



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 30 November 2016.

BACKGROUND

4. On 30 November 2016, the Insurer made a work capacity decision. The decision found that the Worker had an entitlement of \$0.00 per week pursuant to section 37 of the 1987 Act.
5. The Worker requested an internal review by the Insurer which was received on 11 January 2017, as indicated in the Insurer's reply.
6. On 6 February 2017, the Insurer conducted an internal review which confirmed the decision that the Worker had a \$0.00 entitlement under section 37 of the 1987 Act.
7. The Worker made an application for merit review by SIRA dated 5 May 2017. On 26 May 2017, the Authority determined that it was unable to undertake a review of the work capacity decision dated 30 November 2016 because it had been made out of time.
8. On 5 June 2017, the Worker lodged with the Insurer an application for internal review of a work capacity decision dated 29 May 2017.
9. The Worker received no response from the Insurer, and then proceeded to file an application for merit review by SIRA with the Authority on 10 July 2017. The application has been made in the form approved by the Authority and specifies the grounds on which the review is sought.
10. Due to an administrative error, the Insurer was delayed in providing its reply to the Authority in this matter, which was received on 28 July 2017.
11. The Authority sought further information from the parties, which was received on 1 August 2017 and 3 August 2017.

LEGISLATION AND GUIDELINES

12. 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).
13. Section 43 of the 1987 Act defines a "work capacity decision".
14. 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

15. In the application for merit review by SIRA received on 10 July 2017, the Worker (care of her legal representative) made the following submissions regarding jurisdiction in this matter:
 - The original work capacity decision is dated 30 November 2016.
 - Date of the internal review decision "N/A".
16. In the reply dated 28 July 2017, the Insurer made the following submission on the issue of jurisdiction:
 - This is the second merit review application received with a REPLY and Decision made already by Merit Review Service on 26 May 2017.
 - The Insurer confirms that the Worker received the internal review decision in the form approved by the Authority in February 2017.
 - The Insurer's response is in relation to this application which has been lodged outside of [the] timeframe with no new information submitted to date.

REASONS

Timeframe

17. Section 44BB of the 1987 Act provides for reviews of work capacity decisions.
18. Pursuant to section 44BB(1)(a) of the 1987 Act, an injured worker may refer a work capacity decision to the Insurer for an internal review.
19. Section 44BB(1)(b) of the 1987 Act provides that an injured worker may refer a work capacity decision to the Authority for review "**but not until** the dispute has been the subject of internal review by the insurer" (**emphasis added**).
20. Section B1.4 of the Guidelines specify that:

A worker can apply to the insurer to perform *an* internal review of the work capacity decision at any time. The worker must apply for an internal review within 30 days of receiving the work capacity decision advice for a stay of the decision to apply during the internal review process. **The application must be made by supplying a completed Workcapacity-application for internal review by insurer form** to their insurer. (Emphasis added)
21. I confirm that I sought clarification from the parties regarding the time line for this matter. As agreed to by the parties, I now provide the following timeframe:
 - Work capacity decision dated 30 November 2016

-
- Internal review decision dated 6 February 2017
 - Merit review decision (Non-jurisdiction out of time) dated 5 May 2017
 - Application for internal review of a work capacity decision (WCD 30.11.2016) dated 29 May 2017 lodged with the Insurer on 5 June 2017
 - Application for merit review by the Authority dated and lodged with the Authority on 10 July 2017.
22. By way of email correspondence dated 3 August 2017, the Worker's legal representative confirmed the above time line of events although considered that "matters 1, 2 and 3 [dot points above] aren't relevant to what is presently occurring".
 23. However, the above time line of events is imperative to assessing whether the Authority has jurisdiction to review the Worker's current application for merit review in this matter.
 24. The Insurer issued a work capacity decision on 30 November 2016, and conducted an internal review on 6 February 2017. The Worker then lodged an application for merit review by SIRA with the Authority during May 2017. The Authority provided a decision on 26 May 2017 that it did not have jurisdiction to review the work capacity decision dated 30 November 2016. The premise for this decision was that the Worker's application for merit review by SIRA was made outside the required 30 day timeframe.
 25. Following the Authority's decision dated 26 May 2017, the Worker sought another internal review from the Insurer. However I note that no new work capacity decision was issued to the Worker prior to her request for an internal review.
 26. The Worker's legal representative has confirmed that the **only** work capacity decision issued in this matter is dated 30 November 2016. The internal review decision was issued by the Insurer on 6 February 2017, and on 26 May 2017 the Authority determined it could not undertake a review of the Worker's work capacity decision because her application had been made outside the 30 day time frame.
 27. Accordingly, I am not satisfied that the dispute has been the subject of a subsequent work capacity decision and internal review by the Insurer, to then enable the Worker the legislative right to seek a merit review by SIRA. The fact that the Worker has made a further application for internal review of the work capacity decision dated 30 November 2016 does not alter the above facts.
 28. 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 internal review decisions and time limits.
 29. 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 30 November 2016.
 30. For the reasons discussed above, the Authority does not have jurisdiction to accept the application for merit review.