



Time to Offer Modified Work Extended by CCP sec 1013(a)

Ornleaz v. Albertson's Inc. (ADJ2308886) (WCAB Panel Decision) 37 CWCR 74

The WCAB in this Board panel decision found that an offer of modified work made on the 63rd day after service of the P&S report was timely, as it was within the five day extension period of Code of Civil Procedure section 1013.

The QME report dated October 7, 2007 in which applicant was declared permanent and stationary was not served on the parties until December 7, 2008. Defendant issued an offer of modified work on February 7, 2008, which Applicant accepted.

At hearing, the parties stipulated to Applicant's level of permanent disability leaving only the issue of whether the permanent disability would be increased or decreased by 15% based on the offer of modified work.

The WCJ found that the offer of modified work was not timely. Defendant filed a petition for reconsideration. The panel concluded that the offer of work was timely and that applicant's PD award should be decreased by 15%.

The panel reasoned that 60 day period to offer modified work began on the date of service of the P&S report. This took place on December 7, 2008 when the QME served the report by mail. The panel also found the five day time extension of Code of Civil Procedure section 1013 for notices served by mail to be applicable.

The panel noted that the QME report was served by mail on December 7, 2009. The 60 day period ended on February 4th 2008, and the offer of work was served on applicant 3 days later on February 7th, 63 days after service of the QME report, but within the five day extension period of Code of Civil Procedure section 1013.

The case was returned to the WCJ to recalculate the PD award based on the 15% decrease.