 - *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), and
 - *Workers Compensation Regulation 2016* (the Regulation).
9. Section 43 of the 1987 Act describes a "work capacity decision".
10. Section 44BB of the 1987 Act provides for merit review of a work capacity decision of the Insurer, by the Authority.

DOCUMENTS CONSIDERED

11. I have considered all of the information that was provided by the parties in relation to the Worker's application for merit review. I have only referred to the information that is most relevant to my findings.
12. I am satisfied that both parties have had the opportunity to respond to the other party's submissions and that the information provided has been exchanged between the parties.

SUBMISSIONS

13. In the application for merit review, the Worker submits:
 - She is currently 63 years of age and has problems affecting both shoulders, neck, lower back, feet and ankles and suffers from industrial deafness.
 - She does not think she has the skills or physical capacity to be a receptionist, administrative assistant or customer service representative/assistant.
 - None of the work trials were successful because she could not do the work and she was not offered employment as a result of those work trials as she was unable to cope with the work systems or technology involved in undertaking those roles.
 - The Insurer has asked her nominated treating doctor to issue certificates just relating to her shoulder injuries. If he was asked to assess her capacity as a result of the various injuries she sustained in the course of her employment with the pre-injury employer, he would no doubt resile from his assessment of 20 hours per week.
 - The Insurer has never sent her for any training in administrative, reception or customer service job seeking. The only thing the rehab provider did was put her in front of a computer, showed her how to access job seeking sites, and show her how to apply for jobs online.

- She did not receive training on the work trials and they failed because she did not have the necessary skills to do the work requested nor the physical capability to do the work for the hours suggested in the WorkCover certificates.
- She currently has a matter before the Workers Compensation Commission claiming permanent impairments as a result of previous and separate injuries . She has also made a claim in relation to a consequential condition. All these matters have been referred to an Approved Medical Specialist.

14. In reply, the Insurer submits:

- The Worker is an existing recipient and has received 450 weeks of weekly payments of compensation.
- The Worker has included a variety of injuries and or medical conditions that are not related to the claim. This decision relates only to the compensable injuries related to this injury, and the associated entitlement.
- The Worker's nominated treating doctor, has certified her with capacity for some type of employment for at least the past 18 months and the Worker has not raised issues with the capacity so certified in that time.
- The rehab provider has identified the roles of receptionist, administrative assistant and customer service assistant as suitable employment for the Worker. The nominated treating doctor has approved these roles as being within the Worker's current physical capacity. A review of random job logs for the past 18 months shows that the Worker has been applying for this type of role during this time.
- Given that the Worker has physical capacity, suitable employment has been identified and appropriate rehabilitation has been provided.
- As the Worker does not satisfy the requirements of section 38(3) of the 1987 Act, she has no entitlement to ongoing weekly benefits.

REASONS

Nature of merit review

15. This matter involves a merit review of the work capacity decisions of the Insurer in accordance with section 44BB(1)(b) of the 1987 Act.
16. The review is not a review of the Insurer's procedures in making the work capacity decision and/or internal review decision.
17. I am required to consider all of the information that has been provided and make findings and recommendations that are most correct and preferable.
18. I note the Worker has made submissions that other injuries to her neck, back, both lower extremities and industrial deafness be considered in this merit review. However, I am unable to consider these injuries as the Insurer's work capacity decision only relates to her bilateral shoulder injuries which are the subject of this claim.
19. Accordingly, this merit review will only consider the Worker's bilateral shoulder injuries.

Current work capacity and suitable employment

20. The issue for me is how the injuries impact upon the Worker's capacity for employment and her ability to earn in suitable employment.

