WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ANDREW ROHRBACH, *Applicant*

vs.

COLORADO ROCKIES;
ACE AMERICAN INSURANCE, administered by SEDGWICK, *Defendants*

Adjudication Number: ADJ10391741
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant seeks reconsideration of the August 21, 2018 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant was employed as a professional athlete from June 6, 2014 to March 4, 2016, by the Colorado Rockies, insured by ACE American Insurance, administered by Sedgwick CMS (Colorado Rockies). The WCJ found that the Workers' Compensation Appeals Board lacked subject matter jurisdiction over applicant's claim. (Findings of Fact Nos. 2, 4.)

Applicant contends that there is California jurisdiction because an oral contract for hire was made in California.

We have received an Answer from the Colorado Rockies. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the August 21, 2018 Findings of Fact and substitute findings that the parties formed an oral contract for hire within California's territorial jurisdiction, thus conferring California jurisdiction over the claimed injury pursuant to Labor Code sections 3600.5(a) and 5305.

FACTS

Applicant claims injury to multiple body parts, including but not limited to orthopedic, head, neck, spine, hips, upper and lower extremities, neurological, and internal systems while employed as a professional athlete by defendant Colorado Rockies from June 6, 2014 through March 4, 2016. Defendant asserts that California lacks jurisdiction over the claimed injury.

The jurisdictional dispute was heard at trial on May 16, 2018. The sole issue framed for decision was "jurisdiction." (May 16, 2018 Minutes of Hearing and Summary of Evidence (Minutes), at 2:6.) Applicant testified to his employment with the Colorado Rockies from June 6, 2014 through March 14, 2016. (*Id*. at 3:15.) Applicant was born and educated in California, paid California taxes and possessed a California driver's license. (*Id*. at 3:20; 4:6.) On June 8, 2014, Matt Hattabaugh of the Colorado Rockies organization called applicant at his father's home in Valencia, California "to see if [applicant] would be available to be drafted in the 9th round." (*Id*. at 3:23.) Mr. Hattabaugh discussed a signing bonus, along with a college scholarship fund and travel arrangements to Denver. (*Id*. at 4:20.) Applicant accepted the offer over the telephone, at which time applicant believed himself a member of the Colorado Rockies organization. (*Id. at 3:25; 5:15.*) Mr. Hattabaugh stated, "We have a deal," and that the Rockies would arrange for applicant's travel to Colorado to sign a contract over the next few days. (*Id*. at 4:3.)

Applicant first saw the written employment contract after he arrived in Colorado, and learned what his minor league contract salary would be, although applicant had previously assumed that he would be earning the "minor league rate." (May 16, 2018 Minutes, at 4:22.) Applicant further learned the term of the contract with the Rockies was six years. (*Id*. at 4:16.) Applicant signed the contract on June 12, 2014, in Denver, Colorado, without reading it. Applicant played professional baseball through March 14, 2016. (*Id*. at 5:22.)

The WCJ issued Findings of Fact on August 21, 2018, determining that "the Workers Compensation Appeals Board does not have subject matter jurisdiction over the Applicant's claim," and that "the Workers Compensation Appeals Board lacks subject matter jurisdiction over the applicant's claim." (Findings of Fact, Nos. 2 and 4.) The opinion on decision observes that the contract which applicant signed in Denver, Colorado, contained terms addressing "rate of compensation; scope, timing, and location of work to be provided; mandatory activities; prohibited activities; how bonuses were to be paid or taken away; and how and where workers compensation issues were to be addressed." (Opinion on Decision, p.2, para.1.) The opinion further observed that

"none of these items were discussed or negotiated by Rohrback and the agent for the Colorado Rockies over the phone in the call of June 8, 2014." (*Ibid.*) The WCJ further notes the existence of an integration clause in the contract signed by applicant. Citing to *Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556 [83 Cal.Comp.Cases 1175], the WCJ observed that the integration clause would obviate any prior parol agreement:

> In the instant case, all of the terms of performance, location and compensation were presented to, and approved by, ROHRBACH in Colorado. Therefore, even if the acceptance of the signing bonus over the phone and while in California by ROHRBACH were considered an oral contract, the contract signed by ROHRBACH contains superseding language in Section XXIV which limits the position of the parties to the four comers of the written and executed contract. The contract executed by ROHRBACH, at Addendum F, states that all workers compensation issues shall be subject to the laws of the State of Colorado exclusively. (Opinion on Decision, p. 2, para. 5.)

