WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TYLER SLAVIN, *Applicant*

vs.

ST. LOUIS RAMS/LOS ANGELES RAMS; GREAT DIVIDE INSURANCE COMPANY, c/o BERKLEY ENTERTAINMENT; FOOTBALL NORTHWEST LLC/SEATTLE SEAHAWKS, permissibly self-insured, administered by CCMSI, *Defendants*

Adjudication Number: ADJ12766196
Santa Ana District Office

OPINION AND ORDER DENYING PETITIONS FOR RECONSIDERATION

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

In addition to the WCJ's well-reasoned Report, we observe the following.

Defendant St. Louis Rams contend the court lacks jurisdiction over the defendant pursuant to Labor Code[1] section 3600.5(c) because applicant had less than 20 percent of his duty days with the Rams. (Rams' Petition, dated January 19, 2023, at p. 6:11.) However, the WCJ found subject matter jurisdiction over the claimed injury pursuant to section 3600.5(a) when the Rams entered an oral contract with applicant in California. (Finding of Fact No. 4.) The WCJ's Report observes:

> Labor Code Sections 3600.5(c) provides that a professional athlete hired outside of this state and their employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for their employer. Labor Code Sections 3600.5(d), working in conjunction with subdivision (c), provides that a professional athlete and their employer shall be exempt from this division when all of the professional athlete's employers in their last year of work as a professional athlete are exempt from this division

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

> pursuant to subdivision (c) or any other law. However, on analysis of California Labor Code [section] 3600.5, it has been determined that California Labor Code subdivisions (c) and (d) do not apply to athletes who have been hired in California by at least one employer during a cumulative trauma injury period. The Court has found that the applicant was hired within California. As such, Labor Code [section] 3600.5(c) is not applicable.
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> (Report, at p. 9.)

In *Hansell v. Arizona Diamondbacks* (April 7, 2022, ADJ10418232) [2022 Cal. Wrk. Comp. P.D. LEXIS 83] we addressed the 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 do these subdivisions apply only to claims where there is no California hire?" (*Id.* at p. *17.) We noted that "the stated purpose of the amendments to section 3600.5 was to limit the ability of 'out of state professional athletes' with 'extremely minimal California contacts' to file workers' compensation claims in California … The amendments were reacting in large part to a line of decisions that allowed athletes employed by out-of-state teams, who had not been hired in California or played regularly here, to recover California workers' compensation benefits based solely on a handful of games played in this state while employed by their out-of-state teams." (*Id.* at pp. *21-22.) We also observed, however, that in narrowing the scope of California jurisdiction applicable to certain professional athletes, the legislature made clear their desire not to disturb the principle that jurisdiction is appropriately conferred when there is a California contract of hire:

> As is relevant here, the Legislature stated: "It is the intent of the Legislature that the changes made to law by this act shall have no impact or alter in any way the decision of the court in [*Bowen v. Workers' Comp. Appeals Bd.*] (1999) 73 Cal. App. 4th 15 [86 Cal. Rptr. 2d 95]." (Stats. 2013 ch. 653 (AB 1309) § 3.) The central holding of Bowen, affirming sections 3600.5(a) and 5305, is that a contract of hire in this state will support the exercise of California jurisdiction even over a claim based purely on out-of-state injury, and that a player's signing of the contract while in this state constitutes hire in this state for that purpose. (*Bowen, supra*, 73 Cal. App. 4th at 27.)
>
> Taken 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. *23.)

We also concluded that, "[i]f a hire in California during the injury period is a compelling connection to the state, by definition such athletes would not fall into the category of those with 'extremely minimal California contacts' whose claims the Legislature sought to exempt." (*Ibid*.) Accordingly, we found that the formation of a California contract of hire was sufficient to confer subject matter jurisdiction over a claimed injury, obviating the exemption/exception analysis required under section 3600.5(c) and (d). (See also *Neal v. San Francisco 49ers* (March 9, 2021, ADJ9990732) [2021 Cal. Wrk. Comp. P.D. LEXIS 68]; *Wilson v. Florida Marlins* (February 26, 2020, ADJ10779733) [2020 Cal. Wrk. Comp. P.D. LEXIS 30]; cf. *Harrison v. Texas Rangers* (May 26, 2023, ADJ13604193) [2023 Cal. Wrk.Comp. P.D. LEXIS 151] [no jurisdiction over injury where applicant had no California contract of hire, played more than seven seasons with out-of-state teams, and worked less than 20 percent of duty days in California].)

Accordingly, we concur with the WCJ's determination that section 3600.5(a) confers subject matter jurisdiction over applicant's claimed injury and obviates the analysis that would otherwise be required under subsections (c) and (d). (Report, at pp. 8-9.)

The Seattle Seahawks contend the court has no personal jurisdiction over the team. (Seahawks' Petition, dated January 22, 2024, at p. 9:1.) The WCJ's Findings of Fact determined that the "Seattle Seahawks waived personal jurisdiction," by failing to promptly raise the issue of personal jurisdiction and by participating in substantive discovery regarding the case in chief. (Opinion on Decision, at p. 7.) The Seahawks cite to Code of Civil Procedure section 418.10, as interpreted by the Court of Appeal in *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198 [204 Cal.Rptr.3d 566] for the proposition that a defendant may undertake substantive discovery prior to the issuance of a final ruling on a pending motion to quash service of a subpoena for lack of personal jurisdiction.