21. Section 32A of the 1987 Act defines "current work capacity" and "no current work capacity" as:
- current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment*
- no current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to work, either in the worker's pre-injury employment or in suitable employment*
22. In undertaking this review, I will consider the information before me and assess if, and to what extent, the Worker has "current work capacity" or "no current work capacity" as defined and set out above.
23. The Worker's nominated treating doctor has provided WorkCover certificates of capacity for the Worker. The nominated treating doctor has diagnosed the Worker with full thickness supraspinatous tear on both shoulders.
24. The certificates before me range from 29 January 2016 to 2 June 2017. The nominated treating doctor has certified the Worker with capacity for some type of employment for 20 hours per week. The most recent certificates have recommended lifting/carrying capacity of 10 kg with 2 hands; no pushing/pulling ability and no long driving.
25. There are a number of medical reports before me. Those from a specialist general surgeon, relate to medical issues not dealt with in the work capacity decision.
26. The reports of Doctor 1, deal with a number of medical issues, many of which do not relate to the medical issues dealt with in the work capacity decision. There is no indication in Doctor 1's report of how the bilateral shoulder injuries alone affect the Worker's capacity for some type of employment.
27. The reports of Doctor 2, orthopaedic surgeon, also deal with a number of medical issues which are not the subject of the work capacity decision and do not identify how the bilateral shoulder injuries alone affect the Worker's capacity for some type of employment.
28. The report of a gastroenterologist, also deals with medical issues not the subject of the work capacity decision.
29. However, I note from the contents of these reports that the Worker underwent shoulder surgery, the right shoulder on 14 August 2013 and the left shoulder on 14 February 2014.
30. In his report of 22 June 2016, Doctor 2 stated that on examination of both shoulders, there was no tenderness and no evidence of muscle wasting. Shoulder movement was recorded for both shoulders as: flexion 120 degrees; extension 20 degrees; abduction 130 degrees; adduction 30 degrees; external rotation 50 degrees; and internal rotation 30 degrees. Rotation was tested at 90 degrees of abduction.
31. Doctor 1's report of 10 May 2016 found for the left shoulder:
- Flexion 120 degrees; external rotation 60 degrees; abduction 110 degrees; extension 50 degrees; internal rotation 50 degrees and adduction 40 degrees.
32. And for the right shoulder:
- Flexion 120 degrees; external rotation 70 degrees; abduction 115 degrees; extension 50 degrees; internal rotation 60 degrees and adduction 40 degrees.
33. After considering all of the medical information, I accept the certification of the nominated treating doctor. On the certificates before me, he has consistently been certifying the Worker with capacity for some type of employment for 20 hours per week with restrictions on lifting/carrying and

pushing/pulling since at least January 2016. The nominated treating doctor has seen the Worker on a consistent basis and has been liaising with medical professionals and rehabilitation providers regarding the Worker's injury. I have read the reports of the other medical professionals noted above, and whilst they indicate a more restricted level of physical capacity, I note those reports also relate to injuries not the subject of the work capacity decision under review. The nominated treating doctor is the only medical professional to provide an opinion in relation to the Worker's bilateral shoulder injuries only, he has reviewed the Worker for a number of years and liaised with the other medical professionals.

34. I find that the present inabilities arising from the Worker's injuries are such that the Worker has capacity for some type of employment 20 hours per week with the recommendation of lifting/carrying up to 10 kg with 2 hands; no pushing/pulling and no long driving.

Pre-injury employment

35. There is no issue before the Authority in respect of the Worker being unable to return to work in her pre-injury employment. In the absence of any dispute on this point, I accept that the Worker is unable to return to work in her pre-injury employment.

Suitable employment

36. In order to determine whether the Worker has current work capacity, I am required to consider whether she is able to return to work in "suitable employment". Suitable employment is defined in section 32A of the 1987 Act as:

Suitable employment, in relation to a worker, means employment in work for which the worker is currently suited:

(a) having regard to:

- (i) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the worker (under section 448), and*
- (ii) the worker's age, education, skills and work experience, and*
- (iii) any plan or document prepared as part of the return to work planning process, including an injury management plan under Chapter 3 of the 1998 Act, and*
- (iv) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and*
- (v) such other matters as the Workers Compensation Guidelines may specify, and*

(b) regardless of:

- (i) whether the work or the employment is available, and*
- (ii) whether the work or the employment is of a type or nature that is generally available in the employment market, and*
- (iii) the nature of the worker's pre-injury employment, and*
- (iv) the worker's place of residence.*

37. The Worker is not currently working.
38. A Closure Report prepared by the rehabilitation services provider states that the Worker participated in a work trial as a pharmacy/shop assistant and commenced work on 25 February 2008. She was offered a

permanent position but declined due to not liking the job and the travel required. The Worker also obtained casual employment at a transport company. No dates are provided for that position.