Accordingly, the WCJ determined the WCAB to be without jurisdiction over the dispute. (Findings of Fact No. 4.)

Applicant's Petition contends the decision in *Tripplett, supra*, 25 Cal.App.5th 556, stands in opposition to California precedent as set forth in *Travelers Ins. Co. v. Workers' Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7, 12-13 [64 Cal.Rptr. 440, 434 P.2d 992] *(Coakley)*, *Alaska Packers Asso. v. Industrial Acci. Com. (Palma)* (1934) 1 Cal.2d 250, 256 [34 P.2d 716] *(Palma),* and *Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055, 1058 [60 Cal. Comp. Cases 316] *(Arriaga)*. Applicant contends that the "common law contract analysis has no bearing on California Workers' Compensation and the strong policy of the Legislature is to provide benefits to those hired in California." (Petition, at 5:19.) Applicant further avers that interpreting a contractual integration clause as obviating any prior oral contract for hire is tantamount to usurpation of California jurisdictional authority, and is expressly barred under Labor Code section 5000.[1] (*Id*. at 6:7.)

The Report observes that multiple terms contained in the contract were not discussed in the telephone call of June 8, 2014, including rate of pay, and date and location of commencement of employment. (Report, at p.3.) Because the essential terms of the contract were not settled until applicant executed the contract in Colorado, there was no contract for hire formed in California, and California is without jurisdiction over the claimed injury. (*Ibid.*) The Report further addresses

[1] All further statutory references are to the Labor Code unless otherwise stated.

applicant's contention that *Tripplett, supra,* 25 Cal.App.5th 556, stands in opposition to existing caselaw, noting the cited cases are fully distinguishable, either factually or with respect to the issues addressed.

DISCUSSION

The California Constitution confers on the Legislature "plenary power, unlimited by any provision of this Constitution," to establish a system of workers' compensation. (Cal. Const., art. XIV, § 4.) That power includes the power to "provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and [the Legislature] may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State." (*Ibid*.) The workers' compensation laws codified in Labor Code section 3200 et seq. are intended to implement that objective and provide "a complete system of [workers'] compensation…" (Lab. Code, § 3201.) (*Dep't of Corr. v. Workers' Comp. Appeals Bd. (Antrim)* (1979) 23 Cal.3d 197, 203 [77 Cal.Comp.Cases 114].) The jurisdictional provisions of article VI of the California Constitution are, therefore, inapplicable to the extent that the Legislature has exercised the powers granted it under section 4 of article XIV. (*Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1037 [25 Cal.Rptr.2d 539, 863 P.2d 784].)

The WCAB has subject matter jurisdiction over a claim when industrial injury occurs in California. (Cal. Const., Article XIV, § 4; Lab. Code, §§ 3202, 5300, 5301; *Daily v. Dallas Carriers Corp.* (1996) 43 Cal.App.4th 720, 726 [61 Cal.Comp.Cases 216] "[T]he California Workers' Compensation Act applies to a worker employed in another state who is injured while working in California"]; *McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23, 27 (Appeals Board en banc) [the WCAB can exercise jurisdiction "over claims of cumulative industrial injury when a portion of the injurious exposure causing the cumulative injury occurred within the state"].)

The legislature has further provided that a hiring in California within the meaning of Labor Code sections 3600.5(a) and 5305 provides this state with sufficient connection to the employment to support adjudication of a claim of industrial injury before the WCAB. (*Alaska Packers Assn. v.*

Industrial Acc. Com. (Palma) (1934) 1 Cal.2d 250, affd. (1935) 294 U.S. 532 (*Palma*); *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] ["an employee who is a professional athlete residing in California, such as Bowen, who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract"]; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (2013) 221 Cal.App.4th 1116, 1126 [78 Cal.Comp.Cases 1257] (Johnson) ["[T]he creation of the employment relationship in California, which came about when [Mr. Palma] signed the contract in San Francisco, was a sufficient contact with California to warrant the application of California workers' compensation law"].)

