WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BRIAN JORDAN, *Applicant*

vs.

ST. LOUIS CARDINALS; ATLANTA BRAVES; LOS ANGELES DODGERS; TEXAS RANGERS; ACE AMERICAN INSURANCE COMPANY, administered by ESIS; USF&G, administered by GALLAGHER BASSETT; ACE AMERICAN INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ14344483
Santa Ana District Office

OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION

Defendants Los Angeles Dodgers, Atlanta Braves, and Texas Rangers, seek reconsideration of the January 16, 2024 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete/baseball player from June 6, 1988 to October 31, 2006, claims to have sustained industrial injury to his head, neck, back, spine, shoulders, elbows, wrists, hands, fingers, legs, hips, knees, ankles, feet, psyche, and injury in the form of internal, "ENT/TMJ," neuro, hearing, vision, and sleep. The WCJ found that California has subject matter jurisdiction over applicant's claimed injury pursuant to Labor Code[1] section 3600.5(a); that the Texas Rangers are exempt from liability pursuant to section 3600.5(c); that the St. Louis Cardinals and the Atlanta Braves are not exempt pursuant to section 3600.5(c);that the exception of section 3600.5(d) is inapplicable; and that the court has personal jurisdiction over the St. Louis Cardinals, the Texas Rangers, and the Atlanta Braves.

Defendant Los Angeles Dodgers by USF&G (USF&G) contends that there is no subject matter jurisdiction over applicant's claimed injury because applicant did not enter into any California contract of hire and because applicant was not regularly working in California.

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

Defendant ACE American Insurance for the Atlanta Braves, the Texas Rangers, and the Los Angeles Dodgers (ACE American) contends there is no subject matter jurisdiction over applicant's claimed injury because the Atlanta Braves qualify for the exemption of section 3600.5(c) and because applicant does not meet the requirements of section 3600.5(d). ACE American further contends that section 3600.5(a) applies only to injuries occurring outside of California, and in any event, does not preclude the exemption/exception analysis of 3600.5, subdivisions (c) and (d).

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petitions for Reconsideration (Report), recommending that we deny both Petitions insofar as they challenge subject matter jurisdiction with respect to the Los Angeles Dodgers, but that we grant ACE American's Petition and find that the Atlanta Braves are exempt from subject matter jurisdiction pursuant to section 3600.5(c).

We have considered the Petitions for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant both Petitions for Reconsideration. Our order granting the Petitions for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

We highlight the following legal principles that may be relevant to our review of this matter:

Labor Code section 3600.5 provides, in relevant part:

> (a) 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.
>
> …

(c)

(1) With respect to an occupational disease or cumulative injury, a professional athlete who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for his or her employer if both of the following are satisfied:

(A) The employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California.

(B) The employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this state.

(2) In any case in which paragraph (1) is satisfied, the benefits under the workers' compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any occupational disease or cumulative injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete's last day of work for the employer within the state, the professional athlete performs less than 20 percent of his or her duty days in California during that 365-day period in California.

(d)

(1) With respect to an occupational disease or cumulative injury, a professional athlete and his or her employer shall be exempt from this division when all of the professional athlete's employers in his or her last year of work as a professional athlete are exempt from this division pursuant to subdivision (c) or any other law, unless both of the following conditions are satisfied:

(A) The professional athlete has, over the course of his or her professional athletic career, worked for two or more seasons for a California-based team or teams, or the professional athlete has, over the course of his or her professional athletic career, worked 20 percent or more of his or her duty days either in California or for a California-based team. The percentage of a professional athletic career worked either within California or for a California-based team shall be determined solely by taking the number of duty days the professional athlete worked for a California-based team or teams, plus the number of duty days the professional athlete worked as a professional athlete in California for any team other than a California-based team, and dividing that number by the total number of duty days the professional athlete was employed anywhere as a professional athlete.

> (B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.
>
> (2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5.
>
> (Lab. Code, § 3600.5(a), (c)-(d).)

The WCJ's Findings of Fact found California subject matter jurisdiction over applicant's claimed injury pursuant to section 3600.5(a). (Finding of Fact No. 4.) The WCJ's Opinion on Decision explained that the finding of California subject matter jurisdiction over the claimed injury was based on medical records in evidence demonstrating that applicant sustained injuries while employed by a California team. (Opinion on Decision, at pp. 9-10.) The Opinion also notes the decision in *Wilson v. Florida Marlins* (February 26, 2020, ADJ10779733) [2020 Cal. Wrk. Comp. P.D. LEXIS 30], wherein a panel of the Appeals Board held that a finding of subject matter jurisdiction pursuant to section 3600.5(a) obviates the "temporarily working" analysis of subdivision (c) and the corresponding exception to that exemption found in subdivision (d). (Opinion on Decision, p. 12.)