In *Parker v. Indy Fuel Hockey* (November 29, 2017, ADJ10184700) [2017 Cal. Wrk. Comp. P.D. LEXIS 547] (*Parker*), defendant raised Code of Civil Procedure section 418.10, arguing that, "[defendant's] subsequent appearances and actions in the case, including the taking of applicant's deposition on July 18, 2016, did not constitute a general appearance or waiver of an objection to lack of personal jurisdiction because the issue of personal jurisdiction was not finally litigated at the times of those appearances and actions." (*Id.* at p. *4.) In framing the interaction of section 418.10 with workers' compensation law, we observed:

> The purpose of Code of Civil Procedure section 418.10 is "to permit a defendant specially to challenge the court's personal jurisdiction without waiving his right to defend on the merits by allowing a default to be entered against [the defendant] while the jurisdictional issue is being determined." (*In re Marriage of Merideth* (1982) 129 Cal.App.3d 356 [180 Cal. Rptr. 909, 1982 Cal. App. LEXIS 1326].) To accomplish that purpose, an objecting defendant must promptly raise the issue of personal jurisdiction for determination by the court.
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> (*Id.* at p. *8.)

Here, the Seahawks' December 19, 2019 Notice of Representation reflects a special appearance to contest "jurisdiction" but there is no statement the team is challenging personal jurisdiction. Similarly, the Seahawks' December 23, 2019 Answer lists the defense of a "lack of jurisdiction" without specifying personal jurisdiction. Raising an objection to subject matter jurisdiction without a specific challenge to personal jurisdiction constitutes a waiver of the personal jurisdiction objection. (*Janzen v. Workers' Comp. Appeals Bd.* (1997) 61 Cal.App.4th 109, 116–117 [63 Cal.Comp.Cases 9].)

We also agree with the WCJ's observation that section 418.10 of the Code of Civil Procedure requires the filing of a Motion to Quash, which is permissible in workers' compensation proceedings. (Report, at p. 13; *Greener, supra*, 6 Cal.4th at pp. 1034-1035.) However, the Seahawks did not file a Motion to Quash. Nor did the Seahawks promptly seek a hearing to contest personal jurisdiction after filing their Notice of Representation and Answer. Rather, the Seahawks filed their Notice of Representation and their Answer in December, 2019, and then participated in a wide-ranging deposition of the applicant on January 12, 2022. The first Declaration of Readiness to Proceed (DOR) was filed more than two years after the Seahawks filed their Notice of Representation and Answer and was filed by the *St. Louis Rams* on issues of subject matter jurisdiction under section 3600.5, rather than personal jurisdiction. (Declaration of Readiness to Proceed to Hearing, April 8, 2022.) Thus, we concur with the WCJ's determination that the Seattle Seahawks failed to promptly raise the issue of personal jurisdiction and failed to promptly seek adjudication on the issue. As we noted in *Parker*, "defendant did not act to promptly and timely bring the issue of personal jurisdiction before the WCAB for determination, and it cannot now claim that it was free to pursue discovery and litigate subject matter jurisdiction and the substance of applicant's claim without those actions constituting a general appearance." (*Parker, supra*, 2017 Cal. Wrk. Comp. P.D. LEXIS 547, at p. *12.)

For the foregoing reasons,

IT IS ORDERED that the Petitions for Reconsideration are **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 13, 2024

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

TYLER SLAVIN
GLENN, STUCKEY & PARTNERS
BOBER, PETERSON & KOBY
GOLDBERG SEGALLA

SAR/abs

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR REMOVAL

I.

INTRODUCTION

1. Applicant's occupation: professional football player
2. Applicant's Age: 32; Date of Injury: 5-8-2015 through 3-9-2017; Parts of Body Injured: head, neck, back, arms, shoulders, elbows, wrists, hands, fingers, legs, hips, knees, ankles, feet, toes, neuro, and psych Manner in which it occurred: Continuous trauma
3. Identity of Petitioner: Defendants Great Divide Insurance Company for St. Louis Rams/Los Angeles Rams; and Football Northwest LLC/Seattle Seahawks,
4. Timeliness: Petitions are timely Verification : Petitions are verified
5. Date of Order: January 2, 2024
6. Petitioners contend that the WCJ erred in:
    a. Finding that the applicant entered into contracts for hire with the St. Louis Rams/Los Angeles Rams and the Seattle Seahawks while in the state of California;
    b. Finding that there was subject matter jurisdiction over the applicant's claim;
    c. Finding that there was personnel jurisdiction over the St. Louis Rams/Los Angeles Rams;
    d. Finding that there was personnel jurisdiction over the Seattle Seahawks
    e. Finding that the St. Louis Rams/Los Angeles Rams should administer the applicant's claim.

The Undersigned Judge has reviewed the petitions for reconsiderations filed by both the St. Louis Rams/Los Angeles Rams and the Seattle Seahawks.

