



State Insurance Regulatory Authority

Workers Compensation

Merit Review Service

DECISION ON APPLICATION FOR MERIT REVIEW BY THE AUTHORITY

Worker:

Insurer:

Date of Decision:

Date of Injury:

Claim Number:

Our Reference:

DECISION

1. The Worker's application for merit review was not made within 30 days after she received notice in the form approved by the Authority of the Insurer's decision on internal review.
2. The application for merit review was not made in accordance with section 44BB(3)(a) of the *Workers Compensation Act 1987* (the 1987 Act).
3. The Authority does not have jurisdiction to undertake a review of the work capacity decision dated 24 March 2017.

BACKGROUND

4. On 24 March 2017, the Insurer made a work capacity decision. The decision found that the Worker had a current work capacity of 25 hours per week and that she had an entitlement of \$0 per week pursuant to section 37 of the 1987 Act.
5. The Worker requested an internal review by the Insurer which was received on 27 March 2017, as indicated in the Insurer's reply.
6. On 18 April 2017, the Insurer conducted an internal review which confirmed the decision that the Worker had "capacity to work 25 hours per week in [her] suitable employment option as a Cook and earn at least \$30.00 per hour which is \$750.00 per 25 hour week" with a \$nil entitlement under section 37 of the 1987 Act.
7. The Worker made an application for merit review by SIRA dated 10 July 2017 and received on this day. The application has been made in the form approved by the Authority and specifies the grounds on which the review is sought.

LEGISLATION AND GUIDELINES

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 defines a "work capacity decision".
10. Section 44BB of the 1987 Act provides for a merit review of a work capacity decision of the Insurer, by the Authority.

SUBMISSIONS ON JURISDICTION

11. In the application for merit review by SIRA received on 10 July 2017, the Worker made the following submissions regarding jurisdiction in this matter:
 - She received the Insurer's internal review decision on 19 April 2017.
12. In the reply dated 28 July 2017, the Insurer made the following submission on the issue of jurisdiction:
 - The application "has been lodged outside of [the] time frame".

REASONS

Time frame

13. Section 44BB(3)(a) of the 1987 Act provides:

*an application for review **must be made within 30 days** after the worker **receives** notice in the form approved by the Authority of the insurer's decision on internal review of the decision (when the application is for review by the Authority} or the Authority's decision on a review (when the application is for review by the Independent Review Officer). **Emphasis added***
14. The Insurer conducted an internal review on 18 April 2017, and sent notice of that decision to the Worker in the form approved by the Authority.
15. I note that the Worker has confirmed she received the internal review decision on 19 April 2017.
16. Accordingly, I accept that the Worker received the Insurer's internal review decision on 19 April 2017.
17. The Worker's application for merit review was made on 10 July 2017, being the date on which the Authority received the application.
18. However the application for merit review by SIRA was **not made within 30 days** after the Worker received notice of the Insurer's internal review decision in the form approved by the Authority.

19. As outlined above, the Authority is subject to strict legislative requirements with respect to its jurisdiction, in order to accept an application for merit review, particularly in matters relating to time limits.
20. Accordingly, as the application for merit review was not made in accordance with section 44BB(3)(a) of the 1987 Act, the Authority does not have jurisdiction to undertake a merit review of the work capacity decision dated 24 March 2017.
21. For the reasons discussed above, the Authority does not have jurisdiction to accept the current application for merit review because it was made outside the 30-day time frame.

Merit Review Service

Delegate of the State Insurance Regulatory Authority