

1 **WORKERS' COMPENSATION APPEALS BOARD**  
2 **STATE OF CALIFORNIA**

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4 **GEORGE VISGER,**

5 *Applicant,*

6 vs.

7 **SAN FRANCISCO 49ERS; TRAVELERS**  
8 **INSURANCE COMPANY,**

9 *Defendants.*

Case Nos. **ADJ9167384 (SAC 0089876)**  
**ADJ5108194 (SAC 0088818)**  
**(Van Nuys District Office)**

**OPINION AND ORDER**  
**DENYING PETITION FOR**  
**RECONSIDERATION**

10 We have considered the allegations of the Petition for Reconsideration and the contents of the  
11 report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our  
12 review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we  
13 will deny reconsideration.

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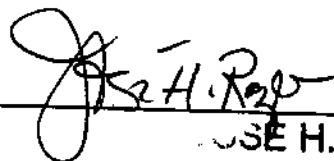
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1 For the foregoing reasons,

2 **IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

3 **WORKERS' COMPENSATION APPEALS BOARD**

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6 **JOSE H. RAZO**

7 **I CONCUR,**

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11 **MARGUERITE SWEENEY**

12 **CONCURRING, BUT NOT SIGNING**  
13 **DANK M. BRASS**



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16 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

17  
18 **JAN 23 2018**

19 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
20 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

21 **ASVAR LAW**  
22 **GEORGE VISGER**  
23 **TRINIDAD & ASSOCIATES**



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**VISGER, George**

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD

CASE NUMBER: ADJ9167384

GEORGE VISGER,

-vs-

SAN FRANCISCO 49ERS; TRAVELERS  
INSURANCE COMPANY,

WORKERS' COMPENSATION JUDGE: DIANE BANCROFT

DATE: DECEMBER 11, 2017

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

I.

INTRODUCTION

1. **Applicant's occupation:** Professional Athlete
2. **Applicant's age at injury:** 22
3. **Dates of injury:** 7/23/1980-7/23/1981
4. **Parts of body injured:** Head per F&A dated 7/1984
5. **Identity of petitioners** Defendant
6. **Timeliness:** The petition is timely.
7. **Verified:** Yes.
8. **Date of Action:** November 16, 2017 Findings of Fact and Order at Expedited Hearing.
9. **Answer Filed:** Yes.
10. **The petitioner's contentions:** 1. Defendant contends that the purported RFA for one year in-patient rehab treatment is invalid, since there was not a "lack of signature" but rather a purported signature by Dr. Bertoldi, which was not in fact his, causing defendant to falsely believe the RFA was properly signed by the doctor is incomplete and invalid; 2. The Request for Authorization on form RFA, signed by one other than Dr. Bertoldi without any indication of such, does not trigger the statutory requirements of handling an incomplete RFA. 3. The Findings and Award, Opinion on Decision herein failed to analyze or make a finding that applicant has met his burden of proof that the requested treatment was reasonable and necessary to cure or relieve the industrial injury.

## II.

### FACTS

Applicant, George Visger, was employed as a professional football player by defendant, San Francisco 49'ers, insured by Travelers, when he sustained a head injury. The case-in-chief resolved per Findings and Award in July, 1984.

In October, 2016 the matter went to trial with respect to an additional 120 days treatment on an inpatient basis at the Center for Neuro Skills (CNS) and an additional one year post inpatient rehab treatment at CNS Assisted Living Residential Program. In the Findings of Fact & Order dated 11/16/2016, the 120 days was found appropriate and the one year was deemed speculative at that time.

Thereafter, on 9/1/2017, and more than a year after the original request on 5/13/2016, the applicant's PTP, Dr. Bertoldi, renewed the request for one year at CNS on an expedited basis. The parties stipulated that the UR was not timely, but defendant indicated because the PTP did not sign the new RFA and someone from his office did, the request was void.

Based upon the evidence presented at the recent trial, it was deemed that the one year at CNS' Assisted Living Residential Program, post in-patient rehabilitation treatment is reasonably required to cure and relieve the effects of the industrial injury.