39. A Vocational Plan report from a rehabilitation services provider recorded that the Worker had attained the following education certifications:

Certificate in Work Opportunity for Women

Certificate in Financial Services

Statement of Attainment in job skills training

Certificate II in Transport & Distribution (Warehousing & Storage)

40. The Worker prepared a resume which is attached to the Vocational Plan report. That resume indicates that the Worker participated in a work trial where her duties included filing, mail run, processing cheques and general administrative duties; worked as a store person/assembler at her pre-injury employer; worked as a pharmacy assistant where her duties included stock control, customer service, cash handling, cleaning and delivery and collection of goods.
41. The report prepared by the senior rehabilitation consultant from the rehab provider states that as well as undertaking workplace preparation modules, the Worker has:
- Participated in a 6 week work trial from 8 September 2015 as an administration assistant. The employer was unable to offer paid employment following the work trial as they were unable to offer ongoing work.
 - On 23 February 2015, she participated in a work trial as an administration officer. The employer was only able to offer a work trial whilst another employee was on leave and was unable to offer paid employment following the work trial.
 - On 9 May 2015, she participated a work trial as an administration assistant. The employer did not offer paid employment following the work trial as the Worker reported difficulty with the cold calling duties of the role.
 - On 27 May 2015, the Worker participated in a one-week work trial as a receptionist. The employer did not offer paid employment as the employer was unable to offer ongoing work.
42. The work trial work assessment report states that the Worker obtained a trial as a receptionist where the duties were computer based duties – scheduling appointments as well as answering and making calls. This trial was for 4 days.
43. An amended work trial assessment report states that the Worker undertook a work trial in an administration/reception position between 6 May and 15 May 2015 working 3 days per week. The duties included answering phone enquiries from clients, contacting clients regarding jobs, enter data and information onto the computer, confirming jobs, entering client responses to follow up of jobs, creating job sheets and emailing job sheets.
44. According to the Workplace Preparation Report provided by the senior rehabilitation consultant, the Worker has:
- Participated in a career transition workshop/job seeking undertaking modules on personal qualities/skills audit, job logs/interview records, resume development, interview questions and techniques, marketing yourself using the job cover placement

program and work trials as well as injury disclosure. She has also received assistance in updating her resume.

45. In light of the above, I accept that the Worker has been provided with sufficient occupational rehabilitation services.
46. The Labour Market Analysis Report prepared by the senior rehabilitation consultant identifies the roles of receptionist, administrative assistant and customer service assistant as suitable roles for the Worker. The nominated treating doctor has provided approval for these positions on a part-time basis for 20 hours per week.

Customer Service Assistant

47. The employer contacts confirmed that the core duties include:
 - Handling a high volume of customer enquiries;
 - Processing a high volume of appointments;
 - Liaising with patients, doctors, insurance companies, employers and service providers in relation to patient appointments and updates;
 - Liaising with internal/external stakeholders;
 - Booking patient appointments across Australia and coordinating patient transport;
 - Meeting and greeting customers;
 - Offering general assistance to clients via face-to-face, email and telephone;
 - Deal with any complaints or problems;
 - General administrative duties; and
 - Set up business rooms.
48. The employer contracts confirmed that lifting/carrying and pushing/pulling were not a requirement of the role and that the worker would not be required to drive in the role.
49. Skills that are required are sales ability; customer service skills, excellent telephone manner; strong communication skills; strong organisational skills; and computer skills.
50. Each employer contact advised the role could be provided on a part-time basis for 20 hours per week and that age was not a consideration for the role.
51. The Worker's resume indicates her pre-injury duties included picking and assembling orders; incorporating both voice and scan system as well as manual picking; replenishing of stock; processing credit return of stocks; incorporating computer data entry; consolidating invoices not delivery/run order; responsible for pick/pack in dangerous drugs area and stock control. In my opinion I believe this work experience would be relevant to a customer service role particularly in relation to stock control and completing orders.
52. The Worker has also obtained a work trial and was offered a permanent position at a pharmacy, and undertaken other work trials in administration and reception where she has processed payments, used a cash register, processed cheques, and dealt with enquiries both in person and on the telephone.
53. Based on her work experience and the experience she has obtained in work trials, I believe the Worker has the necessary education, skills and work experience for the role. Further, the employer contacts have confirmed there are no age-related considerations for the position. I accept that each of the employer contacts also indicated that the position is within the Worker's recommended tolerances and note that the position is considered sedentary

and therefore considered to be within the Worker's recommended tolerances. The position has also been approved by the nominated treating doctor.

