WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GREGORY HANSELL, *Applicant*

vs.

ARIZONA DIAMONDBACKS, et al.; *Defendants*

Adjudication Number: ADJ10418232
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant sought reconsideration of the July 31, 2018 Findings and Order ("F&O"), wherein the workers' compensation administrative law judge (WCJ) concluded that applicant's claim cannot be brought in California due to the application of Labor Code section 3600.5[1] subdivisions (c) and (d). Applicant argues that subdivisions (c) and (d) of section 3600.5 apply only when there is not jurisdiction subject to subdivision (a) and section 5305, and furthermore that even if subdivisions (c) and (d) are applicable, defendants did not show that applicant's claim was barred by them.

We received Answers from three defendants. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answers, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the F&O and return the matter to the WCJ for further proceedings, because we conclude that subdivisions (c) and (d) are not applicable to applicant's claim because he was hired in California, creating jurisdiction over the claim pursuant to subdivision (a) and section 5305.

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[1] Further references are to the Labor Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

Applicant filed an Application for Adjudication, claiming a cumulative trauma industrial industry sustained while employed as a professional baseball player during the period from June 5, 1989 to October 15, 2004. According to the stipulations of the parties, applicant's playing history during the cumulative trauma period was as follows:

Boston Red Sox	June 22, 1989 to July 28, 1990
New York Mets	July 28, 1990 to December 16, 1990
Los Angeles Dodgers	December 16, 1990 to July 31, 1995
Minnesota Twins	July 31, 1995 to October 11, 1996
Boston Red Sox	October 11, 1996 to March 26, 1997
Milwaukee Brewers	March 9, 2017 to October 17, 1997[2]
Arizona Diamondbacks	December 16, 1997 to March 26, 1998
Oakland Athletics	March 31, 1998 to May 8, 1998
Kansas City Royals	May 8, 1998 to October 16, 1998
San Francisco Giants	December 4, 1998 to April 2, 1999
Pittsburgh Pirates	April 7, 1999 to November 24, 1999
Hanshin Tigers	December 7, 1999 to 2003
Bridgeport Bluefish	April of 2003
New York Yankees	April 24, 2003 to October 15, 2003
Mexico City Diablos	January 2004 until July 2004
Arizona Diamondbacks	July 28, 2004 to October 15, 2004
Unknown, Mazatlán, Mexico	December 2004 to February 2005

(Minutes of Hearing/Summary of Evidence (MOH/SOE), 6/19/208, at pp. 2–5.)

The matter proceeded to trial on June 19, 2018, with the WCJ listing the "sole issue" for trial as:

> Whether the California WCAB has jurisdiction over applicant's claims. If so, whether that jurisdiction extends to all of the teams he played for or whether some of them are excluded from jurisdiction for one reason or another.

(*Id.* at p. 5.) Exhibits were admitted without objection, and applicant was the only witness to testify. (*Id.* at pp. 6–8.)[3]

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[2] March 9, 2017 is clearly a typo; according to Exhibit C, it appears the correct date is March 31, 1997. (See Ex. C, at p. 2.)

[3] Exhibit H was voluntarily withdrawn prior to the start of applicant's testimony.

Applicant testified that he was born and raised in La Palma, California. (*Id.* at p. 8.) He lived in California until 1989, when he was drafted by the Red Sox; his contract with that team was negotiated and signed in California. (*Ibid.*)

Applicant first retained an agent after he was traded to the Mets; his agent, who was based in California, negotiated every contract of applicant's thereafter until 2004. (*Id.* at pp. 8–9.) He gave his agent authority to negotiate his contracts and never rejected his agent's recommendations. (*Id.* at p. 9.) Terms would be negotiated over the phone with his agent accepting the deal verbally, before applicant would fly out to wherever the location of the team was to sign a written contract. (*Ibid.*)

Applicant's contract with the Diamondbacks in 2004 was different: his agent did not participate in the negotiations. (*Ibid.*) Instead, the team contacted him while he was playing in Mexico for the Diablos, and told him that they wanted him to play for them after the Mexican season finished; he simply drove to Arizona himself at that time and signed a contract, without any negotiations. (*Ibid.*)

While employed by the Diamondbacks, applicant came to California for a five-game series. (*Ibid.*) He did not play in all the games, but he did participate in all the team activities during that time. (*Id.* at p. 10.)