Labor Code section 3600.5, subd. (a), provides:

> If an employee who has been hired or is regularly working in the state receives personal injury by accident arising out of and in the course of employment outside of this state, he or she, or his or her dependents, in the case of his or her death, shall be entitled to compensation according to the law of this state.

Labor Code section 5305 provides:

> The Division of Workers' Compensation, including the administrative director, and the appeals board have jurisdiction over all controversies arising out of injuries suffered outside the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state. Any employee described by this section, or his or her dependents, shall be entitled to the compensation or death benefits provided by this division.

These statutory provisions reflect California's strong interest in applying a "protective legislative scheme that imposes obligations on the basis of a statutorily defined status." (*Travelers Ins. Co. v. Workers' Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7, 12-13 [32 Cal. Comp. Cases 527] *(Coakley)*.)

> [California's] interest devolves both from the possibility of economic burden upon the state resulting from non-coverage of the workman during the period of incapacitation, as well as from the contingency that the family of the workman might require relief in the absence of compensation. The California statute, fashioned by the Legislature in its knowledge of the needs of its constituency, structures the appropriate measures to avoid these possibilities. Even if the employee may be able to obtain benefits under another state's compensation laws, California retains its interest in insuring the maximum application of this protection afforded by the California Legislature. (*Coakley, supra,* 62 Cal.2d 7,

> citing *Reynolds Electrical etc. Co. v. Workmen's Comp. Appeals Board* (1966) 65 Cal.2d 429, 437-438 [31 Cal.Comp.Cases 415].)

Thus, the California legislature has enacted sections 3600.5 and 5305 as a reflection of public policy:

> If this were not so there could be no compensation for an injury arising out of and in course of the employment but occurring before the jurisdiction in which the services were to be performed had been entered, or where that jurisdiction had no compensation statute. This would seriously interfere with the policy of the act*, which is to charge to the industry those losses which it should rightfully bear, and to provide for the employee injured in the advancement of the interests of that industry, a certain and prompt recovery commensurate with his loss and, in so doing, lessen the burden of society to care for those whom industry has deprived, either temporarily or permanently, of the ability to care for themselves*. Having a social interest in the existence within its borders of the employer-employee relationship, the state may, under its police power, impose reasonable regulations upon its creation in the state. That the imposition of such conditions is in line with the present-day policy in compensation legislation cannot be doubted. (*Palma, supra,* 1 Cal.2d 250, 256, emphasis added.)

The formation of a contract for hire, standing alone, is sufficient to confer California jurisdiction over an industrial injury that occurs outside the state. "[T]he creation of the [employer-employee] status under the laws of this state is a sufficient jurisdictional basis for the regulation of that relationship within this state and the creation of incidents thereto which will be recognized within this state, even though the relation was entered into for purposes connected solely with the rendition of services in another state." (*Palma, supra*, 1 Cal.2d 250; *Benguet Consol. Mining Co. v. Industrial Acci. Com.* (1939) 36 Cal.App.2d 158, 159 [1939 Cal. App. LEXIS 28]; *McKinley, supra,* 78 Cal.Comp.Cases 23; *Jackson v. Cleveland Browns* (December 26, 2014, ADJ6696775) [2014 Cal. Wrk. Comp. P.D. LEXIS 682].)

California courts have also held that the formation of an oral contract in California is sufficient to confer jurisdiction under section 5305. Under California law, "an oral contract consummated over the telephone is deemed made where the offeree utters the words of acceptance." (*Janzen v. Workers' Comp. Appeals Bd.* (1997) 61 Cal.App.4th 109, 114 [71 Cal.Rptr.2d 260], citing *Coakley, supra*, 68 Cal.2d 7, 14.) Pursuant to Civil Code section 1583, "[c]onsent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section. (Cal. Civ. Code, § 1583.) Thus, in *Paula Insurance Co. v. Workers' Comp. Appeals*

Bd. (2000) 65 Cal.Comp.Cases 426 [2000 Cal. Wrk. Comp. LEXIS 6264] (writ denied), the telephonic offer of employment by an Oregon employer, as accepted by the father of a California farm laborer, was sufficient to form a contract of hire.

