WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GREGORY VAUGHN, *Applicant*

vs.

COLORADO ROCKIES; TAMPA BAY RAYS;
ACE AMERICAN INSURANCE COMPANY, ADMIN. BY CHUBB, *Defendants*

Adjudication Number: ADJ11208094
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O), issued on November 22, 2023, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional baseball player from June 1, 1986 to July 13, 2003, claims to have sustained industrial injury to the head, neck, back, arms, shoulders, elbows, wrist, hands, fingers, legs, hips, knees, ankle, feet, and toes, and in the form of neurological and internal injuries. The WCJ found that California does not have jurisdiction over the joined out-of-state employers, that applicant's date of injury pursuant to Labor Code[1] section 5412 was Spring, 2004, and that compensation is barred pursuant to section 5405.

Applicant contends that California has subject matter jurisdiction over the claimed injury, and that the WCJ erred in determining that applicant had knowledge of his injury and its relation to his employment activities in 2004.

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

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

We have considered the allegations of the Petition 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 discussed below, we will grant applicant's petition, rescind the November 22, 2023 F&O, and substitute new Finding of Fact that California has subject matter jurisdiction over the claimed injury, that the date of injury was November 16, 2018, and that compensation is not barred by section 5405.

FACTS

Applicant claimed injury to the head, neck, back, arms, shoulders, elbows, wrist, hands, fingers, legs, hips, knees, ankle, feet, toes, neurological system, and in the form of internal injuries, while employed as a Professional Baseball Player by various teams including the Tampa Bay Rays and Colorado Rockies, from June 1, 1986 to July 13, 2003. Defendants deny liability for the claimed injuries.

Applicant has been evaluated by George "Rick" Hatch, M.D. as the qualified medical evaluator (QME) in orthopedic medicine.

The parties proceeded to trial on January 16, 2020, and stipulated that applicant worked for the Tampa Bay Rays from December 13, 1999, to March 22, 2003, and for the Colorado Rockies from April 11, 2003 to July 14, 2003. (Minutes of Hearing and Summary of Evidence (Minutes), dated January 16, 2020, at p. 2:5.) The parties further stipulated that there is an insurance policy for both the Tampa Bay Rays and for the Colorado Rockies for the year 2003. The parties framed for decision issues of the court's jurisdiction over the claimed injury pursuant to section 3600.5, the applicability of the statute of limitations of section 5405, and the defendants' "liability for injury under Labor Code section 5500.5 as it pertains to jurisdiction." (*Id.* at p. 2:23.) The applicant testified, and the WCJ ordered the matter submitted as of February 14, 2020.

On April 9, 2020, the WCJ issued his Findings and Order, determining in relevant part that the Appeals Board was vested with jurisdiction over the claimed injury based on a California contract of hire as between applicant and the San Diego Padres. The WCJ also determined that compensation was barred by section 5405.

On May 5, 2020, applicant filed a Petition for Reconsideration, averring in relevant part error in the WCJ's determination as to the date of injury.

On June 4, 2020, we granted reconsideration of the April 9, 2020 Findings and Order.

On March 24, 2023, we issued our Opinion and Decision After Reconsideration, wherein we rescinded the April 9, 2020 Findings and Order, and directed the WCJ to revisit his analysis under section 5405, and to develop the record as necessary to the issuance of a new decision. (Opinion and Decision After Reconsideration, March 24, 2023, p. 7.)

On August 8, 2023, the parties proceeded to trial, at which time the testimony of the applicant was adduced, and the matter submitted for decision.

On November 22, 2023, the WCJ issued his Findings and Order, determining in relevant part that "California does not have jurisdiction over the out-of-state employers joined herein per LC Sec. 3600.5." (Finding of Fact No. 2.) The WCJ also found that applicant's date of injury pursuant to section 5412 was "no later than spring of 2004," and that applicant's claim was barred by the section 5405 statute of limitations. (Findings of Fact Nos. 3, 4.)

