WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

STEVE LAUTER, *Applicant*

vs.

BALTIMORE RAVENS FKA CLEVELAND BROWNS, PERMISSIBLY SELF-INSURED, ADMINISTERED BY BERKLEY ENTERTAINMENT; SAN DIEGO CHARGERS, CALIFORNIA INSURANCE GUARANTEE ASSOCIATION FOR FREMONT INSURANCE, IN LIQUIDATION, *Defendants*

Adjudication Number: ADJ14657802
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

The San Diego Chargers by the California Insurance Guarantee Association for Fremont Insurance, in liquidation (CIGA), seek reconsideration of the July 1, 2022 Findings and Order wherein the workers' compensation administrative law judge (WCJ) determined that the court had no personal jurisdiction over the Baltimore Ravens formerly known as the Cleveland Browns (Cleveland Browns).

CIGA contends that the Cleveland Browns are subject to personal jurisdiction in California based on the specific facts of this case, that the Browns' activities and connections to California are substantial, continuous and systematic, and that it was error to dismiss the Browns as a party. CIGA further contends the WCJ erred in applying Labor Code section 4062 as it existed prior to 2005 to the medical-legal procedure in this matter.[1]

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

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

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 grant the Petition, amend the Findings of Fact to reflect that there is no California jurisdiction over the Cleveland Browns/Baltimore Ravens in this matter, and otherwise affirm the F&A.

BACKGROUND

Applicant claimed injury to his head, neck, shoulder, back, elbows, bilateral wrists, hands, hips, knees, feet, TMJ, neuro, internal, neuro/psyche, psyche, pain, and sleep while employed as a football player by defendant the San Diego Chargers from May 5, 1987 to July 29, 1987, and for the Cleveland Browns from September 30, 1987 to October 19, 1987. Defendants deny injury, and the Cleveland Browns have entered a special appearance to contest personal jurisdiction. (April 27, 2022 Minutes of Hearing and Summary of Evidence (Minutes), at 1:18.)

The parties proceeded to trial on April 27, 2022 on the sole issue of "personal jurisdiction over the Cleveland Browns/Baltimore Ravens." (Minutes, at 2:14.) Applicant testified that he was employed by both the San Diego Chargers and the Cleveland Browns in 1987. Applicant was, at all relevant times, represented by agent Bruce Allen, whose offices were located in Arizona. (Transcript of Proceedings (Transcript), dated April 27, 2022, at 25:22.)

On May 4, 1987, applicant signed a free agent contract with the San Diego Chargers. (Transcript, at 15:1.) Applicant participated in various training camps until the Chargers released him on or about July 28, 1987. (*Id*. at 19:8.)

Thereafter, applicant's agent contacted him over the telephone indicating the Cleveland Browns were interested in signing applicant. (Transcript, at 19:15; 26:3.) Applicant was residing in California at the time. (*Id*. at 19:22.) When applicant spoke with his agent about the offer from the Browns, applicant was not aware of the terms of the contract, and was not aware of whether his agent had negotiated the contract terms. (*Id*. at 20:12.) Applicant received no paperwork from the Browns while in California. (*Id*. at 26:11.) Applicant traveled to Cleveland, Ohio, but did not pay for the air travel. (*Id*. at 28:10.) In Cleveland, applicant underwent a physical examination and signed an employment contract on September 23, 1987. (*Id*. at 21:17.) Applicant practiced regularly with the team until he was released on October 20, 1987. Applicant played no games for the Cleveland Browns. (*Id*. at 23:13.) Applicant participated in no special exhibitions, appearances, or training sessions in California with the Cleveland Browns. (*Id*. at 24:16; 26:25.)

Following his release, the Cleveland Browns paid for applicant's air travel back to California. (Transcript, at 31:8.) After returning to California, applicant had insurance through the Cleveland Browns and received chiropractic treatment at San Diego State.

The WCJ issued his F&O on July 1, 2022, finding no personal jurisdiction over the Cleveland Browns/Baltimore Ravens, and ordering their dismissal as a party defendant. (F&O, Findings of Fact No. 2, Order.) The WCJ's Opinion on Decision noted that applicant played no games with either team, and that applicant did not travel to California while employed by the Cleveland Browns. Consequently, there was no injurious exposure within the State of California while the Cleveland Browns employed applicant. The WCJ concluded there was no affiliation with the activity or occurrence within the forum state of California, leading to no specific personal jurisdiction over the Cleveland Browns. (Opinion on Decision, pp. 5-6.)