Given the similarity of the issues raised in the Petitions for Reconsideration, and to avoid repetition of statements of law in responding to the issues raised, the Undersigned Judge will address the Petitions for Reconsideration concurrently.

II.

FACTS AND CASE BACKGROUND

The applicant, Tyler Slavin, filed an application alleging that while employed during the period of May 8, 2015 through March 9, 2017 as a professional football player, Occupational

Group No. 590, at various locations, by the St. Louis Rams from May 8, 2015 through September 2, 2015 and the Seattle Seahawks from November 24, 2015 through March 9, 2017, claimed to have sustained injury arising out of and in the course of employment to his head, neck, back, arms, shoulders, elbows, wrists, hands, fingers, legs, hips, knees, ankles, feet, toes, neuro, and psych.

Defendants denied the applicant's claim, asserting that there was no subject matter jurisdiction. The Seattle Seahawks further asserted that there was no personal jurisdiction over the Seattle Seahawks.

The matter proceeded to trial on October 10, 2022, and trial was concluded on May 25, 2023.

At the time of trial, the applicant testified that he agreed to play for the St. Louis Rams and the Seattle Seahawks while he was in California.[1]

The Rams first contacted the applicant on draft day 2015. At the time, he lived in his girlfriend's house in Eastvale, California. The applicant testified that while in California, he was offered a contract to play the Rams.[2] The contract was a rookie contract for three years for 1.3 million dollars.[3] The applicant responded to the offer with, "Okay, let's do it."[4]

The applicant later went to Seattle, where he participated in a tryout for the Seattle Seahawks. The applicant went home after the tryout and was contacted three weeks later. He was advised that Seattle wanted to sign him to the practice squad.[5] The applicant was in Eastvale, California, at the time.[6]

The applicant recalls being in California when Seattle offered him a contract to play on the practice squad. The applicant testified that he told them that he would accept the offer. The

[1] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 2, Line 25; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 8, lines 4-10
[2] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Line 2-3; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 8, lines 13-22 & Page 9, Lines 1-2
[3] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 6-7; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 9, Lines 5-6
[4] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 6-7; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 9, Line 9
[5] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 11-14; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 1-14
[6] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 8-10; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 15-30

applicant was in Los Angeles at the time.[7] The applicant testified that he signed three contracts with the Seattle Seahawks in Seattle.[8] All his practices were in Seattle, and he played in no games.[9]

The Undersigned Judge issued a Findings and Order on July 26, 2023, initially finding that the St. Louis Rams and the applicant entered into an oral contract in California, that the Seattle Seahawks and the applicant entered into an oral contract in California, that the California Workers' Compensation Appeals Board had subject matter jurisdiction over the applicant's claim; that the Seattle Seahawks did not waive personal jurisdiction; that there is no California jurisdiction over the Seattle Seahawks; and that the St. Louis Rams are exempt from the proceedings before the California Workers' Compensation Appeals Board pursuant to Labor Code Sections 3600.5(d) and may not be found liable for the applicant's injury.

A Petition for Reconsideration was filed by the applicant asserting that the Undersigned Judge overlooked the full ramifications of finding that there were contracts for hire entered into between the applicant and both the St. Louis Rams/Los Angeles Rams and the Seattle Seahawks.

Both defendants filed answers to the applicant's Petition for Reconsideration.

Upon review of the record and considering the legal positions delineated in the applicant's Petition for Reconsideration and the defendants' Answers to the Petition for Reconsideration, the Undersigned Judge determined that his Findings and Order inadequately addressed all the issues concerning jurisdiction and were not supported by the record. The Undersigned Judge, therefore, rescinded his July 26, 2023, Findings and Order and placed the matter back on his trial calendar to afford the parties the opportunity to file further briefs on the issues for consideration.

The Undersigned Judge re-reviewed the evidence submitted, and the pleadings contained in the official record and issued a subsequent Findings and Order on January 2, 2024.

In the Undersigned Judge's January 2, 2024, Findings and Order, he found that the St. Louis Rams and the applicant entered into an oral contract in California, that the Seattle Seahawks and the applicant entered into an oral contract in California, that the California Workers' Compensation Appeals Board has subject matter jurisdiction over the applicant's claim, that the Seattle Seahawks waived personal jurisdiction, that the applicant's claim was not barred by Labor

[7] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 21-22; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 16-18; 25 & Page 11, lines 1-4
[8] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 5, Lines 14-15; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 25, lines 20-25
[9] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 5, Line 18[;]

Code Section 3600.5(c) and (d), that the Seattle Seahawks waived the Choice of Law and Choice of Forum Selection defense, and that the St. Louis Rams and Great Divide Insurance Company, as administered by Berkley Entertainment, were in the best position to administer the claim.

The defendants filed Petitions for reconsideration asserting that the Undersigned Judge errored on fining California contracts for hire and that the California Workers' Compensation Appeals Board had subject matter jurisdiction over the applicant's claim and personal jurisdiction over the St. Louis Rams/Los Angeles Rams and Seattle Seahawks.