Applicant's Petition for Reconsideration (Petition) avers that the employers' failure to advise applicant of his rights to bring a workers' compensation claim in California tolled the running of the statute of limitations under section 5405, and that the WCJ misconstrued the exemptions to liability found in section 3600.5(c).

Defendant's Answer to Petition for Reconsideration (Answer) avers there is no legal precedent to "support applicant's assertion that determining the date of injury under Labor Code section 5412 requires an injured worker be familiar with the legal definition of 'cumulative trauma' and/or their right to file a workers' compensation claim for cumulative trauma injury." (Answer, at 2:25.) Defendant asserts that as of 2004 applicant had sustained disability and had knowledge that his disability was related to his work activities, resulting in a date of injury of 2004 and that applicant's filing of an application for benefits in 2018 was barred by section 5405.

The WCJ's Report avers that both of the joined employers here have insufficient contacts with California to warrant the exercise of jurisdiction over applicant's claimed injury. (Report, at pp. 2-3.)

DISCUSSION

The WCJ has determined that "California does not have jurisdiction over the out-of-state employers joined herein per LC Sec. 3600.5." (Finding of Fact No. 1.) The WCJ's Opinion on Decision states, "there has not been a showing that as against the named defendants herein,

applicant had sufficient contacts through contract or games played upon which he can claim jurisdiction under the statute." (Opinion on Decision, at p. 3.)

Applicant's Petition contends the WCJ incorrectly applied section 3600.5, and that California retains jurisdiction over all injuries occurring outside its territorial boundaries if the contract of employment was entered into in California or if the employee was regularly employed in California. (Petition, at p. 4:12, citing *Wilson v. Florida Marlins* (ADJ10779733, February 26, 2020) [2020 Cal. Wrk. Comp. P.D. LEXIS 30].)

Section 3600.5 provides, in relevant part:

> (a) If an employee who has been hired or is regularly working in the state receives personal injury by accident arising out of and in the course of employment outside of this state, he or she, or his or her dependents, in the case of his or her death, shall be entitled to compensation according to the law of this state.
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> (b)
>
> (1) An employee who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the employee is temporarily within this state doing work for his or her employer if the employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than California, so as to cover the employee's work while in this state if both of the following apply:
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> (A) The extraterritorial provisions of this division are recognized in the other state.
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> (B) The employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation insurance or similar laws of the other 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 injury, whether resulting in death or not, received by the employee while working for the employer in this state.
>
> (c)
>
> (1) With respect to an occupational disease or cumulative injury, a professional athlete who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for his or her employer if both of the following are satisfied:
>
> (A) The employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California.

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

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

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

(d)

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

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

(B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.

(2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5.

> (e) An employer of professional athletes, other than a California-based team, shall be exempt from Article 4 (commencing with Section 3550) of Chapter 2, and subdivisions (a) to (c), inclusive, of Section 5401.

Section 3600.5 thus provides California jurisdiction over injuries where, as here, the employee has been hired in the state and has received personal injury by accident arising out of and in the course of employment outside of this state. In those instances, the employee "*shall* be entitled to compensation according to the law of this state." (Lab. Code, § 3600.5(a), italics added.)

However, subdivision (c) exempts California jurisdiction in limited instances of a claimed cumulative injury where "a professional athlete who has been hired outside of this state," but is temporarily within California doing work for their employer. (Lab. Code, § 3600.5(c).) Here, applicant entered into a contract of hire with the San Diego Padres within California's territorial limits. (January 16, 2020 Minutes, at p. 4:11.) However, defendant contends that neither the hiring by the Colorado Rockies or the Tampa Bay Rays was made in California, and that those two employers are therefore exempt from liability pursuant to subdivision (c). (Answer, at p. 5:3; 18:23.)