CIGA's Petition for Reconsideration (Petition) contends that the Browns' substantial, continuous and systematic contacts with California are sufficient to establish personal jurisdiction over the team, that the Browns availed themselves of the benefits of conducting business in California, that applicant's employment with the Browns contributed to his injury, and that the dismissal of the team was not warranted. (Petition, at pp. 7-10.)

The Cleveland Browns' answer contends the material assertions of fact contained in the Petition are not supported in the Transcript of Proceedings. (Answer, at p. 2.) The Answer also notes that the three games played by the Cleveland Browns in California in 1987 all transpired after applicant's release from employment, and that applicant's California residency is not a basis for the exercise of personal jurisdiction over an employer. (Answer, at p. 7.)

The WCJ's Report observes that the record does not support contract formation between applicant and the Cleveland Browns while applicant was physically in California. (Report, at p. 3.) The WCJ also notes that applicant's California residency is not a basis for exercising personal jurisdiction over an out-of-state defendant. (*Id*. at p. 4.) The WCJ also observes that while employed by the Cleveland Browns, applicant played no games in California, never traveled to California, sustained no injuries in California, and had no "affiliation with the activity or occurrence causing injury" within the State of California. (*Id*. at p. 6.)

DISCUSSION

CIGA contends the facts of this case support the exercise of California personal jurisdiction over the Cleveland Browns (Petition, at p. 5.)

A California court may exercise jurisdiction over a nonresident defendant only within the [perimeters] of the due process clause as delineated by the decisions of the United States Supreme Court. (*Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472, 475 [1973 Cal.App. LEXIS 991], citing *International Shoe Co. v. State of Washington*, 326 U.S. 310 [90 L.Ed. 95, 66 S.Ct. 154, 161 A.L.R. 1057] and *Michigan Nat. Bank v. Superior Court*, 23 Cal.App.3d 1, 6 [99 Cal.Rptr. 823]; Code Civ. Proc., § 410.10.) Due process requires that a defendant have certain minimum contacts with a state so that the maintenance of an action in the state does not offend traditional notions of fair play and substantial justice. (*McKinley v. Arizona Cardinals* (2013) 78 Cal. Comp. Cases 23, 26 [2013 Cal. Wrk. Comp. LEXIS 2]; *Buckner v. Industrial Acci. Com.* (1964) 226 Cal.App.2d 619, 623) [1964 Cal. App. LEXIS 1319].)

Personal jurisdiction is not determined by the nature of the action, but by the legal existence of the party and either its presence in the state or other conduct permitting the court to exercise jurisdiction over the party. Subject matter jurisdiction, by contrast, is the power of the court over a cause of action or to act in a particular way. (*Greener v. Workers' Comp. Appeals Bd. of California* (1993) 6 Cal.4th 1028 [58 Cal. Comp. Cases 793, 795].)

Here, CIGA contends an oral contract of employment was reached between applicant and the Cleveland Browns, which supports the exercise of California personal jurisdiction over the Browns. (Petition, at p. 5.) CIGA avers:

> Applicant was then contacted by the Browns while still in San Diego (SOE pg 5, line 9) and applicant then told his parents he was going to go play with the Browns (SOE page 5, line 9-10). Applicant's employment with the Browns was not contingent upon him taking a physical. No terms of the contract were negotiated while applicant was in Ohio. Applicant signed a contract in Ohio where the terms had already been agreed to prior to applicant arriving in Ohio. (Petition, at p. 5.)

A contract of employment is governed by the same rules applicable to other types of contracts, including the requirements of offer and acceptance. (*Reynolds Electrical & Engineering Co v. Workers' Comp. Appeals Bd. (Egan)* (1966) 65 Cal.2d 429,433 [31 Cal.Comp.Cases 415].) California has adopted the rule that an oral contract consummated over the telephone is deemed

made where the offeree utters the words of acceptance. (*Travelers Ins. Co. v. Workers' Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7, 14 [32 Cal.Comp.Cases 527].) Additionally, California courts have looked to the creation of a contract of hire in California as a factor supporting the exercise of personal jurisdiction over a non-resident party. (See *Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472 [1973 Cal. App. LEXIS 991; *cf. United State Fidelity and Guaranty Co. v. Workers' Comp. Appeals Bd.* (2015) 81 Cal.Comp.Cases 97 [2015 Cal. Wrk. Comp. LEXIS 164].)

