

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **GEORGE WILSON,**

5 **Applicant,**

6 **vs.**

7 **CENTINELA HOSPITAL MEDICAL**
8 **CENTER, permissibly self-insured,**
9 **adjusted by WEAR & WOOD**

10 **Defendant(s).**

Case No. **LAO 0726063**
LAO 0726064
LAO 0727783

OPINION AND ORDER
GRANTING RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

11
12 Defendant, Centinela Hospital Medical Center, seeks
13 reconsideration of the Arbitrator's Award dated June 8, 1998,
14 wherein it was found that applicant sustained an industrial injury
15 on August 12, 1994 and June 6, 1995 to his back; that the
16 determination of the rehabilitation unit dated November 5, 1996
17 was proper and supported by substantial evidence in light of the
18 entire record; and that applicant is a qualified injured worker
19 (QIW). It was ordered that defendant provide applicant
20 rehabilitation services consistent with the determination of the
21 Rehabilitation Unit, dated November 5, 1996.

22 Defendant contends that 1) the Arbitrator's Award should be
23 vacated because it is void and untimely under Labor Code section
24 5277; 2) the finding that applicant is QIW is not supported by
25 substantial medical evidence; 3) the permanent and stationary
26 report is tainted because it was ghost written by the applicant's
27 attorney in violation of Labor Code section 4628; and 4) there was

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

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

10 The record reflects that on January 9, 1998 the parties
11 requested and agreed to have this case heard before Steven
12 Dewberry, Arbitrator, on the sole issue of defendant's appeal of
13 the Determination of the Rehabilitation Unit, dated November 5,
14 1996. On January 29, 1998, presiding WCR Barbara Burke ordered
15 that the issues checked on the arbitration submittal form of
16 January 9, 1998 be arbitrated before Steven Dewberry. This was a
17 mandatory arbitration under Labor Code section 5275(a).

18 The record reflects chronologically that on March 13, 1998
19 the hearing took place and the matter was submitted for decision.
20 On March 29, 1998 a transcript of the hearing was certified as
21 true and correct by the court reporter. Next, we note that April
22 13, 1998 was the thirtieth day deadline in which a decision should
23 issue after submission, pursuant to Labor Code section 5277.
24 Labor Code section 5277 provides:

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

...
...

1 “(e) Unless all parties agree to a longer
2 period of time, the failure of the arbitrator
3 to submit the decision within 30 days shall
4 result in forfeiture of the arbitrator’s fee
 and shall vacate the submission order and all
 stipulations.”

5 “(f) The presiding workers’ compensation judge
6 may submit supplemental proceedings to
 arbitration pursuant to this part.”

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

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

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

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

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

12 For the foregoing reason,

13 **IT IS ORDERED** that defendant's Petition for Reconsideration
14 filed July 2, 1998, be, and the same hereby is, **GRANTED**.

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

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

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