Under examination from the Court, applicant confirmed that he signed a transfer of his contract from the Mets to the Dodgers in California in December 1990; it was not a negotiated contract, but instead an assignment of his contract with the Mets. (*Id.* at p. 11.) He then signed his first contract with the Dodgers in April of 1991. (*Ibid.*) He had not yet hired an agent at that time. (*Ibid.*) He was still living in California during the offseason at that time. (*Ibid.*) He signed a further contract with the Dodgers in California in 1992, after hiring his agent; he was sure he was in California at the time he signed the contract, but was unsure of whether he was at home, at his sister's house, at his agent's office, or at the Dodgers stadium. (*Ibid.*)

Trial briefs were submitted by July 20, 2018, and the matter taken under submission as of July 27, 2018. (*Id.* at 2.)

On July 31, 2018, the WCJ issued the F&O, finding that although the WCAB had subject-matter jurisdiction over applicant's claim, the entire claim was exempt pursuant to section 3600.5(d). (F&O, at p. 1.) The concurrently-filed Opinion on Decision ("OOD") makes clear that the WCJ reached his conclusion based upon a judgement that section 3600.5 is "not a 'jurisdiction'

statute." (Opinion on Decision, at p. 2.) Instead, the WCJ viewed section 3600.5, subdivision (a), which provides for recovery where there is a California contract of hire, as "merely a codification of the Ninth Circuit holding in [*King v. Pan American World Airways* (1959) 270 F.2d 355, 360, cert den., 362 U.S. 928 (1960)]." (*Ibid.*) The WCJ viewed 3600.5, subdivision (d) as "akin to a dispute over employment," in that subject-matter jurisdiction could exist over the claim overall but recovery could nevertheless be barred. The WCJ therefore went on to analyze the case under subdivisions (c) and (d), finding that applicant's claim was barred because his employment with the Diamondbacks was covered by subdivision (c), and that his employment with the Mexican team in Mazatlán was covered by subdivision (d)'s reference to an exemption according to "any other law" because of a lack of personal jurisdiction over that team, to which applicant had stipulated. (*Id.* at pp. 2–4.)

This Petition for Reconsideration followed.

DISCUSSION

Under California's workers' compensation law, benefits are to be provided for industrial injuries when the statutory conditions of compensation are met. (Cal. Const., art. XIV, § 4; §§ 3600 et seq., 5300 and 5301.) The statutes establishing the scope of the WCAB's jurisdiction reflect a legislative determination regarding California's legitimate interest in protecting industrially-injured employees. (*King v. supra,* 270 F.2d at 360 ["The [California Workmen's Compensation] Act applies to all injuries whether occurring within the State of California, or occurring outside the territorial boundaries if the contract of employment was entered into in California or if the employee was regularly employed in California."].)

In general, the WCAB may assert its subject matter jurisdiction in a given workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a significant connection or nexus to the state of California. (See §§ 5300, 5301; *King, supra,* 270 F.2d at 360; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116, 1128.) Whether there is a significant connection or nexus to the State of California is best described as an issue of due process, though it has also been referred to as a question of subject-matter jurisdiction. (*New York Knickerbockers v. Workers' Comp. Appeals Bd.* (*Macklin*) (2015) 240 Cal.App.4th 1229, 1238; *Johnson, supra,* 221 Cal.App.4th at 1128.)

In addition to injuries occurring in California, the WCAB can also assert subject matter jurisdiction over injuries occurring outside this state in certain circumstances. Section 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." (§ 5305.)[4]

For nearly a century, it has been established law that a hiring in California within the meaning of Labor Code sections 3600.5(a) and 5305 provides this state with sufficient connection to the employment to support adjudication of a claim of industrial injury before the WCAB. (*Alaska Packers Assn. v. Industrial Acc. Com.* (*Palma*) (1934) 1 Cal.2d 250, affd. (1935) 294 U.S. 532; *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] ["an employee who is a professional athlete residing in California, such as Bowen, who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract"]; *Johnson, supra,* 221 Cal.App.4th at p. 1126.)

Under certain circumstances, additional requirements apply to professional athletes filing workers' compensation claims involving occupational disease or cumulative trauma injuries. Section 3600.5(d) provides as follows:

> (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

[4] The residency requirement of section 5305 has long been recognized as unconstitutional. (See *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 20, fn. 6 [64 Cal.Comp.Cases 745].)

