

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

CHRIS MANDERINO, *Applicant*

vs.

**KANSAS CITY CHIEFS; GREAT DIVIDE INSURANCE COMPANY, administered by
BERKLEY ENTERTAINMENT LLC; CINCINNATI BENGALS, self-insured, *Defendants***

**Adjudication Number: ADJ15429257
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the August 7, 2023 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that California does not have personal jurisdiction over the Cincinnati Bengals or the Kansas City Chiefs, and that applicant's contracts with both teams contained valid contractual choice of law or choice of forum clauses.

Applicant contends that the defendants have both waived their assertion that the court lacks personal jurisdiction over the teams, and that applicant entered contracts of hire with both teams while within California's territorial jurisdiction.

We have received an Answer from the Kansas City Chiefs and from the Cincinnati Bengals. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations in the Petition, both Answers, and the contents of the Report. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting applicant's Petition 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 Petition 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:

Applicant avers the Kansas City Chiefs waived their claim that California is without personal jurisdiction by filing an Answer and an “admission” to the merits of the claim. (Petition for Reconsideration, at p. 7:6.) Applicant asserts that because the Answer is responsive to issues beyond that of personal jurisdiction, the Chiefs have made a general appearance and waived the issue of personal jurisdiction. Applicant further avers the Cincinnati Bengals recognized and submitted to the authority of the WCAB by requesting that the WCJ approve an election negotiated with applicant. (*Id.* at p. 8:17.) Applicant also contends the WCJ mischaracterized and misinterpreted the trial testimony of applicant. (*Id.* at p. 9:22.) Defendant Kansas City Chiefs contend applicant is bound by the choice of law clauses in his employment contract, and that the WCJ appropriately determined applicant’s testimony to be not credible with respect to contract formation. (Answer of the Kansas City Chiefs, at p. 11.) Defendant Cincinnati Bengals avers its letter to the WCJ was for the limited purposes of confirming an election against a co-defendant, and did not constitute a general appearance. (Answer of the Cincinnati Bengals, at p. 2:19.)

The WCJ’s Report observes that the applicant was not deemed a credible witness at trial, that applicant became agitated and aggressive when questioned regarding his contracts. (Report, at p. 4.) The lack of credibility, in turn, informed the WCJ’s decision that there was insufficient evidence to support a finding of contract formation in California. (*Id.* at p. 5.) The WCJ further observed that the applicant had no work activities including games for either team in California, and that applicant’s assertion of injury is linked to a fitness program applicant was allegedly required to follow in the off-season. (*Id.* at p. 5.)

It is axiomatic that before a tribunal may enter an award against a party, it must have personal jurisdiction over that party ... Personal jurisdiction requires both notice and that the party have at least “minimal contacts” with the forum state. (*Janzen v. Workers Compensation Appeals Bd.* (1997) 61 Cal.App.4th 109 [63 Cal.Comp.Cases 9, 13].) 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 [108 Cal. Rptr. 23, 1973 Cal.App. LEXIS 991], citing *International Shoe Co. v. State of Washington* (1945) 326 U.S. 310 [66 S.Ct. 154] and *Michigan Nat. Bank v.*

Superior Court (1972) 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 [38 Cal. Rptr. 332].)

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].)

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 [108 Cal. Rptr. 23, 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].)

The defense that California lacks personal jurisdiction over a nonresident defendant may be waived. (*Janzen v. Workers Compensation Appeals Bd., supra*, 61 Cal.App.4th 109.) A 'special appearance' made for the purposes of contesting subject matter jurisdiction will result in a waiver of the personal jurisdiction defense, and an appearance to contest subject matter jurisdiction will not preserve a personal jurisdiction claim. (*Ibid.*)

Here, the WCJ has determined that insufficient evidence exists to support a finding of contract formation in California. Contract formation may be one of the factors relevant to the issue of personal jurisdiction and should be among the factors considered in conjunction with applicant's argument regarding defendants' alleged procedural submission to the authority of the WCAB. We therefore believe that additional analysis of the factors relevant to contract formation, as well as the factors supporting and opposing personal jurisdiction, and any potential waiver made by

general appearance, will require further consideration for the Appeals Board to issue a just and reasoned decision.

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 applicant's Petition for Reconsideration, and order 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.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on August 7, 2023 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 30, 2023

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

**CHRIS MANDERINO
BETTS LAW GROUP
GOLDBERG SAGALA
BOBER, PETERSON & KOBAY**

SAR/abs

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