We previously discussed the interaction between subdivisions (a) and (c) of section 3600.5 in *Hansell v. Arizona Diamondbacks* (April 7, 2022, ADJ10418232) [2022 Cal. Wrk. Comp. P.D. LEXIS 83) (*Hansell*). Therein, applicant claimed a cumulative injury between June 5, 1989, and October 15, 2004, while employed by multiple professional baseball organizations. Several of applicant's contracts of hire during the course of his claimed cumulative injury were entered into within California's territorial limits, while other contracts of hire were entered outside California. (*Id.* at pp. *3-4.) We framed the issue of the interaction of subdivisions (a) and (c) of section 3600.5 as follows:

> 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 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?
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> 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 [105 Cal. Rptr. 2d 387, 19 P.3d 1129].) 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 [68 Cal.Rptr.3d 769, 171 P.3d 1101].) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal. 4th 617 [42 Cal.Rptr.3d 743, 133 P.3d 636].) 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 [248 Cal.Rptr. 115, 755 P.2d 299].)

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 [114 Cal.Rptr.3d 429, 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 [135 Cal.Rptr.2d 30, 69 P.3d 951].) 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 626.) 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.
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> (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].)

In understanding the Legislature's concern, it is critical to remember that *Johnson*,[2] 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. 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 [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. 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 longstanding 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

[2] *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116, 1128 [165 Cal.Rptr.3d 288] (*Johnson*).)

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.
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> (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.
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> (*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.
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> …
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> 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.

(*Hansell, supra*, at pp. 17-31.)

Here, as in *Hansell*, *supra*, the claimed cumulative injury encompasses contracts of hire entered into both within and without California's territorial borders. Here, as in *Hansell*, we are persuaded that the applicant's contract of hire with the San Diego Padres, as well as his multiple seasons of employment with a California-based team, serve to alleviate the legislative concerns informing the amendments of section 3600.5(c) and (d). This is because applicant's contract of hire and multiple seasons of employment with a California-based team would not fall into the same category as those with "extremely minimal California contacts" whose claims the Legislature sought to exempt. Applicant's contract of hire, entered into within California's territorial borders, serves to confer California jurisdiction over applicant's claimed cumulative injury. (*Hansell, supra*, at p. *31; see also *Hermanson v. San Francisco Giants* (November 20, 2023, ADJ11134795) [2023 Cal. Wrk. Comp. P.D. LEXIS 328]; *Wilson v. Florida Marlins* (February 26, 2020, ADJ10779733) [2020 Cal. Work. Comp. P.D. LEXIS 30].)

Accordingly, we will rescind Finding of Fact No. 2, which finds no jurisdiction pursuant to section 3600.5, and substitute a Finding of Fact that applicant's California contract of hire confers subject matter jurisdiction over the claimed injury pursuant to section 3600.5(a).

We next turn to the issue of whether compensation is barred by the statute of limitations of section 5405, and the related question of applicant's date of injury pursuant to section 5412. The WCJ's Findings of Fact determine that applicant's date of injury as described by section 5412 is

"no later than the Spring of 2004," and consequently that applicant's filing of a claim in 2018 is barred by section 5405.

Generally, proceedings before the Workers' Compensation Appeals Board are commenced by the filing of an application. (Lab. Code § 5500; Cal. Code Regs., tit. 8, § 10450.) The time limitations for commencing proceedings are set forth in California Labor Code section 5405:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
> (a) The date of injury.
> (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
> (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

Thus, an applicant must commence proceedings with the WCAB within one year of (1) the date of injury or (2) the expiration of the period covered by the employer's last payment of disability indemnity or (3) the date of the last furnishing by the employer of medical, surgical or hospital treatment. (*J.T. Thorp v. Workers' Comp. Appeals. Bd.* (*Butler*) (1984) 153 Cal.App.3d 327 [49 Cal.Comp.Cases 224].)

In cases involving an alleged cumulative injury, the date of injury is governed by section 5412, which holds:

> The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.
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> (Lab. Code, § 5412.)

The Court of Appeal has defined "disability" per section 5412 as "either compensable temporary disability or permanent disability," noting that "medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may a need for splints and modified work. These are questions for the trier of fact to determine and may require expert medical opinion." (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579].)

Regarding the "knowledge" component of section 5412, whether an employee knew or should have known his disability was industrially caused is a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53] (*Johnson*).)