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.

(§ 3600.5(d).)

As section 3600(d)(1) makes clear by reference, an important provision for determining the meaning of section 3600.5(d) is section 3600.5(c).

Section 3600.5(c) provides as follows:

> (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.

(§ 3600.5(c).) This statutory provision applies to a cumulative trauma claim asserted by a professional athlete who is hired in a state other than California, when that athlete is temporarily doing work in California. (See, e.g., *Carroll v. Cincinnati Bengals* (2013) 78 Cal.Comp.Cases 655, 660 (Appeals Board en banc); *Dailey v. Dallas Carriers Corp.* (1996) 43 Cal.App.4th 720, 727.)

Section 3600.5 also defines some of the terms used in the above subdivisions. Subdivision (g)(1) states: "The term 'professional athlete' means an athlete who is employed at either a minor or major league level in the sport of baseball, basketball, football, ice hockey, or soccer." (§ 3600.5(g)(1).) "California-based team" means "a team that plays a majority of its home games in California." (§ 3600.5(g)(2).) "Duty day" means "a day in which any services are performed by a professional athlete under the direction and control of his or her employer pursuant to a player contract." (§ 3600.5(g)(3).) The term "season" means "the period from the date of the first preseason team activity for that contract year, through the date of the last game the professional athlete's team played during the same contract year." (§ 3600.5(g)(4).)

Initially, in light of the WCJ's statement that the section is "not a 'jurisdiction' statute," and defendant's argument, endorsed by the WCJ, that a lack of personal jurisdiction is an exemption according to "any other law" pursuant to subdivision (d) of that section, it is prudent to clarify the nature of section 3600.5 and its function within the general statutory framework that determines whether a workers' compensation claim may be brought in California.

First, we disagree that section 3600.5 is not a jurisdictional statute, and that subdivision (a) merely codifies the holding of *King, supra,* 270 F.2d 355, 360. Subdivision (a) predates *King*, and was the basis for its statement, rather than the other way around. More fundamentally, it is important to remember that the WCAB is solely a creation of the Legislature, and thus our fundamental subject matter jurisdiction is limited by statute. Article XVI, section 4, of the California Constitution provides that the Legislature "is … expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation." (Cal. Const., art. XIV, § 4.) Thus, in the absence of a statute affirmatively conferring subject matter jurisdiction over a claim to the WCAB,

we cannot exercise jurisdiction over the claim. (*Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556, 562.)

To be sure, section 3600.5(a) overlaps to some degree with other jurisdictional statutes, most principally section 5305, which provides for jurisdiction based upon a California contract of hire. (§ 5305 ["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."].)[5] Section 3600.5(a) goes beyond that statute, however, in further providing for jurisdiction where the injured worker was either hired in California or regularly employed here: "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).) Without this affirmative grant of jurisdiction, we would be unable to exercise jurisdiction over claims based upon regular employment in this state. Section 3600.5 is, therefore, a jurisdictional statute. Subsection (a) is an affirmative grant of jurisdiction, while subsections (b), (c) and (d) are limitations that, under the appropriate circumstances, serve to deprive the WCAB of subject-matter jurisdiction in cases where it could otherwise exercise such jurisdiction if not for those subsections.

We next turn to the argument that a lack of personal jurisdiction over an employer constitutes an exemption from California workers' compensation law according to "any other law" pursuant to section 3600.5(d). We disagree with this contention: the exclusions under section 3600.5, subdivisions (c) and (d) are subject-matter jurisdiction exclusions, and do not depend on the presence or absence of personal jurisdiction. Subdivision (c) exempts some defendants from liability for workers' compensation benefits if they meet certain requirements, but nothing in the text of the subdivision makes any reference to personal jurisdiction. This is with good reason, because employers over whom the WCAB cannot exercise personal jurisdiction would have no reason to need the exemption of subdivision (c) in the first place.

Subdivision (d), meanwhile, states that a claim is "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

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[5] § 5305's purported additional requirement of California residency has long been recognized as unconstitutional. (See *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 20, fn. 6 [64 Cal.Comp.Cases 745].)

exempt from this division pursuant to subdivision (c) or any other law," unless the exceptions of (d)(1)(A) & (B) are met. A lack of personal jurisdiction over a defendant does not render an employer "exempt" from the substantive provisions of California workers' compensation law; it merely indicates that a particular defendant cannot be required to defend a claim in this state.