California courts have further held that a contract for hire is formed for purposes of California jurisdiction even when not every term has been negotiated, so long as the essential terms of engagement have been agreed upon. Decided nearly 100 years ago, the case of *Globe Cotton Oil Mills v. Industrial Acc. Com.* (1923) 64 Cal.App. 307, 309-310 [1923 Cal. App. LEXIS 130], involved a contract for hire made in Calexico, California for work to be performed outside California. The parties to the agreement did not reach an accord regarding applicant's wages until applicant had been working for several days. The court of appeal observed that "[t]he place of the contract is the place at which the last act was done by either of the parties essential to a meeting of the minds." (*Id*. at 309-310.) Thus, "[t]he substance of the negotiations was that at Calexico, within the state of California, [applicant] asked the superintendent for a job; the superintendent said he would see about it and later told [applicant] that he could go to work." (*Id*. at 309.) Thus, a contract was formed in California when the parties reached a meeting of the minds regarding the employment, despite issues such as a rate of pay having not yet been negotiated. *(Ibid.)*

In *Reynolds Electrical & Engineering Co v. Workers' Comp. Appeals Bd. (Egan)* (1966) 65 Cal.2d 429 [31 Cal.Comp.Cases 415] (*Egan*), the employee accepted an offer of Nevada employment, conveyed by a representative of his union, while physically located at a union hiring hall in California. The Supreme Court held that the contract for hire was made in California even when certain out-of-state contingencies were to be satisfied at a date subsequent to the date of agreement, including the completion of a lengthy questionnaire in Nevada, applicant obtaining a security clearance once in Nevada *before he could commence work*, and where the employer could reject applicant when he appeared at job site in Nevada. (*Egan, supra,* 65 Cal.2d 429, 431-432.)

One year after the decision in *Egan*, the Supreme Court confirmed in *Coakley, supra*, 68 Cal.2d 7, that a contract for hire in California was established even where all of the conditions of employment were not yet finalized. In *Coakley*, applicant in California accepted an offer for work in Wyoming. Notwithstanding this oral contract for hire, the employer required the completion of additional documents and conditions, including, inter alia, documents specifying applicant's work, addressing patent rights, requiring four weeks' notice of termination, completion of a W-2 form and completion of both a medical examination and a driver's test. Moreover, applicant's job title

was changed following the initial agreement from Geological Aid/Technician to Assistant Engineer - Mud Logging. The Supreme Court held:

> [T]he oral California agreement included the essential terms of the contract: the parties, time and place of employment, salary, and the general category of employment (geologist). An employment contract need not detail every condition of employment (*Gordon v. Wasserman* (1957) 153 Cal.App.2d 328, 329 [314 P.2d 759]). That particular terms remain undesignated does not render the original contract invalid for uncertainty. Later agreement on the unspecified terms does not rescind the original contract (*Wilson v. Wilson* (1950) 96 Cal.App.2d 589, 594 [216 P.2d 104]), especially if the parties' performance indicates that they intended to be bound by the prime agreement. (*Bohman v. Berg* (1960) 54 Cal.2d 787, 794-795 [8 Cal.Rptr. 441, 356 P.2d 185].) Second, an alteration of details of the contract which leaves undisturbed its general purpose constitutes a modification rather than a rescission of the contract (*Grant v. Aerodraulics Co.* (1949) 91 Cal.App.2d 68, 74-75 [204 P.2d 683]); it does "not affect the original contract, which still remains in force." [Citations.] (*Coakley, supra*, 68 Cal.2d 7, 17.)

On this basis, the Supreme Court thus concluded that a valid contract for hire was established in California, conferring California jurisdiction over the subsequent workers' compensation claim.

In *Bowen v. Workers' Comp. Appeals Bd.* (1993) 73 Cal.App.4th 15 [64 Cal. Comp. Cases 745], the court of appeal determined that a contract for hire between a player and a major league baseball team was formed in California, conferring California jurisdiction, notwithstanding the need for the contract to be ratified by the baseball Commissioner. Citing the St. Clair workers' compensation treatise, the court of appeal observed:

> T]he fact that there are formalities which must be subsequently attended to with respect to such extraterritorial employment does not abrogate the contract of hire or California jurisdiction. Such things as filling out formal papers regarding the specific terms of the employment or obtaining a security clearance from the federal government are deemed 'conditions subsequent' to the contract, not preventing it from initially coming into existence. [Citations.]" (*Bowen, supra,* at 22.)