III.
DISCUSSION

A. Contract of hire

The defendants assert that there is no contract of hire made in California with either the St. Louis Rams/Los Angeles Rams or the Seattle Seahawks.

The defendants assert that only in situations where a binding oral agreement can be accepted would an oral contract of hire be formed. The defendants further assert that when an actual written contract of hire is necessary to create a binding relationship, the written contract controls.

The defendants cite *Tripplett v. WCAB (2018) 25 Cal. App. 5th 556* for legal support for its position. The Undersigned Judge disagrees with the defendant's conclusions in this regard.

In *Tripplett,* the applicant was asserting that, though neither the applicant nor his agent was in California when the employment was accepted and the contract was signed, an employment contract was formed when the agent completed the negotiation of the applicant's contract in California, at the agent's principal place of business.

The Appeals Court determined that the applicant in *Tripplett* had retained the ability to reject any contract his agent negotiated and that the negotiation of terms to be included in a written employment contract is not sufficient to bind the parties. Because the negotiations were the only contract-related activity that took place in California, there was no basis for concluding the contract was formed in the state.

The Appeals Court, in its analysis, noted that the California Supreme Court has stated that "California has adopted the rule that an oral contract consummated over the telephone is deemed made where the offeree utters the words of acceptance."[10]

As such, in determining whether a contract was made in California, the critical question was whether acceptance occurred within the state.[11]

The Undersigned Judge found the applicant to be credible, and his testimony was uncontested.

The applicant testified that the Rams first contacted him on draft day 2015 while he was in Eastvale, California.[12] At that time, the applicant was offered a minimum contract for three years to play with the Rams.[13] The applicant responded to the offer with, "Okay, let's do it."[14]

The statement "Okay, let's do it" to the offer of a minimum contract were words of acceptance to an offer of employment. As these words were uttered on the phone while the applicant was in the state of California, an oral contract of hire between the Rams and the applicant was consummated in California.

The applicant testified that he went home after a tryout with the Seattle Seahawks. The applicant was contacted three weeks later and advised that Seattle wanted to sign him to the practice squad.[15] The applicant was in Eastvale, California, at the time.[16]

The applicant further testified that he was in California when Seattle called him and said, "we're going to sign you to a practice squad contract". The applicant testified that he replied "yes" to the practice squad contract while on the phone.[17]

The statement "Yes" to the offer of a practice squad contract was a word of acceptance to an offer of employment. As these words were uttered on the phone while the applicant was in the

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[10] *Tripplett v. Workers' Comp. Appeals Bd.*, 25 Cal. App. 5th 556, 565, & *Travelers Ins. Co. v. Workers' Comp. Appeals Bd.*, 68 Cal. 2d 7, 14-15

[11] *Bowen v. Workers' Comp. Appeals Bd.* 64 Cal.Comp.Cases 745.

[12] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Line 5-8; & EAMS Doc ID: 76854713 Tyler Slavin Original Transcript, Page 8, Lines 16-25

[13] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Line 2-3; & EAMS Doc ID: 76854713 Tyler Slavin Original Transcript, Page 8, Lines 20-25 & Page 9 Lines 1-6

[14] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 6-7; & EAMS Doc ID: 76854713 Tyler Slavin Original Transcript, Page 9, Lines 7-12

[15] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 11-14; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 1-14

[16] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 8-10; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 15-30

[17] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 21-22; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 16-18; 25 & Page 11, lines 1-4

state of California, an oral contract of hire between the Seahawks and the applicant was consummated in California.

The evidence supports a finding of a California contract of hire between the applicant and the St. Louis Rams/Los Angeles Rams and between the applicant and the Seattle Seahawks.

Based on the above, the Undersigned Judge was not in error for finding there were contracts for hire consummated in California and that California has subject matter jurisdiction over the applicant's claim and personal jurisdiction over the St. Louis Rams/Los Angeles Rams and Seattle Seahawks.

B. Federal Law's Preemption And The WCAB'S Power To Determine The Existence Of Employment Contract

The defendants assert that the Undersigned Judge did not have the authority to determine if there was an employment contract and if there was personal jurisdiction on the grounds that California workers' compensation laws are limited in application by California Labor Code §3203 and that the California labor code is preempted by federal law.

The original Pre-Trial Conference Statement[18] filed by the parties listed the issues raised by the defendants as follows: 1. Subject matter jurisdiction over the St. Louis Rams and over the Seattle Seahawks, 2. exemption under labor code section 3600.5(b), or subject matter jurisdiction of the claim per labor code section 3600.5 (c) and (d); 3. is the applicant's claim barred by labor code section 3600.5 (c) and (d); and 4. who is liable for providing benefits if there is jurisdiction over claim.

The Pre-Trial Conference Statement was amended on October 10, 2022. The issues were restated as follows: 1. Subject matter jurisdiction over the claim with the Rams contesting subject matter jurisdiction pursuant to Labor Code Sections 3600.5(c) and (d); 2. the Seattle Seahawks contesting subject matter jurisdiction pursuant to Labor Code Sections 3600.5(b), (c), and (d); 3. personal jurisdiction over the Seattle Seahawks with applicant asserting that they have waived personal jurisdiction; and 4. who is to administer the claim if there is jurisdiction over the claim.