This conclusion follows necessarily from basic principles governing the exercise of personal jurisdiction. First, a lack of personal jurisdiction is not only subject to waiver, but automatically waived by a general appearance. (See, e.g., *Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341.) However, whether California can apply the substantive provisions of its workers' compensation system to a claim is a question that cannot be waived, because subject-matter jurisdiction can neither be waived nor consented to by the parties. (*Applera Corp. v. MP Biomedicals, LLC* (2009) 173 Cal.App.4th 769, 781; *Harrington v. Superior Ct. of County of Placer* (1924) 194 Cal. 185, 188 ["Jurisdiction of the subject matter cannot be given, enlarged or waived by the parties."].) If a lack of personal jurisdiction were an exemption from the substance of California workers' compensation law, it would not be subject to waiver, and a general appearance would not suffice to confer applicability of that substantive law over a party.

Second, the question of whether a state may apply its laws to a given claim – choice of law – is separate and distinct from the question of whether it may exercise personal jurisdiction over a defendant. (*Allstate Ins. Co. v. Hague* (1981) 449 U.S. 302, 317, fn. 23.) Therefore, it cannot be said that a lack of personal jurisdiction over a party amounts to an exemption from the substantive law in question; it is possible that such law could be applied by a different court that does have personal jurisdiction over the party in question, or by the same court at a later date if there is a change in the status quo that allows the court to establish personal jurisdiction.

Accordingly, we disagree that a lack of personal jurisdiction over a defendant is an "exemption" from California workers' compensation law, and therefore a trigger for subdivision (c) or (d) of section 3600.5.[6]

These clarifications aside, we turn to the fundamental dispute between the parties: do subdivisions (c) and (d) of section 3600.5 override the general jurisdictional provisions of sections

[6] Because we conclude that subdivision (d) does not apply to this claim, as described below, we do not consider whether applicant's last employers were exempt according to "…some other law" on a basis other than a lack of personal jurisdiction, for example a lack of subject-matter jurisdiction under any other jurisdictional provision.

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?

The fundamental purpose of statutory interpretation is to ascertain the Legislature's intent in order to effectuate the law's purpose. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Interpretation begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) If, however, the language is susceptible to more than one interpretation, consideration must be given to other factors, such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

We are directed to interpret statutory language "consistently with its intended purpose, and harmonized within the statutory framework as a whole." (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 585 [75 Cal.Comp.Cases 817].) "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.) We accordingly cannot interpret section 3600.5(d) in isolation; it must be construed in the context of the entire statute of which it is a part.

Here, section 3600.5, subdivision (c) exempts "a professional athlete who has been hired outside of this state and his or her employer" when the professional athlete is injured while temporarily within this state. (§ 3600.5(c).) When applied to a cumulative trauma claim sustained while employed by a single employer, this clause is unambiguous in that it applies only when the contract of hire is made outside the state of California.

However, when applied to a mixed claim, where the applicant was hired in California for some of the cumulative trauma period, but also signed a contract outside California with the employer asserting it is exempt under subdivision (c), the statute is less clear. Does the phrase "a professional athlete who has been hired outside of this state and his or her employer" refer only to the contract of hire with the employer in question that is asserting the exemption, or to any contract of hire with any employer during the relevant injury period? In a strictly grammatical sense, the

choice to place the phrase “who has been hired outside of this state” directly after “a professional athlete” arguably implies the subdivision applies only to an athlete who has no contract of hire in California during the cumulative trauma injury period. However, because the subdivision clearly contemplates one particular employment relationship between an athlete and a single employer, we cannot say the statute is unambiguous in limiting its application to athletes who have not been hired in California by any employer during the relevant period.

Expanding the inquiry to the language of subdivision (d) does not help matters, because subdivision (d) does not refer to hire at all. Moreover, because in this particular case defendant relies on the exemption of subdivision (c) to trigger subdivision (d) with regard to the Diamondbacks, if subdivision (c) is limited to cases where there is no hire in California by any employer during the relevant period, it would not matter if subdivision (d) applies more generally in the abstract.