In the present matter, applicant discussed essential terms of a proposed employment contract with the Colorado Rockies while physically located in California. Applicant was at home when he was contacted by Mr. Hattabaugh, an agent for the Colorado Rockies. Mr. Hattabaugh inquired whether applicant was available to be drafted in the 9th round of the Major League Baseball draft. (May 16, 2018 Minutes, at 3:23.) Applicant and Mr. Hattabaugh discussed the terms

of an employment agreement, including a signing bonus, the amount of a college scholarship fund, and travel arrangements to Denver. (*Id*. at 4:20.) Applicant accepted the offer over the telephone, at which time applicant believed himself a member of the Colorado Rockies Organization. (*Id. at 3:25; 5:15.*) Mr. Hattabaugh stated, "We have a deal," and that the Rockies would arrange for applicant's travel to Colorado to sign a contract over the next few days. (*Id*. at 4:3.) Applicant traveled to Colorado shortly thereafter. Once in Colorado, applicant was presented with an employment contract for the first time. Applicant learned what his minor league contract salary would be, although applicant had previously assumed he would be earning the "minor league rate." (May 16, 2018 Minutes, at 4:22.) Applicant further learned the contract granted the Rockies employment rights for six years. (*Id*. at 4:16.)

The contract and its addenda set forth a variety of terms, nearly all which are standardized. The contract is entitled the "Minor League Uniform Player Contract," and was signed by Applicant and Bill Schmidt, the Rockies' Vice President for Scouting. (Ex. 1, Minor League Uniform Player Contract, p.9.) The Minor League Uniform Contract itself contains no markup and no reference to the terms negotiated by applicant and Mr. Hattabaugh on June 8, 2014 (those terms are addressed in the various addenda to the Uniform Contract). The Uniform Contract specifies at Article VI "Duration And Conditions Of Employment" that the "Club hereby employs Player to and Player agrees to render, skilled services as a Minor League Player in seven (7) separate championship playing seasons…" (*Id*., at p.10, para. "A".) The Uniform Contract addresses a variety of standard terms, including standard lodging and transportation expense language, the provision of a team uniform, and the Club's right to pictures of the players. Addendum "A" provides identifying information for the parties, and specifies that applicant will initially play for the Tri-City Dust Devils in the Northwest League. (*Id*. at p.1.) Addendum C-1 contains a schedule of the monthly salary rate during the 2014 championship season for various teams, including the Tri-City Dust Devils. (*Id*. at p.6.)

We observe that the *only* section of the contract reflecting negotiated terms appears to be Addendum B, which contains the signing bonus and the "tuition allowance" discussed by applicant and Mr. Hattabaugh. (*Id*. at pp.2-3.) Addendum B reflects no other markup, additional negotiated terms, or evidence of change in terms previously agreed to. (*Ibid.*) At trial, the Colorado Rockies interposed no witnesses to delineate any additional terms discussed beyond those described by applicant's testimony. Thus, the entirety of the evidentiary record reflects no documentation of

any negotiated terms except those terms to which applicant agreed while residing in California. (May 16, 2018 Minutes, at 4:20.) Additionally, applicant's undisputed testimony is that after he arrived in Denver, there were no additional terms negotiated, and he signed the contract without reading it. (May 16, 2018 Minutes, at 4:4; 4:18.)

On this record, it appears that applicant and the agent for the Colorado Rockies reached an accord as to the essential terms relevant to an employment agreement during the telephonic discussion of June 8, 2014. (May 16, 2018 Minutes, at 3:23.) We conclude that a valid oral contract was formed in California, because it was "the place at which the last act was done by either of the parties essential to a meeting of the minds." (*Globe Cotton Oil Mills v. Industrial Acc. Com., supra,* at 309-310.)