The applicant and both defendants signed the October 10, 2022, Amended Pre-Trial Conference Statement as an acknowledgment of the correctness of the stipulations and issues raised and their readiness to proceed on the record.[19]

[18] EAMS Doc ID: 43335924 FULLY EXECUTED PTCS. Date 10/4/2022, Page 3
[19] EAMS Doc ID: 76016776, SLAVIN, TYLER-PTCS dated 10/10/2022 Page 1

At no time during the trial did the defendants raise the issue of federal law preemption. Failure to raise an issue at trial with specificity poses a serious question of due process on the party that was not put on notice. Petitioner raised the issue of federal preemption for the first time in its Trial Brief. Respondent was, therefore, prejudiced because of the lack of opportunity to raise additional issues or present additional evidence on the issue.

As such, because Petitioner failed to timely raise the issue of federal preemption at the time of trial, it should be considered waived.

If, however, the WCAB determines that federal preemption is a subcategory of subject matter jurisdiction, the Undersigned Judge will address the defendant's argument.

Determination of Subject Matter Jurisdiction is within the Appeals Board's purview per statute. California Labor Code §5305 provides that "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."

The applicant is a resident of the state of California, and his contract of hire was consummated in California. This case falls under Labor Code §5305 because it involves an issue as to whether a contract of hire was made in this state.[20]

In addition, the parties did not submit the collective bargaining agreement for review as evidence but, in essence, assert that the alleged existence of the agreement removes the applicant's claim from California jurisdiction.

In this matter, there is no evidence that the applicant's claim deals with a dispute involving the interpretation or application of any provision of the NFL collective bargaining agreement or the contract.

As such, the Undersigned Judge was not barred from determining the issue of contract formation.

C. Labor Code Section 3600.5(C)(D)

The defendant, St. Louis Rams/Los Angeles Rams, asserts that there is no subject matter jurisdiction pursuant to California Labor Code Section 3600.5(c)(d), as the applicant has less than 20% of his duty days in California with the Rams.

[20] *House v. Green Bay Packers, Great Divide Ins. Co.*, 2023 Cal. Wrk. Comp. P.D. LEXIS 265

The Undersigned Judge disagrees. The WCAB can assert subject matter jurisdiction in a workers' compensation injury claim when the evidence establishes that an employment-related injury has a sufficient connection or nexus to the state of California.

In addition to injuries occurring in California, the WCAB can also assert subject matter jurisdiction over injuries occurring outside this state in certain circumstances.

California Labor Code Section 3600.5, subdivision (a) provides that "[i]f 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."

California Labor Code Section 5305 provides that "[t]he 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." (§ 5305.)

Labor Code Section 3600.5(c) limits the ability of "out of state professional athletes" with "extremely minimal California contacts" to file workers' compensation claims in California.

Labor Code Sections 3600.5(c) provides that a professional athlete hired outside of this state and their employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for their employer.

Labor Code Sections 3600.5(d), working in conjunction with subdivision (c), provides that a professional athlete and their employer shall be exempt from this division when all of the professional athlete's employers in their last year of work as a professional athlete are exempt from this division pursuant to subdivision (c) or any other law.

However, on analysis of California Labor Code Sections 3600.5, it has been determined that California Labor Code subdivisions (c) and (d) do not apply to athletes who have been hired in California by at least one employer during a cumulative trauma injury period.[21]

The Court has found that the applicant was hired within California. As such, Labor Code Sections 3600.5(c) is not applicable.

[21] *Wilson v. Florida Marlins*, 2020 Cal. Wrk. Comp. P.D. LEXIS 30, *6-7 (Cal. Workers' Comp. App. Bd. February 26, 2020)

Based on the above, the Undersigned Judge was not in error in finding that there was California subject matter jurisdiction, and that the applicant's claim was not barred by California Labor Code Section 3600.5(c) and (d).

D. Stipulations Of Contract Formation In The State Of Washington

The defendant, Seattle Seahawks, asserts that there cannot be a California contract as the contract signed by the parties stipulates that the contracts were formed and negotiated in the state of Washington.

The November 23, 2015, Practice Player Contract Addendum Page 1 paragraph 1 provides that "[t]his Contract and all of its terms and conditions was negotiated and agreed upon in the state of Washington and in no other state; its execution below is made in the state of Washington."[22]

The defendant relying on *County of Sacramento v. WCAB (Weatherall), (2000) 65 Cal. Comp. Cases 1* asserts that a stipulation of the parties may not be vacated without good cause.

The case of *Weatherall* deals with a party's request to be relieved from a stipulation made at the time of the setting of a matter for trial on the issues to be submitted for determination. The stipulation resulted in a finding of no injury. The Court stated that it was unaware of any statute permitting the Board to reject a stipulation clarifying the issues in controversy absent good cause.

The Undersigned Judge does not find the *Weatherall* decision applicable in the current matter. The stipulation alluded to by the defendant is a contractual one that appears to be standard language within player contracts that may or may not be required by the employer/team. The stipulation in *Weatherall* was voluntarily entered into by the parties at the direction of counsel during litigation as a litigation strategy to limit the issues being left to the judge for determination.