In light of all of the above, we must conclude that the phrase “a professional athlete who has been hired outside of this state” in section 3600.5, subdivision (c) is ambiguous as applied to a claim like this one, where the applicant has California contracts of hire, but not with the particular employer that is asserted to be exempt pursuant to the subdivision.

Because the language of the statute is ambiguous, we must consider the purpose of the statute, the legislative history, and public policy in determining which interpretation is more persuasive. (*King, supra,* 38 Cal.4th at 642.) In the second Assembly Floor Analysis of Assembly Bill 1390, the purposes of the amendments to section 3600.5 were described as follows:

> According to the author, out of state professional athletes are taking advantage of loopholes in California's workers’ compensation system to the detriment of substantial California interests, and to the detriment of California sports teams. Specifically, as a result of the ‘last employer over which California has jurisdiction’ rule, and the absence of an enforceable one-year limitations period, California teams are facing cumulative injury claims from players with extremely minimal California contacts, but substantial playing histories for teams in other states. In addition, out of state sports teams are having claims filed against them in California that are resulting in a number of serious consequences to California, including: 1) clogging the workers’ compensation courts with cases that should be filed in another state, thereby delaying cases of California employees, 2) causing all insured California employers to absorb rapidly escalating costs being incurred by CIGA, and 3) placing increasing pressure on insurers to raise workers' compensation rates generally in California to cover these rapidly rising unanticipated expenses. In many of these cases the players have already received workers’ compensation benefits from other states,

as well as employment benefits covering the same losses they are seeking compensation for in California.

(Assem. Com. on Ins., Second Assembly Floor Analysis of Assem. Bill No. 1390 (2013-2014 Reg. Sess.).)

Accordingly, 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. (*Ibid.*) 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. (See, e.g., *Injured Workers' Ins. Fund of Maryland v. Workers' Comp. Appeals Bd.* (*Crosby*) (2001) 66 Cal.Comp.Cases 923 (writ den.) [single game played in California during career sufficient to exercise California jurisdiction over cumulative trauma claim].)[7]

In understanding the Legislature's concern, it is critical to remember that *Johnson*, which largely foreclosed the ability of athletes to file claims in California based solely on a small handful of games played in this state for an out-of-state employer, had not yet been issued.[8] The Legislature was therefore crafting legislation in an environment where even a single game played in California over the course of a professional career could allow for the filing of a California workers' compensation claim for a cumulative trauma injury, and it was working to foreclose that possibility.

In addition to the above, when the Legislature amended section 3600.5, it provided specific notes of its intent. 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." (Stats. 2013 ch. 653 (AB 1309) § 3.) The central holding of *Bowen*, affirming sections 3600.5(a) and 5305, is

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[7] Prior to the amendments, section 3600.5 did have a limited exemption for claims filed by employees hired outside of this state, injured within this state while temporarily doing work for an out-of-state employer, but only when they were covered for the injury by workers' compensation insurance in the other state, the extraterritorial provisions of California were recognized by that state, and that state had a similar exemption provision that would apply in the reverse situation. (See § 3600.5(b).) This exemption remains in the statute, and applies to any worker. (*Id.*) However, the reciprocity requirements meant that out-of-state teams were frequently unable to prove the elements necessary to establish the subdivision (b) exemption. (See *Crosby, supra,* 66 Cal.Comp.Cases at 926-27.)

[8] The amendments to section 3600.5 were signed by the Governor on October 8, 2013, and apply to claims filed after September 15, 2013. Johnson was issued on December 3, 2013.

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. The Legislature appears to have been mainly concerned with athletes who were not hired in this state, who were filing claims and recovering benefits under the law as it existed prior to *Johnson* based upon a small handful of games. The reference to *Bowen* demonstrates the Legislature recognized and approved of the long-standing principle of California law, stretching back close to a century, that a contract of hire in California is itself a compelling connection to the state that validates the exercise of jurisdiction. (See *Alaska Packers, supra,* 1 Cal.2d at 261-262.) If 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. If the Legislature had intended to depart from the position that California will exercise jurisdiction over a claim if the applicant was hired in California, we think the Legislature would clearly have said as much, and, at a minimum, would not have reaffirmed that principle by referencing *Bowen*.