The WCJ's Report and the Answer both cite to *Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556 [83 Cal.Comp.Cases 1175] as relevant to the issues at bar. Therein, Tripplett, a professional football player and California resident, asserted a contract for hire was formed when he signed a contract together with his agent at the agent's office in Newport Beach, California. (*Id*. at 559.) However, when presented with the actual signature pages to the contract which appeared to demonstrate his agent signed the document separately from applicant, and that the agent faxed the signature page from a telephone number in Buffalo, New York, applicant admitted he did not remember where he signed the agreement. (*Id*. at 1177.) The WCJ found that applicant's agent had negotiated the contract in California, thus conferring California jurisdiction over the dispute. In a split panel decision, the WCAB reversed, finding that the evidence demonstrated "neither [Tripplett] nor his agent were in California when the employment was accepted and the contract was signed." The court of appeal affirmed the determination of no jurisdiction, noting the factual discrepancies in the record did not support a finding that either applicant or his agent were present in California at the making the contract for hire. The court further held that because Tripplett retained the ability to reject any contract his agent negotiated, the agent could not bind applicant to a contract, and because the agent's negotiations in California were the only contract-related activities in the state, there was no basis for California jurisdiction. (*Id*. at 567.) The opinion in *Tripplett* further rejected applicant's contentions that an oral agreement was reached in California because "Tripplett's employment agreement was in writing and specified that it became effective only after execution," and because "there was no evidence any party

believed a binding agreement had been formed before the parties executed the written document." (*Id*. at 563.) In addition to these determinations, the *Tripplett* decision further states:

> Additionally, the outcome here remains the same even if we assume that Tripplett's agent had some authority to bind him to an oral employment agreement at the conclusion of the agent's negotiation with Indianapolis. Tripplett's written employment agreement includes an integration clause that specifies it supersedes any prior oral agreement between the parties. Thus, the written agreement Tripplett signed while attending the team's minicamp in Indianapolis was the only agreement governing his employment relationship with the team. (*Id*. at 567.)

We find *Tripplett* distinguishable on a factual basis, however, because *Tripplett* presented the question of whether applicant had met the burden of proof of establishing a contract for hire made in California. The jurisdictional question was decided adversely to applicant because he *did not meet that burden of proof*. Here, the uncontested facts in the record demonstrate that the Colorado Rockies negotiated the essential terms of the contract directly with applicant, forming a contract for hire, and conferring California jurisdiction over the claimed industrial injuries. (*Palma, supra*, 1 Cal.2d 250; *Benguet Consol. Mining Co., supra,* 36 Cal.App.2d 158, 159; *Egan, supra,* 65 Cal.2d 429; *Coakley, supra*, 68 Cal.2d 7.) Additionally, applicant testified without rebuttal to his subjective belief that he had reached an employment agreement with the Colorado Rockies at the conclusion of the telephone call on June 8, 2014, and that the agent for the Rockies stated, "We have a deal." (May 16, 2018 Minutes, at 3:25; 4:3.) The evidence thus demonstrates both an objective agreement to the essential terms of an employment agreement as well as the parties' contemporaneous subjective beliefs that a contract for hire had been agreed upon.

The WCJ's report observes that the Section XXIV of the Minor League Uniform Player Contract contains an "integration clause," that confirms the written contract to be the only valid, recognized agreement, obviating any other understandings or agreements made before or after. (Report at p.2; Ex. 1, Minor League Uniform Player Contract, Section XXIV, p. 14.) Pursuant to the conclusion reached in *Tripplett*, the WCJ determined that the integration clause invalidates any prior agreements, including an oral contract for hire. However, the WCJ's reliance on *Tripplett* for the proposition that an integration clause voids California jurisdiction appears misplaced, because the conclusion reached is obiter dictum, and therefore not binding. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 945, pp. 986–987.) Although dictum may be persuasive authority if made by a court after careful consideration or in the course of an elaborate review of the authorities (id.,

§ 947, pp. 989–991), it is axiomatic that cases are not authority for propositions they did not consider or address. (*Gomez v. Superior Court* (2005) 35 Cal. 4th 1125, 1153 [29 Cal. Rptr. 3d 352]; *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176 [46 P.3d 372, 119 Cal. Rptr. 2d 903]; *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd. (Steele)* (1999) 19 Cal.4th 1182, 1195 [969 P.2d 613, 81 Cal. Rptr. 2d 521] [64 Cal.Comp.Cases 1].) The issue of whether an integration clause can invalidate a prior oral agreement for contract for hire in California was neither raised nor discussed at the trial level in *Tripplett*, nor was it raised or discussed in subsequent WCAB proceedings. (See *Tripplet [sic] v. Indianapolis Colts* (March 1, 2017, ADJ6943108) [2017 Cal. Wrk. Comp. P.D. LEXIS 123] (WCAB panel decision).)