54. On the information before me, I am satisfied that the role of customer service assistant is suitable employment for the Worker as defined by section 32A of the 1987 Act.

Receptionist

55. The core duties involved in this role include:

- Greet visitors and telephone callers and find out the nature of their enquiry;
- Operate telephone switchboards and consoles to connect, hold, transfer and disconnect telephone calls;
- Provide information to assist clients or refer them to appropriate contacts;
- Arrange appointment for callers or for people in the organisation;
- Carry out word processing, filing, mail-outs, bookkeeping and banking as required;
- Send out accounts, receive payments order stationery and office supplies; and
- Open and deal with incoming mail, and organise outgoing mail and postage.

56. The senior rehabilitation consultant made three employer contacts who confirmed the duties of the role and advised that the successful applicant would require previous customer service or administrative experience, have a proficiency in Microsoft Office, have a great work ethic, a high level of written and verbal communication skills, and a professional phone manner. They stated the physical requirements of the role allowed a worker to frequently sit at a desk with opportunities to alternate posture; lifting, pushing or pulling is not a requirement of the role, and the worker would not be required to drive. They each confirmed that the Worker's age would not be a barrier to obtaining the role.

57. The senior rehabilitation consultant advised the employer contacts of the Worker's transferrable skills and her previous administration and customer service experience and proficiency in Microsoft Office demonstrated from her role as a receptionist and her role as an administrative assistant in work trials.

58. The contacts all advised that the role could be provided on a part-time basis for 20 hours per week.

59. Each of the employer contacts have indicated that the position is within the Worker's recommended tolerances and noting that the position is considered sedentary, I accept that the position is within the Worker's recommended tolerances. I further note that the nominated treating doctor has provided a medical approval for the role.

60. The Worker has obtained a number of work trials in the position of an administrative assistant and/or receptionist. I note that the Labour Market Analysis Report also states that the Worker worked as a voluntary receptionist. Whilst I accept that the Worker has customer service skills and has skills in relation to scheduling appointments and dealing with mail, there is nothing in the information before me that suggests that the Worker has a proficiency in Microsoft Office or the requisite computer skills to undertake the role of a receptionist. Although the senior rehabilitation consultant put to the employers that the Worker had a proficiency in Microsoft Office, there is nothing in the information before me specifically regarding the Worker's proficiency the Microsoft Office suite of programs, or with her ability with technology. I note that the information relating to the work trials does not indicate that the Worker undertook word processing tasks, but more customer service and banking type tasks. I do not believe, based on the information before me,

that the Worker has the necessary education, skills and work experience to undertake this role.

61. On the information before me, I find the role of receptionist is not suitable employment for the Worker as defined by section 32A of the 1987 Act.

Administration Assistant

62. The senior rehabilitation consultant made three employer contacts who advised that the duties of the role include meeting and greeting clients and directing them to the appropriate departments; managing phone calls and assisting clients' requests; providing administrative support in the office; ad hoc duties as required; email correspondence; data entry and maintenance of records; general office duties; organising meetings and taking minutes; and maintaining office supplies.
63. The contacts advised that lifting, carrying, pushing and pulling was not a requirement of the role, and the worker would not be required to drive as part of the role.
64. The skills that are required are experience in administration; computer skills; excellent communication skills; high attention to detail; superior organisational skills; excellent prioritising and time management skills; and professional and flexible approach to working in a team environment.
65. The contacts all advised that the role could be provided on a part-time basis for 20 hours per week.
66. The Insurer has provided the Worker with a number of work trials for positions as an administrative assistant and/or receptionist. However, the role description requires a worker to provide secretarial type services and requires computer skills. Whilst the Worker has the required customer service skills for this role, nothing in the information before me indicates that the Worker has the necessary computer skills to undertake this role. The information on the work trial does not suggest that the Worker undertook word processing type tasks but rather customer service and banking type tasks.
67. On the information before me, I find the role of administrative assistant is not suitable employment for the Worker as defined by section 32A of the 1987 Act.

Findings

68. I find that the position of customer service assistant is suitable employment for the Worker as defined by section 32A.
69. I find that the Worker has current work capacity as defined by section 32A of the 1987 Act.