In *Johnson*, applicant, a long-term employee of the City of Fresno, experienced chest pain on December 21, 1980, and was subsequently hospitalized with a myocardial infarction. (*Johnson, supra*, at p. 469.) Applicant entertained the belief that his condition was work-related in early 1981, but a medical examination conducted in June, 1981, concluded that applicant's heart problems were nonindustrial. In July, 1981, the City provided applicant with the requisite notices regarding his workers' compensation rights. However, applicant did not file his claim for workers' compensation benefits until July 9, 1982. The WCJ found applicant's claim was not barred by the statute of limitations, and the WCAB affirmed. Following defendant's Petition for Writ of Review, the 5th District Court of Appeal began its analysis by observing that, "[w]hether an employee knew or should have known his disability was industrially caused is a question of fact." (*Id.* at p. 471.) The court pointed out that "[a]n employee clearly may be held to be aware that his or her disability was caused by the employment when so advised by a physician," but that "in some cumulative injury cases a medical opinion that the applicant's disability is work related is not necessary to support a finding that an applicant, in the exercise of reasonable diligence, should have known of that relationship." (*Id.* at pp. 472-473.) Synthesizing these principles, the *Johnson* court concluded that, "applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*Id.* at p. 473.) Accordingly, and notwithstanding his suspicions of work-relatedness, Johnson was not charged with knowledge that his condition was work related. (*Ibid.*)

Here, the record does not reflect applicant's receipt of medical advice as to the existence of a cumulative injury, or its relationship with applicant's work activities, prior to the QME evaluation conducted by Dr. Hatch on November 16, 2018. (Lab. Code, § 5705; Ex. D, Report of George "Rick" Hatch, M.D., dated November 16, 2018, at p. 28.)

Notwithstanding the lack of medical advice, however, the WCJ has determined that the nature of the disability and applicant's training, intelligence and qualifications are such that

applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability. (*Johnson, supra,* at p. 473.) The Opinion on Decision explains that applicant's work as a professional athlete would confer an understanding of the relationship between his work activities and his industrial injuries:

> Here, applicant testified to receiving treatment from team physicians, but even absent that, physician confirmation in the matter at hand isn't necessary as a contrary conclusion would render any Statute of Limitations (which is designed to give a time limit on ascertaining one's rights) so emasculated as to render it a nullity. Further, as defendant cites, there are cases supporting the proposition that knowledge can be imputed without confirmation of a physician.
>
> (Opinion on Decision, p. 8.)

Defendant's Answer asserts that applicant should have known he sustained disability and that the disability was related to his industrial exposures because "applicant was employed in a very physical position widely known to be injurious." (Answer, at p. 12:9.) Defendant asserts, "[t]he fact that it is common practice for sports teams, including many high school sports teams, to employ team trainers is telling in of itself, as it does not require specialized knowledge to infer that strenuous sports activity can, and often does, lead to injuries and wear-and-tear on the body." (*Id.* at p. 15:3.)

However, we are not persuaded that employment in a physically demanding profession confers an understanding of the relationship between the known adverse factors involved in applicant's employment and applicant's disability.[3] (*Id.* at p. 473.) Such a finding of knowledge would necessarily rest on a court's after the fact determination that a specific profession was sufficiently arduous, and would necessarily impute to every member of that profession the knowledge that injuries occurring during their professional career were related to occupational hazards, effectively vitiating the knowledge requirement of section 5412. (See *J. T. Thorp v. Workers' Comp. Appeals Bd., supra,* 153 Cal.App.3d 327, 341 ["…the purpose of section 5412

[3] We take exception to defendant's assertion that our verbatim citation to the Court of Appeal's analysis in *Johnson* "can almost be interpreted as an insult to the applicant's cognitive abilities." (Answer, at p. 14:15.) We remind defense counsel that WCAB Rule 10421 prohibits the use of language in a pleading that is directed to the Appeals Board, its officials or staff or any party that is insulting, offensive, intemperate, foul, vulgar, obscene or disrespectful, or where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board, or its commissioners, judges or staff. We expect defendant to refrain from this type of inflammatory rhetoric in future filings.

was to prevent a premature commencement of the statute of limitations, so that it would not expire before the employee was reasonably aware of his or her injury."].