CIGA contends that "California Courts have found that the formation of an oral contract in California is sufficient to confer California jurisdiction over a professional sports team," and cites to *Jackson v. Cleveland Browns* (December 26, 2014, ADJ6696775) [2014 Cal. Wrk Comp. PD LEXIS 682] and *Rohrback v. Colorado Rockies* (April 8, 2022, ADJ10391741) [2022 Cal. Wrk. Comp. P.D. LEXIS 102]. (Petition, at p. 8.) However, we write to clarify that the making of a contract of hire in California differs in how it is applied to the question of whether there is subject matter jurisdiction over a claimed injury, and whether there is a basis for the exercise of personal jurisdiction over an out-of-state defendant.

California courts have identified the circumstances of contract formation as one of the various factors relevant to the analysis of minimum contacts necessary for the exercise of personal jurisdiction over an out-of-state defendant. (*Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472 [1973 Cal.App. LEXIS 991] [employment contract signed in California is a factor supporting personal jurisdiction over out-of-state defendant.]; *Moradi v. Northwest Colo. Transp.* (December 3, 2018, ADJ9531454, ADJ9531455) [2018 Cal. Wrk. Comp. P.D. LEXIS 576] [no basis to find specific personal jurisdiction based upon making of contract in California where written employment contract signed outside the state].) However, the cases cited by CIGA are relevant to *subject matter jurisdiction*, as distinguished from *personal jurisdiction*. California workers' compensation subject matter jurisdiction may be conferred for injuries sustained outside California if the employee's contract of hire was made within California. (Labor Code §§ 3600.5, 5305; *Alaska Packers Assn. v. Industrial Acc. Com. (Palma)* (1934) 1 Cal.2d 250, affd. (1935) 294 U.S. 532; *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745]; *Jackson v. Cleveland Browns* (December 26, 2014, ADJ6696775) [2014 Cal.Wrk.Comp. P.D. LEXIS 682, *21].) Thus, while the making of an employment contract in California is

dispositive of subject matter jurisdiction, it is not, standing alone, dispositive of the issue of personal jurisdiction.

Here, the transcript of proceedings does not support CIGA's assertion of an oral agreement between applicant and the Cleveland Browns, because there is no evidence the Browns ever directly contacted applicant while he was residing in California. (Answer, at 2:16.) Rather, applicant testified that he received a call from his agent, Bruce Allen, whose office was located in Arizona. (Transcript, dated April 27, 2022, at 19:21.) The record thus does not substantiate direct contact between the Cleveland Browns and applicant, and neither CIGA nor applicant asserts that contract of hire was formed by agreement between applicant's agent and the Browns, or that applicant's agent was authorized to bind applicant to a contract. (See, generally, *Johnson v. San Diego Chargers* (July 31, 2012, ADJ6784479) [2012 Cal. Wrk. Comp. P.D. LEXIS 354].) Additionally, applicant testified that he did not know any terms of the contract, or whether his agent had negotiated any terms on applicant's behalf. (Transcript of Proceedings, at 20:12.) Applicant then traveled to Ohio, where he underwent a physical examination in Cleveland, and signed the contract in Cleveland. (*Id*. at 22:4.) In summary, the record does not establish that applicant spoke directly with the Cleveland Browns while in California, that he discussed or negotiated any terms with the team while in California, or that his agent negotiated any terms on his behalf while in California. In addition to the lack of evidence of an oral agreement, applicant neither reviewed nor signed a written contract while in California. Applicant only signed a written contract after traveling outside the state, and after passing a physical examination. On this record, we agree with the WCJ that the record does not support the formation of a contract, oral or written, in California.

Accordingly, we are not persuaded that applicant entered into a binding contract of hire with the Cleveland Browns while he was still physically present in California. The lack of a binding employment agreement reached while applicant was in California is relevant to both the issues of subject matter jurisdiction based on a contract for hire, and further attenuates the assertion of personal jurisdiction based on minimum contacts between the Cleveland Browns and California.

CIGA also contends that personal jurisdiction is appropriate because the Cleveland Browns played three games in California during the 1987 season, paid for applicant's air travel from Cleveland to San Diego, and because applicant received medical treatment in San Diego for injuries sustained while playing for the Browns. (Petition, at p. 8.) However, in order to exercise

personal jurisdiction over a nonresident defendant, "a particular cause of action must arise out of or be connected with the defendant's forum-related activity." (*Buckeye Boiler Co. v. Superior Court of Los Angeles County* (1969) 71 Cal.2d 893, 899 [80 Cal.Rptr. 113].) "[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 137 S.Ct. 1773, 1780 [2017 U.S. LEXIS 3873].) Here, applicant played no games in California, did not travel to California, and was not injured in California during his employment with the Cleveland Browns. (Report, at p. 4.) Moreover, the basis for California contact is further attenuated by the fact that all three of the games played in California in 1987 by the Cleveland Browns occurred only after applicant's release. (Ex. E, 1987 Browns game schedule.)