Furthermore, "The formation of a contract of hire, standing alone, is sufficient to confer California jurisdiction over an industrial injury that occurs outside the state. 'The 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.'"[23]

[22] DEFENSE G: NFL Practice Player Contract, dated 11-23-2015. Page 11, Paragraph 2

[23] Rohrbach v. Colo. Rockies, 2022 Cal. Wrk. Comp. P.D. LEXIS 102, *11-12 (Cal. Workers' Comp. App. Bd. April 8, 2022)

The making of a valid contract of hire in California serves 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.[24]

As previously discussed, after returning to California after trying out for the Seattle Seahawks, the applicant was contacted by phone and told by Seattle, "we're going to sign you to a practice squad contract". The applicant replied "yes" to the practice squad contract while on the phone. The applicant was in California at the time.[25]

The statement "Yes" to the offer of a practice squad contract was a word of acceptance to an offer of employment. As these words were uttered on the phone while the applicant was in the state of California, an oral contract of hire between the Seahawks and the applicant was consummated in California.

As there was a valid contract of hire in California, California may not be deprived of jurisdiction by the ratification of the subsequent employment contract.

E. Waiver Of Personal Jurisdiction

The defendant, Seattle Seahawks, states that despite no new evidence, the Undersigned Judge found that the Seahawks had waived the personal jurisdiction defense.

The Undersigned Judge acknowledges that in his initial July 26, 2023, Findings and Order, he did not find personal jurisdiction over the Seattle Seahawks.

However, upon further review of the record and considering the legal positions delineated in the Petition for Reconsideration and the defendants' Answers to the Petition for Reconsideration, the Undersigned Judge determined that his Findings and Order inadequately addressed all the issues concerning jurisdiction and were not supported by the record. The Undersigned Judge, therefore, rescinded his July 26, 2023, Findings and Order and placed the matter back on his trial calendar to afford the parties the opportunity to file further briefs on the issues for consideration.

The Undersigned Judge re-reviewed the evidence submitted and the pleadings contained in the official record and issued a subsequent Findings and Order on January 2, 2024, that found the Seattle Seahawks had waived personal jurisdiction as claimed by the applicant.

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[24] *Rohrbach v. Colo. Rockies*, 2022 Cal. Wrk. Comp. P.D. LEXIS 102, *31 (Cal. Workers' Comp. App. Bd. April 8, 2022)

[25] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 8-22; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 15-30 & Page 11, lines 1-4

In response to this determination, the defendant, Seattle Seahawks, assert that they did not make a general appearance, thereby waiving the personal jurisdiction defense.

In support of their assertion, the defendant relies on the matter of *ViaView, Inc. v. Retzlaff (2016) 1 Cal. App. 5th 198.* The defendant interprets *ViaView* as finding that a party may act on substantive issues without waiving the personal jurisdiction defense.

In the matter of *ViaView, Inc. v. Retzlaff (2016),* the Court cites California Code of Civil Procedure § 418.10, which provides "[a] defendant, on or before the last day of his or her time to plead or within any further time that the Court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: (1) To quash service of summons on the ground of lack of jurisdiction of the Court over him or her. (2) To stay or dismiss the action on the ground of inconvenient forum. (3) To dismiss the action pursuant to the applicable provisions of Chapter 1.5."

California Code of Civil Procedure § 418.10(e) provides that "[a] defendant or cross-defendant may make a motion under this section and simultaneously answer, demur, or move to strike the complaint or cross-complaint." and that "no act by a party who makes a motion under this section, including filing an answer, demurrer, or motion to strike constitutes an appearance, unless the Court denies the motion made under this section. If the Court denies the motion made under this section, the defendant or cross-defendant is not deemed to have generally appeared until entry of the order denying the motion."

A review of the pleadings in this matter demonstrates that the Seattle Seahawks did not file a petition to quash service of summons on the ground of lack of jurisdiction, a petition to stay or dismiss the action on the ground of inconvenient forum, or a petition to dismiss the action pursuant to the applicable provisions of Chapter 1.5.

As such, the opinion in *ViaView, Inc. v. Retzlaff (2016)* and California Code of Civil Procedure § 418.10 do not shield the Seattle Seahawks from waiving jurisdiction.

Personal jurisdiction may be waived by making a general appearance beyond the scope of that limited issue.[26] Whether particular acts of a defendant reflect an intent to submit to the jurisdiction of the Court, constituting a general appearance, depends upon the circumstances.[27]

[26] *Janzen v. Workers Compensation Appeals Bd.*, 63 Cal. Comp. Cases 9, 10 (Cal. App. 3d Dist. December 30, 1997)
[27] *General Ins. Co. v. Superior Court of Alameda County*, 15 Cal. 3d 449, 453

Whether an appearance is general or special is determined by the character of the relief sought and not by the intention of the party that it shall or shall not operate as a general or special appearance. The statement of a defendant or party that he is making a special appearance is not necessarily conclusive.[28]

The question is whether a party appears and objects only to the consideration of the case or any procedure in it because the Court had not acquired jurisdiction over the defendant or party. If so, then the appearance is special.