## III.

### DISCUSSION

**Defendant contends that the RFA is invalid because it was not Dr. Bertoldi's signature on the RFA and an RFA not signed by the PTP does not trigger the same handling requirements as an incomplete RFA.**

Defendant's first and second contentions as to the RFA are without merit. First, defendant has been on notice for over a year that the PTP indicated that the applicant required

the one year assisted living program at CNS. Defendant failed to timely review the earlier request on an expedited basis in 2016 and failed to do it again in 2017. There is no “deception” here as defendant was already aware of the requested treatment. Second, defendant ignores that this is a life threatening brain injury. Third, the PTP signed the narrative report that forms the basis of the request and shows that the request is justified and endorsed by the PTP. Further, the purported defect is curable and does not excuse the defendant’s failure to determine the request in a timely fashion. Fourth, defendants cannot excuse their failure to act in a timely fashion because the RFA was signed by someone other than the PTP. The fact that the defendant acted on the RFA and failed to determine the request in a timely manner is less excusable here than if the RFA was unsigned and they failed to act on it in a timely manner. Whether the defendant realized that fact at the time or later is of no impact. Defendant failed to act in a timely manner on an expedited request – the same request that was previously made more than a year ago – and failed to act timely on an expedited basis once again. Therefore, there is jurisdiction to determine the medical issue.

**Defendant Contends that the Findings and Award, Opinion on Decision Failed to Properly Analyze Whether the Requested Treatment is Supported by Substantial Medical Evidence.**

Joint Exhibit 8 is comprised of the RFA as well as the supporting documents that were included with the RFA, i.e. CNS’ Discharge Summary, two PR 2’s dated 8/16/17 and 6/7/17 and Dr. Bertoldi’s narrative report dated 5/13/16. Based upon that evidence, the undersigned determined that the request was justified. The CNS Discharge Summary dated 3/31/17 demonstrates that applicant’s condition had improved in some respects as a result of the 120 day program e.g. “overall memory improved throughout course of treatment, overall prospective

memory improved, good visual recall at discharge, reading skills improvement goal was met, math skills goal was also met (Joint Ex. 8, EAMS p. 6, 7, 8). However, CNS still recommended the assisted living program for at least 12 months to address "physical, cognitive, visual, behavioral and psychosocial issues." (Joint Ex. 8, EAMS p. 4). That information was not available to the undersigned at the trial held in October, 2016 as the applicant had not completed the 120 day treatment at that time and the request was deemed speculative at that time. (Findings of Fact, 11/15/2016).

At the recent trial, Dr. Bertold's 8/16/17 PR-2 indicated that the 3/31/17 discharge summary from CNS shows that the 120 day program was 'NOT successful. Mr. Visger 'required maximum assistance when presented with novel situations' which equals to semi skill care unable to handle anything out of the ordinary which translates into one year transitional living CNS because in real world novel situations are not controlled or predictable Mr. Visger will get into trouble" (Joint Ex. 8, EAMS p. 33). Therefore, after the completion of the 120 days which showed some improvement but was "not successful" in rendering the applicant able to live on his own and without assistance, the one year program was deemed medically necessary on a transitional basis. The UR denial that stated that "there was no documentation of measurable objective gains justifying the need for additional hours" is incorrect (Exhibit, 9, EAMS p. 7). The evidence showed that the treatment was beneficial but that the applicant is not able to live independently at this point due to the gravity of his medical condition. On that basis, the treatment was not successful as 120 days at CNS is not enough for a traumatic brain injury with residual post-traumatic head syndrome et. al.. Therefore, it was found that substantial medical evidence exists to show that the requested treatment is warranted at this time.

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**RECOMMENDATION**

Therefore, it is respectfully recommended that the petition for reconsideration be denied.

Dated: December 11, 2017



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**DIANE BANCROFT**  
**Workers' Compensation Administrative Law Judge**

Service by mail on parties as shown  
on the Official Address Record.

By: Patricia Soliz  
Patricia Soliz