Of course, the question of whether the dictum expressed in *Tripplett* should be followed warrants careful consideration in each case, and we note the California Supreme Court's subsequent denial of petition for review in *Tripplett*. (*Tripplett v. Workers' Compensation Appeals Bd.*, 2018 Cal. LEXIS 8421.) "To say that dicta are not controlling…does not mean that they are to be ignored, on the contrary, dicta are often followed. A statement which does not possess the force of a square holding may nevertheless be considered highly persuasive, particularly when made by an able court after careful consideration, or in the course of an elaborate review of the authorities, or when it has been long followed." (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 785, p. 756.)

The interplay between California's public policy-driven decision to extend jurisdiction based on a "contract for hire" and traditional principles of contract formation has been the subject of a significant body of California jurisprudence. In *Palma, supra*, 1 Cal.2d 250, the Supreme Court opined:

> [T]he California [workers' compensation] act is compulsory and it is now settled that the right to, and the liability for, compensation established by it are not founded upon contract but are statutory rights and duties arising from the *employer-employee relationship and are imposed by the law as incidents to that status*. [Citations.] Consequently a decision upholding the so-called extraterritorial effect of our act cannot be placed upon this ground. We are of the opinion that the creation of the status under the laws of this state is a sufficient jurisdictional basis for the regulation of that relationship within this state and the creation of incidents thereto which will be recognized within this state, even though the relation was entered into for purposes connected solely with the rendition of services in another state. (*Id*. at 257-258.)

In *Coakely, supra*, 68 Cal. 2d 7, the Supreme Court further delineated the distinction between the public policy-driven extension of California jurisdiction over contracts for hire made within the state, and traditional principles of contract law:

> California has rejected the traditional mechanical solutions to choice-of-law problems and adopted foreign law only when it is appropriate in light of the significant interests in the particular case. The significance of extra-state elements varies directly with the nature of the forum's interest in a given case. Thus, California maintains a stronger interest in applying its own law to an issue involving the right of an injured Californian to benefits under California's compulsory workmen's compensation act than to an issue involving torts or contracts in which the parties' rights and liabilities are not governed by a protective legislative scheme that imposes obligations on the basis of a statutorily defined status. (*Id*., at 11-12.)

The court further explained:

> "Workmen's compensation contemplates a substitution of the contractual rights and obligations which normally flow between worker and employer with *a complete and exclusive statutory scheme based not upon contract but upon status*. The relationship of employer and employee itself generates the rights and obligations; the legislation describes the content and extent of those rights and obligations." (*Noe v. Travelers Ins. Co.* (1959) 172 Cal.App.2d 731, 733 [342 P.2d 976].) "[The] liability under workmen's compensation acts is...imposed as an incident of the employment relationship...[California has] as great an interest in affording adequate protection to this class of its population [California employees injured outside California] as to employees injured within the state." (*Alaska Packers Assn. v. Industrial Acc. Com.* (1935) 294 U.S. 532, 541-543 [79 L.Ed. 1044, 55 S.Ct. 518]; [Citations.] (*Id*. at 12, fn.3, *emphasis added*.)

Additionally, the court addressed the question of "who should be embraced within the class of beneficiaries," by applying the liberal construction provisions of Section 3202, wherein the court "follow[ed] the legislative mandate to construe liberally the provisions of the statute, including those defining the class of persons who are entitled to the statutory benefits." (*Id*. at 13.)

In *Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771 [37 Cal.Comp.Cases 185], the Supreme Court again addressed the interplay between common law principles of contract formation and California's public policy interests in extending workers' compensation benefits to all persons hired in California. Applicant John Laeng was injured while participating in a physical agility challenge as part of a job tryout for defendant City of Covina. (*Id*. at 774.) The workers' compensation referee, although sympathetic to the "equities" of Laeng's claim, nevertheless ruled

that under traditional employment principles, Laeng, who was participating in pre-employment "tryout" was not an employee at the time of his injury. The WCAB affirmed. The Supreme Court, overturning the WCAB, ruled that "[a]lthough at the time of his injury Laeng was concededly not an 'employee' of the city in a strict, contractual sense of that term, we are not constrained in interpreting the provisions of the Workmen's Compensation Act by the common law contractual doctrine but must instead be guided by the purposes of the legislation at issue. (*Id*. at 774.)