However, if a party appears and asks for any relief which could be given only to a party in a pending case or which itself would be a regular proceeding in the case, it is a general appearance regardless of how the appearance may be denominated or characterized as special.[29]

The Seattle Seahawks filed an Answer to the application challenging jurisdiction. However, the Seattle Seahawks also, in their Answer, asserted the affirmative defenses of AOE/COE, the statute of limitations, laches, lack of substantial medical evidence to support C.T., improper forum, and improper venue.[30]

In addition, the defendant filed their denial of the claim that asserted that the claim was being denied due to lack of jurisdiction, improper venue, the improper forum and that the injury was not a result of being engaged in work-related activities or any activity that were a benefit to the employer. The denial further stated that the applicant failed to report his injury and that there was no substantial contemporaneous medical evidence of an industrially related injury.[31]

The Undersigned Judge also reviewed the deposition of the applicant taken by the Seattle Seahawks on January 12, 2022. In the deposition, counsel asked questions concerning the applicant's personal history[32] and play history outside of that with the Seattle Seahawks.[33] Counsel also asked questions concerning the applicant's injury history, including possible prior injuries.[34] An inquiry was also made about the applicant's knowledge of his potential rights to file a claim in California.[35]

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[28] *Judson v. Superior Court of Los Angeles County*, 21 Cal. 2d 11, 13
[29] *Judson v. Superior Court of Los Angeles County*, 21 Cal. 2d 11, 13
[30] EAMS Doc ID: 31169719, ANSWER TO APPLICATION FOR ADJUDICATION OF CLAIM
[31] DEFENSE I: Notice Regarding Denial of Workers' Compensation Benefit, dated 2-18-2020.
[32] DEFENSE F: Deposition of Tyler Slavin, dated 1-12-2022. Page 13
[33] DEFENSE F: Deposition of Tyler Slavin, dated 1-12-2022. Page 15 -20
[34] DEFENSE F: Deposition of Tyler Slavin, dated 1-12-2022. Page 15 -20
[35] DEFENSE F: Deposition of Tyler Slavin, dated 1-12-2022. Page 40

The questioning in the deposition identified above would have been undertaken, in addition to jurisdictional issues, to elicit information concerning the issues of AOE/COE, the statute of limitations, and other affirmative defenses beyond the issue of jurisdiction.

Based on the above, the Undersigned Judge found that the Seattle Seahawks raised defenses and conducted discovery to defend against the claim beyond issues of jurisdiction assertion.

Based on the above, the Undersigned Judge was not in error in finding that the Seattle Seahawks waived the personal jurisdiction defense.

F. Subject Matter Jurisdiction

The Seattle Seahawks assert that there were insufficient contacts with the state of California to support a finding of subject matter jurisdiction.

The defendant cites *Farley v. San Francisco Giants, 2020 Cal. Wrk. Comp. P.D. Lexis 173,* in which the Appeals Board stated, "[i]n general, the WCAB can assert subject matter jurisdiction in a presented workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a sufficient connection or nexus to the state of California."[36]

The Appeals Board continued, stating that where an applicant sustains injurious exposure in California, jurisdiction is generally established under section 5300. However, the WCAB can also assert subject matter jurisdiction over injuries occurring outside this state.

In support of this position, the Appeals Board noted that "[s]ection 3600.5, subdivision (a) states: '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.' (§ 3600.5(a).) Similarly, section 5305 states: 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.'"[37]

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[36] *Farley v. San Francisco Giants*, 2020 Cal. Wrk. Comp. P.D. LEXIS 173, *5-6 (Cal. Workers' Comp. App. Bd. April 29, 2020)

[37] *Farley v. San Francisco Giants*, 2020 Cal. Wrk. Comp. P.D. LEXIS 173, *14 (Cal. Workers' Comp. App. Bd. April 29, 2020)

In *Farley v. San Francisco Giants*, the defendant made offers of employment to the applicant, which the applicant accepted and signed outside the State of California.

The appeals Board declined to exercise jurisdiction, stating that "no statute provides for the exercise of jurisdiction based solely on the fact that the defendant is a California-based employer that supervised applicant's employment from this state."[38]

The Seattle Seahawks also cite *Federal Insurance v. WCAB (Johnson), (2013) 221 Cal.App.4th 1116*, in which the Court of Appeal held that a single game played in Los Angeles was insufficient contact with the state to bestow jurisdiction when the places of an applicant's injuries, employment relationship, employment contract, and residence had no relationship to California.

The present case is distinguishable from *Farley v. San Francisco Giants* and *Federal Insurance v. WCAB (Johnson)*. In both Farley v. San Francisco Giants and Federal Insurance v. WCAB (Johnson), the applicants were not California residents. They had contracts that were entered into outside the state of California. However, the applicant, a California resident, and the Seattle Seahawks entered a contract of hire when the Seattle Seahawks contacted the applicant while he was in California and offered him a Practice Squad Contract that the applicant accepted.[39]

As such, pursuant to California Labor Code section 3600.5(a), the California Workers' Compensation Appeals Board does have subject-matter jurisdiction over the applicant's claim.