Existing recipient of weekly payments

70. An "existing recipient of weekly payments" is defined in clause 1, Part 19H, Schedule 6 of the 1987 Act as:

existing recipient of weekly payments means an injured worker who is in receipt of weekly payments of compensation immediately before the commencement of the weekly payments amendments.

71. The Insurer has advised that the Worker is an existing recipient of weekly payments as she was in receipt of weekly payments of compensation immediately before the commencement of the weekly payments amendments. Therefore the weekly payments amendments as provided in Division 2, Part 19H, Schedule 6 of the 1987 Act apply to the Worker's entitlement to weekly payments of compensation.

Entitlement periods for ongoing weekly payments

72. The following provisions of the 1987 Act provide the basis for determination and calculation of a worker's weekly payments entitlement:
- a. Weekly payments in the first 13 weeks are to be determined in accordance with section 36 of the 1987 Act (the first entitlement period);
 - b. Weekly payments in weeks 14-130 are to be determined in accordance with section 37 of the 1987 Act (the second entitlement period); and
 - c. Weekly payments after the second entitlement period (after week 130) are to be determined in accordance with subsections 38(6) or (7), but only if the special requirements for continuation of weekly payments after the second entitlement period are met in accordance with section 38 of the 1987 Act.
73. The Insurer has advised that the Worker has received 450 weeks of weekly payments of compensation up to the filing of the reply. That has not been disputed by the Worker.
74. I accept the Insurer's statement that the Worker's entitlement to weekly payments of compensation currently falls after the second entitlement period and is to be calculated in accordance with section 38 of the 1987 Act.

Special requirements for continuation of weekly payments after second entitlement period (after week 130)

75. Section 38 of the 1987 Act provides that an entitlement to weekly payments after the second entitlement period is only available if special requirements are met as follows:
- (2) *A worker who is assessed by the Insurer as having no current work capacity and likely to continue indefinitely to have no current work capacity is entitled to compensation after the second entitlement period.*
 - (3) *A worker (other than a worker with high needs) who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if:*
 - (a) *the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period, and*
 - (b) *the worker has returned to work (whether in self-employment or other employment) for a period of not less than 15 hours per week and is in receipt of current weekly earnings (or current weekly earnings together with a deductible amount) of at least \$155 per week, and*
 - (c) *the worker is assessed by the insurer as being, and as likely to continue indefinitely to be, incapable of undertaking further additional employment or work that would increase the worker's current weekly earnings.*
 - (3A) *A worker with high needs who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period.*
76. A "worker with high needs" is defined in section 32A of the 1987 Act must be met, as follows:
- worker with high needs* means a worker whose injury has resulted in permanent impairment and:
- (a) *the degree of permanent impairment has been assessed for the purposes of Division 4 to be more than 20%, or*
 - (b) *an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that*

maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or

(c) the insurer is satisfied that the degree of permanent impairment is likely to be more than 20% and includes a worker with the highest needs

77. To satisfy the requirements of being a "worker with high needs" as set out in section 32A, at least one of the sub-sections (a), (b) or (c) of the definition must be met by the worker.
78. There is no information before me that the Worker has been assessed as being a worker with high needs and the Worker has not submitted that she is a worker with high needs.
79. Therefore, the requirements of section 38(3) of the 1987 Act apply in this matter.
80. With respect to sub-section 38(3)(a), I note that this section does not apply to an existing recipient of weekly payment for the purposes of clause 16 schedule 8 of the Regulation.
81. With respect to sub-section 38(3)(b), I am informed that the Worker is not currently working.
82. Accordingly, I am not satisfied that the Worker has returned to work (whether in self-employment or other employment), for a period of not less than 15 hours per week and is in receipt of current weekly earnings (or current weekly earnings together with a deductible amount) of at least \$183 per week (as currently indexed). the Worker does not meet the requirements of sub-section 38(3)(b) of the 1987 Act. She therefore is not entitled to weekly payments of compensation under section 38 of the 1987 Act.
83. Although I have found only one of the suitable employment options to be suitable employment for the Worker, the outcome of my review does not differ from the outcome of the Insurer's internal review decision that the Worker does not meet the special requirements of section 38(3) to be entitled to a continuation of weekly payments of compensation. Therefore, it is not necessary that I make any recommendations to the Insurer.

Merit Review Service

Delegate of the State Insurance Regulatory Authority

