WORKERS' COMPENSATION APPEALS BOARD 1 STATE OF CALIFORNIA 2 3 4 Case No. LAO 0726063 GEORGE WILSON, LAO 0726064 5 LAO 0727783 Applicant, 6 vs. OPINION AND ORDER 7 GRANTING RECONSIDERATION CENTINELA HOSPITAL MEDICAL AND DECISION AFTER 8 RECONSIDERATION CENTER, permissibly self-insured, adjusted by WEAR & WOOD 9 Defendant(s). 10 11 Defendant, Centinela Hospital Medical Center, 12 reconsideration of the Arbitrator's Award dated June 8, 1998, 13 wherein it was found that applicant sustained an industrial injury 14 on August 12, 1994 and June 6, 1995 to his back; that the 15 determination of the rehabilitation unit dated November 5, 1996 16 was proper and supported by substantial evidence in light of the 17 entire record; and that applicant is a qualified injured worker 18 It was ordered that defendant provide applicant (QIW). 19 rehabilitation services consistent with the determination of the 20 Rehabilitation Unit, dated November 5, 1996. 21 Defendant contends that 1) the Arbitrator's Award should be 22 vacated because it is void and untimely under Labor Code section 23 5277; 2) the finding that applicant is QIW is not supported by 24 substantial medical evidence; 3) the permanent and stationary 25 report is tainted because it was ghost written by the applicant's 26

attorney in violation of Labor Code section 4628; and 4) there was

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no jurisdiction to find applicant was a QIW because Dr. Phillips, in part, denied an injury.

Based on our review of the record and for the reasons stated herein, we will grant reconsideration, rescind the arbitrator's decision and return this case to the trial level for the presiding workers' compensation referee (WCR) to either assign the case to a WCR for hearing, to refer the case to another arbitrator, to allow the parties to agree to another arbitrator, or to allow the parties to resubmit the case to the same arbitrator.

The record reflects that on January 9, 1998 the parties requested and agreed to have this case heard before Steven Dewberry, Arbitrator, on the sole issue of defendant's appeal of the Determination of the Rehabilitation Unit, dated November 5, 1996. On January 29, 1998, presiding WCR Barbara Burke ordered that the issues checked on the arbitration submittal form of January 9, 1998 be arbitrated before Steven Dewberry. This was a mandatory arbitration under Labor Code section 5275(a).

The record reflects chronologically that on March 13, 1998 the hearing took place and the matter was submitted for decision. On March 29, 1998 a transcript of the hearing was certified as true and correct by the court reporter. Next, we note that April 13, 1998 was the thirtieth day deadline in which a decision should issue after submission, pursuant to Labor Code section 5277. Labor Code section 5277 provides:

"(a) The arbitrator's findings and award shall be served on all parties within 30 days of submission of the case for decision."

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"(e) Unless all parties agree to a longer period of time, the failure of the arbitrator to submit the decision within 30 days shall result in forfeiture of the arbitrator's fee and shall vacate the submission order and all stipulations."

"(f) The presiding workers' compensation judge may submit supplemental proceedings to arbitration pursuant to this part."

The record reflects no indication that the parties explicitly or otherwise agreed to a longer time period than the thirty days.

The arbitrator, therefore, failed to meet the requirements of Labor section 5277 when his decision issued on June 8, 1998 beyond the statutory time period. Labor Code section 5277, subdivision (e), specifically provides that "unless all parties agree" to a longer time, the arbitrator must submit the decision within thirty days. We believe that this requires a specific agreement on the record by all parties. If an arbitrator is unable to submit the decision within thirty days, the arbitrator, for example, could seek a specific agreement, or waiver by the parties to allow a longer time period.

The remedy, here, is clear that the submission order and the Findings and Award shall be vacated. Therefore, we will order rescission of the submission order and the of Findings and Award resulting from the submission of the matter to the arbitrator. The delay also results, by statute, in a forfeiture of the arbitrator's fee. We will order this matter returned to presiding WCR to assign the case to a WCR for hearing, to refer the case to another arbitrator, or to allow the parties to agree to another, or the same, arbitrator.

In light of our disposition, we will not take a position on the merits of defendant's allegations regarding applicant's QIW status.

Finally, we note that the arbitrator in his report indicates that defendant should be estopped from asserting this defense because it is the first time it raised this issue of untimeliness. However, defendant could not raise the matter of timeliness until a decision issued and promptly did so in filing the Petition for Reconsideration thereafter. Therefore, we find that defendant is raising the issue when it first became ripe, and that defendant has raised the issue in a timely fashion.

For the foregoing reason,

IT IS ORDERED that defendants Petition for Reconsideration filed July 2, 1998, be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED as the Appeal's Board's decision after reconsideration that the submission order be, and the same hereby is, VACATED.

IT IS FURTHER ORDERED that the Findings Award which issued June 8, 1998, be, and the same hereby is, VACATED as having issued after thirty days from the submission in violation of Labor Code section 5277, subdivision (e).

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1	IT IS FURTHER ORDERED that the arbitrator's fee to date,
2	if any is requested, be FORFEITED .
3	IT IS FURTHER ORDERED that this matter be RETURNED to
4	presiding WCR at the trial level for further action, consistent
5	with this opinion.
6	WODELERS COMPENSATION APPEALS BOARD
7	WORKERS' COMPENSATION APPEALS BOARD
8	/s/ Douglas M. Moore, Jr.
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10	I CONCUR,
11	/s/ Robert N. Ruggles
12	/s/ Robert N. Ruggies
13	/s/ Colleen S. Casey
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15	DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
16	August 31, 1998
17	SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE
18	OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS.
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