> Given these broad statutory contours, we believe that an "employment" relationship sufficient to bring the act into play cannot be determined simply from technical contractual or common law conceptions of employment but must instead be resolved by reference to the history and fundamental purposes underlying the Workmen's Compensation Act. [Citations]. (*Id*. at 777.)

However, the Supreme Court further observed in a footnote to the above text that:

> By this statement, of course, we do not imply that common law notions of the employment relationship should never be considered in determining the issue of 'employment' under work[ers'] compensation, but only that such common law principles are not determinative of the issue. The differences between the common law and work[ers'] compensation usage of the term 'employment' stem from the fundamentally different purposes served by the employment concept in each context...Although there is considerable overlap between the two fields, in each context the determination of the presence or absence of a sufficient 'employment' relationship must ultimately depend on the purpose for which the inquiry is made." (Id. at pp. 777-778, fn. 7.)

Laeng thus provided for the application of traditional principles of contract formation within a workers' compensation context, but further provided that any such application should be in furtherance of the principles and public policy informing the legislature's implementation of the California workers' compensation system. While we acknowledge that the decision in *Laeng* addressed fundamental issues of what constituted employment under section 3351, the decision in *Laeng* is instructive for its conclusion that common law principles of contract formation may *inform*, but should not *limit*, California's interests in extending its workers' compensation benefits for the protection of persons injured in the course of their employment. (Cal. Lab. Code § 3202.)

Thus, although we distinguish *Tripplett* on its facts, we further observe that the integration clause described in Section XXIV of the Uniform Player Contract would not preclude California jurisdiction herein because that jurisdiction was conferred when the parties entered into a contract for hire from within California. Once conferred, that jurisdiction is prescribed by law and it cannot

be increased or diminished by contract. (See, e.g., *General Acceptance Corp. v. Robinson* (1929) 207 Cal. 285, 289, 277 P. 1039 ["The rules to determine in what courts and counties actions may be brought are fixed upon consideration of general convenience and expediency by general law; to allow them to be changed by the agreement of the parties would disturb the symmetry of the law, and interfere with such convenience."]; *Beirut Universal Bank v. Superior Court* (1969) 268 Cal. App. 2d 832, 843, 74 Cal. Rptr. 333.) Given our factual determination that a contract for hire was formed in California, and that applicant's subsequent ratification of a written employment contract does not serve to invalidate California statutory jurisdiction, we conclude that California continues to maintain jurisdiction over the claimed injuries herein.

In summary, we find that applicant negotiated and finalized all of the essential and reasonably negotiable terms of an employment contract with the Colorado Rockies from his home in California on June 8, 2014. The making of a valid contract for hire in California served to confer jurisdiction over the ensuing claim of injury, pursuant to section 3600.5(a) and section 5305. Once conferred, California may not be deprived of that jurisdiction by the ratification of a subsequent employment contract. Accordingly, we will rescind the Findings of Fact and substitute findings that California has jurisdiction to adjudicate the claimed injuries.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact dated August 21, 2018 is **RESCINDED** and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant, ANDREW ROHRBACH, born [], was employed by the COLORADO ROCKIES insured by ACE AMERICAN administered by SEDGWICK during the period of June 6, 2014 through March 4, 2016 as a professional athlete, occupational group 590.
2. Defendants are relieved of their pre-trial stipulation the Applicant worked in California.

3. Applicant and the Colorado Rockies formed a contract for hire within California's territorial jurisdiction, thus conferring California jurisdiction over the claim pursuant to Labor Code sections 3600.5(a) and 5305.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

DEIDRA E. LOWE, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2022

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

ANDREW ROHRBACH
COLANTONI, COLLINS, PHILLIPS, MARREN & TULK
LEVITON, DIAZ & GINOCCHIO

SAR/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*