G. Forum Selection Clause

The Seattle Seahawks assert that the forum selection clause defense was not waived as the Undersigned Judge afforded the parties to address the appropriateness of its assertion on October 19, 2023, when the Court to matter re-submitted for decision.

A review of the pleadings shows that the Seattle Seahawks did not raise the forum selection clause defense until its response to the applicant's August 16, 2023, Petition for Reconsideration.

As noted previously, the Undersigned Judge, upon review of the record and considering the legal positions delineated in the applicant's Petition for Reconsideration and the defendants' Answers to the Petition for Reconsideration, realized that he had failed to adequately address all the issues concerning jurisdiction raised and rescinded the July 26, 2023, Findings and Order.

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[38] *Farley v. San Francisco Giants*, 2020 Cal. Wrk. Comp. P.D. LEXIS 173, *14 (Cal. Workers' Comp. App. Bd. April 29, 2020)

[39] Minutes of Hearing (Further) and Summary of Evidence from trial dated 05-25-2023, Page 3, Lines 21-22; and EAMS Doc ID: 76854713, Tyler Slavin Original Transcript Page 10, lines 16-18; 25 & Page 11, lines 1-4

In response to the Undersigned Judge's offer to brief the issue, the Seattle Seahawks elected not to address the issue and or the applicant's assertion that the issue had been waived.

As the issue of forum selection was not raised at the time of the mandatory settlement conference or the original trial and the defendant's declination to provide additional legal support for its assertion when provided the opportunity, the defendant waived the defense.

If, however, the WCAB determines that forum selection is a subcategory of subject matter jurisdiction, the Undersigned Judge will address the defendant's argument.

The Seattle Seahawks argue that pursuant to the En Banc decision in *McKinley v. Arizona Cardinals (2013) 78 Cal. Comp. Cases 23*, the WCAB shall enforce a reasonable mandatory Choice of Law and Choice of Forum Selection Clause contained in a player's contract.

In *McKinley,* the applicant was not a resident of California and did not enter into any contracts for hire or employment contracts in the state of California. The applicant's only connection to California was the seven of the eighty games he played in California throughout his career.

The Appeals Board determined Arizona had a materially greater interest than California in determining the workers' compensation benefits due to an Arizona resident who contracted for employment in Arizona, was employed by an employer based in Arizona, and performed most of his work duties in Arizona.

The Appeals Board distinguished *McKinley* from the California Supreme Court's decision in *Alaska Packers Asso. v. Industrial Acci. Com., 1 Cal. 2d 250,* in which the Supreme Court stated that a choice of law clause is unenforceable when there was a finding that the employment relationship in question had sufficient contacts with California to apply California's workers' compensation law.

The present matter differs from *McKinley* as there was a contract of hire formed in California when the applicant accepted the Seattle Seahawks' offer over the phone to sign the applicant to a practice squad contract.

Pursuant to California Labor Code section 3600.5(a), the California Workers' Compensation Appeals Board does have subject-matter jurisdiction over the applicant's claim, and there is sufficient contact with California to apply California's workers' compensation law.

Therefore, the rule in McKinley is not applicable in this case, and the forum selection clause is unenforceable.

H. Administration Of Claim

The defendant, St. Louis Rams/Los Angeles Rams, assert that the Undersigned Judge was in error in determining that the St. Louis Rams and Great Divide Insurance Company, as administered by Berkley Entertainment, were best positioned to administer the claim.

The defendant cites to California Labor Code section 5500.5(a), which states that "…liability for a cumulative trauma shall be limited to the employer or employers who employed the employee during a period of one year immediately preceding the date of injury … or the last date the employee was exposed to the hazards of the occupational disease or cumulative injury."

The defendant asserts that 5500.5(a) requires a finding that the Seattle Seahawks administered the claim as they were the employer for the last year of the alleged exposure.

However, the year of liability delineated by California Labor Code section 5500.5(a) is not set until a determination of the date of injury per California Labor Code section 5412.

As of this date, the applicant's date of injury per California Labor Code section 5412 has not been determined and/or stipulated to by the parties. As such, the period of exposure giving rise to liability per California Labor Code section 5500.5 for the applicant's alleged injuries has not been determined.

As liability for the applicant's alleged injuries has not been determined, there is no legal mandate that one defendant over the other is to administer the applicant's claim.

In determining the party to administer the applicant's claim, the Undersigned Judge took into consideration the nature and resources of the parties participating and was of the opinion that the St. Louis Rams, as insured by an entity whose business regularly participates in litigation of the nature before the Board, was in the best position to administer the claim.

Based on the above, the Undersigned Judge, who was requested by the parties to select a defendant to administer the claim, was acting within his authority to designate the St. Louis Rams and Great Divide Insurance Company, as administered by Berkley Entertainment, to administer the applicant's claim.

IV.

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the defendants' petitions for reconsideration be denied.

DATE: February 7, 2024

Oliver Cathey
WORKERS' COMPENSATION JUDGE