Applicant acknowledged at trial that he "had injuries while playing baseball and knew it was from his career, but he didn't know he could file a claim for workers' compensation as no one told him he could." (January 16, 2020 Minutes, at p. 6:23.) Applicant further testified that he sustained various specific injuries which resulted in surgeries to both shoulders, the right knee, and right toe. (August 8, 2023 Minutes, at 4:19.) In addition, "[a]pplicant saw Dr. Hatch in November 2018 after he filed the claim, who concluded something to the effect that applicant sustained a cumulative trauma due to applicant's career in major league baseball…[t]his was the first medical report that explained the injury occurring, 'over the course of your career' rather than using the term, 'cumulative trauma.'" (*Id.* at p. 5:9.) Thus, applicant was not possessed of an understanding that he had incurred a cumulative injury, or that his work activities were causative of that cumulative injury, until he received medical advice to that effect in 2018. Nor does the record demonstrate that at any point prior to 2018 applicant was advised as to his rights to file a California workers' compensation claim on a cumulative basis, or the associated time limits for filing. (*Galloway v. Workers' Comp. Appeals Bd.* (1998) 63 Cal.App.4th 880 [63 Cal.Comp.Cases 532].) In short, the nature of the disability and applicant's training, intelligence and qualifications required medical advice to the applicant to satisfy the knowledge requirement of section 5412. (*Johnson, supra,* at p. 473.)

The first evidence of medical advice to the applicant of the existence of a cumulative injury, as well as the first evidence of the *relationship* between applicant's work activities and *an identified cumulative injury* is the November 16, 2018 report of QME Dr. Hatch. (Ex. D, Report of George "Rick" Hatch, M.D., dated November 16, 2018, at p. 28.) Accordingly, we conclude that the date of injury pursuant to section 5412 was November 16, 2018. By extension, the Application for Adjudication, filed on February 21, 2018, was not filed more than one year from the date of injury pursuant to section 5412, and compensation is not barred by the running of the statute of limitations of section 5405. Accordingly, we will rescind Finding of Fact No. 4 and substitute new findings of fact that compensation is not barred by section 5405.

In summary, we are persuaded that applicant's California contract of hire with the San Diego Padres was sufficient to confer California jurisdiction over applicant's claimed injury pursuant to section 3600.5(a). We are not persuaded that applicant's employment as a professional

baseball player was sufficient to confer knowledge of the existence of a cumulative injury, or its relationship to his work activities. We conclude that the nature of the disability and applicant's training, intelligence and qualifications required medical advice to the applicant to satisfy the knowledge requirement of section 5412, and that the first evidence of such medical advice was the QME report of November 16, 2018. The application for adjudication was not filed more than one year after the date of injury, and compensation is not barred by section 5405. Accordingly, we will rescind the F&O and substitute new Findings of Fact that there is California jurisdiction over applicant's claimed injury, that the date of injury was November 16, 2018, and that compensation is not barred by section 5405.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of November 22, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of November 22, 2023 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Gregory Vaughn, while employed during the period June 1, 1986 to July 13, 2003, as a Professional Baseball Player, occupational group 590, at various locations in and out of California, by the Tampa Bay Rays and the Colorado Rockies, claims to have sustained injury arising out of and in the course of employment to his head, neck, back, arms, shoulders, elbows, wrist, hands, fingers, legs, hips, knees, ankle, feet, toes, and in the form of neurological and internal injuries.
2. Applicant's California contract of hire confers jurisdiction over the claimed injury pursuant to section 3600.5(a).

3. The date of injury pursuant to section 5412 was November 16, 2018.
4. Compensation is not barred by section 5405.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 5, 2024

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

GREGORY VAUGHN
MADANS LAW GROUP
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

SAR/abs

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