This reading of the statute is also supported by the nature of subdivisions (c) and (d), both of which reference a 20% threshold for determining the strength of an injured athlete's connection to the state. Subdivision (c) uses this 20% threshold to determine whether a worker injured here while working on an out-of-state contract is within the state "temporarily." (§ 3600.5(c).) This focus on how much work time in the state transforms an injured worker's status from "temporary" to "regular" mirrors the due process concerns identified in *Johnson* with ensuring a sufficient connection to the state — concerns which only apply where there is not a hire in California at some point during the cumulative trauma period.

Similarly, subdivision (d) sets a 20% threshold for duty days worked "either in California or for a California-based team" over a career in order to meet the first prong of the exception to the exemption. (§ 3600.5(d)(1)(A).) Alternatively, this prong may also be met by a showing that the athlete has worked "two or more seasons for a California-based team or teams." (*Ibid.*) Notably, the two-season requirement of work for "a California-based team or teams" does not

require that the work be in the state of California. Because professional athletes in some of the covered sports are regularly dispatched out of state to affiliate teams or for training camps, it is not as rare as one might think that an athlete could be employed by a California-based team without being regularly employed in California. Therefore, the fact that subdivision (d) mentions two seasons or more of work for a California-based team does not show it is meant to apply even to athletes who were hired in this state or regularly employed here. Instead, a careful reading of the statute suggests that subdivision (d)(1) is concerned with determining under what circumstances an athlete who does not meet the requirements of section 3600.5, subdivision (a) or section 5305 should nevertheless be able to bring a claim in California, because their relationship to the state is sufficiently strong despite the lack of a hire in California or regular California employment.

This interpretation is further bolstered by consideration of changes to the Act made by the Senate in response to concerns that the originally contemplated language went beyond the Act's intended purpose and was likely unconstitutional. The version of Assembly Bill 1309 sent to the Senate differed from the enacted law in several key ways. First, it did not contain the statement of legislative intent affirming the holding of *Bowen*, referenced above, that a California contract of hire will support the award of benefits for an injury sustained outside the state, regardless of any other relationship between this state and the injury. (Assem. Amend. To Assem. Bill 1309 (2013-2014 Reg. Sess.) April 25, 2013.) Second, subdivision (d) was a part of subdivision (c) rather than a separate subdivision, and read:

> (4) (A) An employer of a professional athlete that is subject to this division is not liable for occupational disease or cumulative injury pursuant to Section 5500.5 if at the time application for benefits is made the professional athlete performed his or her last year of work in an occupation that exposed him or her to the occupational disease or cumulative injury as an employee of one or more other employers that are exempt from this division pursuant to paragraph (1) or any other law.
> (B) This paragraph shall apply to all occupational disease and cumulative injury claims filed against an employer of professional athletes if the employer is subject to this division, unless the professional athlete was employed for eight or more consecutive years by the same California-based employer pursuant to a contract of hire entered into in California, and 80 percent or more of the professional athlete's employment as a professional athlete occurred while employed by that California-based employer against whom the claim is filed.

(*Ibid.*) Third, the changes to section 3600.5 applied to any athlete's claim, no matter when filed, if the claim had not yet been adjudicated by the date the Act became law. (*Ibid.*). Fourth, the Act

also amended section 5412 to create an entirely new statute of limitations solely for professional athletes, separate and apart from the statute of limitations that applied to all other injured workers. (*Ibid.*)

In other words, the statute that was sent to the Senate did not reaffirm the principal of *Bowen*, and its version of what became subdivision (d) explicitly applied to athletes with a California contract of hire, unless they played under that contract of hire for eight or more consecutive years for the same California employer. Had this version of the statute become law, there would be no controversy over whether provisions (c) and (d) were intended to apply to bar recovery even to athletes with a California contract of hire.

However, the version of the Act that ultimately became law, as described above, differs from the Assembly version in key, fundamental ways. The affirmation of *Bowen* was added, at the same time as the Senate removed the reference to a California contract of hire and liberalized the criteria of the exemption in what became subdivision (d). Both of these changes appear to have been influenced by the Analysis of the Senate Committee on Labor and Industrial Relations, which stated:

> As noted above, players who played for California teams, but then leave to play for out-of-state teams for several years, would lose their ability to file for workers' compensation benefits under AB 1309. This raised some objections in the Assembly, and the author responded with what some refer to as the "Joe Montana" Exception: if a player signs a contract in California and plays for a team for 8 years AND 80% of their career, the player would have standing to file for workers' compensation benefits in California.
>
> While this addresses some players with long-standing careers, it does lead to some perverse outcomes. For example, Alex Smith was recently traded from the San Francisco 49ers to the Kansas City Chiefs. Assuming Alex Smith plays for the Kansas City Chiefs for longer than a year, he would lose his ability to file for workers' compensation benefits in California. Even though he played for nearly 100% of his career for the 49ers, he was with the team for less than 8 years by 5 months (July 2005 to February 2013).
>
> Despite the fact that Alex Smith suffered at least one concussion and several shoulder injuries while playing for the 49ers, he would be denied the ability to file in California. It is unclear what the policy justification is for such an arbitrary cut-off. Nor is it clear why a worker who suffered injuries while employed by a California employer should be denied workers' compensation benefits in California, athlete or otherwise.

(Sen. Comm. on Lab. and Ind. Rel., First Senate Floor Analysis of Assem. Bill No. 1390 (2013-2014 Reg. Sess.).) The Analysis went on to point out that developing caselaw – what would

ultimately culminate in *Johnson* – was already placing limitations on the ability of out of state athletes to file claims, presumably with the implication that such drastic legislative action was therefore not required. (*Ibid.* ["This concern, however, does not appear to take into account recent ruling by the Workers' Compensation Appeals Board. Specifically, *Vaughn Booker v. Cincinnati Bengals* (2012) and *Michael Jameson v. Cleveland Browns* (2012) clarify that an injured athlete needs to have actually played a game in California to qualify for benefits. Noting the rulings in *McKinley v. Arizona Cardinals* (2013), *Wesley Carroll v. Cincinnati Bengals* (2013), and *Matthews v. National Football League Management Council*, 688 F.3d 1107 (2012), it is further clear that the athlete must have significant ties to California in order to file."].)

In our view, the most reasonable interpretation of the Senate's amendments – adding in the affirmation of *Bowen* and deleting the reference to a hire in California in subdivision (d) – is that they intended to significantly scale back the Assembly version of the Act to match the actual stated objective of barring claims by athletes with "extremely minimal California contacts," by reaffirming the principal of *Bowen* that a California contract of hire is sufficient to establish WCAB jurisdiction. Accordingly, their deletion of the reference to a California contract of hire in subdivision (d), combined with that affirmation, was intended to render the subdivision applicable only to athletes without a California contract of hire, and therefore to bar only claims from those athletes without the strong contact with California that is created by a California contract of hire.

In the course of the above analysis, we have considered the principle that, when a statute is amenable to more than one interpretation, we should select the interpretation that leads to a more reasonable result. (*Lungren, supra,* 45 Cal.3d at 735.) Here, applicant was born and raised in California, and he signed his first professional contract in this state. He was employed by the Dodgers for five years, and signed multiple contracts with them in this state. He was also employed by the Giants and the Athletics. It strains credulity to characterize applicant's contacts with this state as "extremely minimal," and we do not think the Legislature had claims like his in mind when it sought to limit access to the California compensation system by out of state athletes with minimal connections to the state. Therefore, it does not appear reasonable to interpret the statute to preclude applicant's claim when there is a more plausible interpretation of the statute that both better reflects the Legislature's true intent, and leads to results more reasonably in accord with that intent.

We are mindful that discerning legislative intent is fraught with difficulty when the statute does not clearly speak for itself. However, for all the reasons referenced above, we believe the most reasonable interpretation of section 3600.5 subdivisions (c) and (d) is that they are intended to apply only to athletes who cannot establish jurisdiction under section 3600.5, subdivision (a) or section 5305. Because it is undisputed that applicant was hired in California multiple times during the cumulative trauma injury period, we may properly exercise jurisdiction over his claim pursuant to those sections, and we will reverse the WCJ's finding to the contrary, and return the matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 31, 2018 Findings and Order is **RESCINDED**, and the matter **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 7, 2022

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

BOBER, PETERSON & KOBY
CHERNOW AND LIEB
GOLDBERG SEGALLA
GREGORY HANSELL
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
LEVITON, DIAZ & GINOCCHIO, INC
LEWIS, BRISBOIS, BISGAARD & SMITH
HERMANSON, GUZMAN & WANG, A.P.C.
SHAW, JACOBSMEYER, CRAIN & CLAFFEY

AW/ara

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