We also observe that while the defense of a lack of personal jurisdiction may be waived by a party making a general appearance, the Cleveland Browns have been specially appearing throughout these proceedings for the purpose of contesting personal jurisdiction. (See, e.g. *Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341 [25 Cal.Rptr.3d 488], "it has long been the rule in California that a party waives any objection to the court's exercise of personal jurisdiction when the party makes a general appearance in the action.")

In sum, the record does not support the making of a contract of hire in California, which is both a basis for subject matter jurisdiction, and also a factor to be considered as part of the analysis of minimum contacts necessary to the exercise of personal jurisdiction. Additionally, applicant was employed by the Cleveland Browns for approximately three to four weeks, during which time he did not play a game or travel to California. While the Browns did play games in California during the 1987 season, applicant played in none of them, as all the California games occurred after applicant had been released. Accordingly, and on the record before us, we are persuaded that there is no basis for the exercise of California jurisdiction over this claim. We will grant the petition solely to clarify the lack of California jurisdiction in Findings of Fact No. 2.

Next, CIGA contends the WCJ erred in allowing into evidence medical reports obtained in violation of Labor Code section 4062.2. Citing to the significant panel decision in *Ward v. City of Desert Hot Springs* (2006) 71 Cal.Comp.Cases 1313 [2006 Cal. Wrk. Comp. LEXIS 313] (Appeals Bd. significant panel decision), defendant avers that for injuries on or after January 1, 2005, medical disputes regarding compensability must be resolved solely through the procedures of Labor Code § 4062.2. (Petition, at p. 11.) CIGA contends that in this matter, the date of injury

under section 5412 for applicant's injury did not arise until after January 1, 2005, and as such, the medical-legal procedures described in section 4062.2 are applicable. However, in *Tanksley v. City of Sana Ana*[2] (January 25, 2010, ADJ2005173) [2010 Cal. Wrk. Comp. P.D. LEXIS 74], we observed:

> [T]he question of the process that applies to applicant's claim *does not first require a finding of the date of injury*. Instead, for injuries that are claimed to have occurred prior to January 1, 2005, as alleged in this case, section 4062 as it existed before its amendment by SB 899 continues to provide the procedure by which medical-legal reports are to be obtained. (*Nunez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 584 [71 Cal.Comp.Cases 161]; *Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596 [71 Cal.Comp.Cases 155]; *Simi v. Sav-Max Foods, Inc.* (2005) 70 Cal.Comp.Cases 217 (Appeals Board en banc); *cf. Ward v. City of Desert Hot Springs* (2006) 71 Cal.Comp.Cases 1313 (significant panel decision), 71 Cal.Comp.Cases 1900 (writ den.).) (*Id*. at *9, emphasis added.)

Additionally, in our en banc decision in *Simi v. Sav-Max Foods, Inc.* (2005) 70 Cal.Comp.Cases 217 [2005 Cal.Wrk.Comp. P.D. LEXIS 3], we held that because there was no operative law other than former section 4062 to provide a procedure for obtaining AME and QME medical-legal reports for cases involving represented employees who sustained injuries prior to January 1, 2005, "injuries occurring prior to January 1, 2005, section 4062, as it existed before its amendment by SB 899, continues to provide the procedure by which AME and QME medical-legal reports are obtained in cases involving represented employees. (*Emphasis added*.)

Here, the WCJ concluded that "Labor Code Section 4062, as it existed before its amendment by SB899, provides the procedure by which medical-legal reports were to be obtained in this matter." (Report, at p. 6.) Based on our review of the record, we decline to disturb the WCJ's findings in this regard.

[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to *Tanksley* because it considered a similar issue.

In summary, we concur with the WCJ that no contract was formed as between applicant and the Cleveland Browns in California, and that the facts of this case do not support the exercise of California jurisdiction over the Browns. We further decline to disturb the WCJ's reliance on the medical-legal procedures of section 4062 as it existed prior to its amendment in 2005 by SB899. We will amend Finding of Fact no. 2 solely to reflect the lack of California jurisdiction as it relates to the Cleveland Browns.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the **DECISION AFTER RECONSIDERATION** of the Workers' Compensation Appeals Board that the Finding and Order, dated July 1, 2022, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

2. There is no California jurisdiction over the Cleveland Browns/Baltimore Ravens.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 19, 2022

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

STEVE LAUTER
LAW OFFICE OF LYSETTE R. RIOS
GUILFORD SARVAS & CARBONARA
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

SAR/abs

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