The Petitions for Reconsideration filed by USF&G and ACE American contend that with respect to professional athletes as defined in section 3600.5(g)(1), subdivisions (c) and (d) are the metric by which an employee is adjudged to be "temporarily working" in California, for purposes of establishing subject matter jurisdiction over a claimed cumulative injury. (USF&G Petition, at p. 14:1; ACE American Petition, at p. 9:17.) ACE American cites to the panel decision in *Farley v. San Francisco Giants* (September 14, 2020, ADJ10510769) [2020 Cal. Wrk. Comp. P.D. LEXIS 292] (*Farley*) for the proposition that "§ 3600.5(c) and (d) unequivocally quantify the actual amount of work required to have been performed in California or for a California based team by a professional athlete to confer statutory subject matter jurisdiction." (ACE American Petition, at p. 8:11.) ACE American further contends that the Atlanta Braves are exempt from California jurisdiction pursuant to section 3600.5(c), and that section 3600.5 applies only to injuries occurring outside California. (*Id.* at p. 10:5.)

The WCJ's Report notes that applicant's employment with the Dodgers, a California-based team, and his documented injuries sustained during that employment are a sufficient basis upon which to find subject matter jurisdiction over the claimed cumulative injury. (Report, at p. 6.) The

WCJ further notes that upon further review of the records regarding the applicant's time spent playing for the Atlanta Braves, it appears that the Braves meet the exemption requirements of section 3600.5(c)(1)(A) and (B) and are thus exempt from these proceedings. (Report, at p. 7.)

As is noted by both the WCJ and the parties, the interaction between the general subject matter jurisdiction provisions of sections 5305 and 3600.5(a), and the exemption/exception requirements set forth in section 3600.5 subdivisions (c) and (d) have been the subject of prior Appeals Board panel decisions. In *Farley, supra,* 2020 Cal. Wrk. Comp. P.D. LEXIS 292, applicant averred that section 3600.5(d) provided an independent basis upon which to establish subject matter jurisdiction over a claimed cumulative injury. However, a panel of the Appeals Board held that "the most reasonable reading of section 3600.5, subdivision (d) is that it serves to limit the general jurisdictional statutes governing subject-matter jurisdiction, not to expand them. When an athlete meets the requirements of (A) and (B) of the subdivision and therefore avoids its application, it merely means that the athlete's claim is not exempted by the subdivision. It does not mean that the subdivision authorizes a claim when it would otherwise lack subject-matter jurisdiction." (*Farley, supra*, at p. 18.)

In *Wilson, supra*, 2020 Cal. Wrk. Comp. P.D. LEXIS 30, a panel of the Appeals Board addressed the fundamental question of whether "subdivisions (c) and (d) of section 3600.5 override the general jurisdictional provisions of sections 3600.5(a) and 5305 that provide for jurisdiction where there is a California hire during the period of injury, or [whether] these subdivisions apply only to claims where there is no California hire." (*Id.* at p. 10.) The *Wilson* decision held that by its own terms, subdivision (c) of section 3600.5 would only apply in situations where the contract of hire was made outside of California. (*Id.* at p. 11.) The panel further observed that section 3600.5 was amended in 2013 for the purpose of limiting the ability of "'out of state professional athletes' with 'extremely minimal California contacts' to file workers' compensation claims in California." (*Id.* at p. 15.) The panel therefore concluded that, "[t]aken together, these two expressions suggest that the Legislature did not intend for subdivisions (c) and (d) to apply to athletes who have been hired in California by at least one employer during the cumulative trauma injury period." (*Id.* at p. 17.)

The Petitions before us both contend that notwithstanding applicant's employment by a California employer during the course of his cumulative injury, subdivisions (c) and (d) of section 3600.5 define, or at least inform, the term "regularly working" as used in subdivision (a), as

applicable to professional athletes. On this basis, petitioners aver an insufficient basis for the exercise of California subject matter jurisdiction over the claimed injury pursuant to section 3600.5(c), and further, that applicant does not meet the exception requirements under subdivision (d).

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id*. at p. 404.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

II.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial*

Acc. Com. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci*. *Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp*. *Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp*. *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

III.

Accordingly, we grant both USF&G's and ACE American's Petitions for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that USF&G's and ACE American's Petitions for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on January 16, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 5, 2024

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

BRIAN JORDAN
GLENN, STUCKEY & PARTNERS
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK
GURVITZ & MARLOWE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

SAR/abs

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