

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

**CHAD FONCECA, *Applicant***

**vs.**

**CINCINNATI REDS, SELF-INSURED, *Defendants***

**Adjudication Number: ADJ15179609  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the January 3, 2024 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from June 1, 1995 to October 1, 1996, claims to have sustained industrial injury to his head, neck, back, shoulders, elbows, wrists, hands, fingers, hips, knees, ankles, feet, toes, internal issues, neurological issues, psychological issues, and sleep issues. The WCJ found that the Workers' Compensation Appeals Board (WCAB) has specific personal jurisdiction over the Cincinnati Reds.

Defendant contends the court lacks personal jurisdiction because the team did not avail itself to the forum state.

We have received an Answer from applicant. 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 Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

## FACTS

Applicant claimed injury to his head, neck, back, shoulders, elbows, wrists, hands, fingers, hips, knees, ankles, feet, toes, internal issues, neurological issues, psychological issues, and sleep issues while employed as a professional athlete by defendant Cincinnati Reds from June 1, 1995, through October 1, 1996. Defendant's September 15, 2021 Notice of Representation asserted a lack of personal and subject matter jurisdiction.

The parties proceeded to trial on March 1, 2023, framing for decision the sole issue of whether there is personal jurisdiction over the Cincinnati Reds. (March 1, 2023 Minutes of Hearing and Summary of Evidence (Minutes), dated March 1, 2023, at p. 2:15.)

Applicant testified that he attended an open tryout in 1995 in Adelanto, California, at which time he was scouted by Robbie Cassero for the Cincinnati Reds. Applicant was further evaluated by Mr. Cassero's supervisor in the Reds organization, and later by the Western Regional Director for the Reds organization who watched applicant "throw a bullpen." (*Id.* at p. 3:18.) On July 14, 1995, applicant signed a one-year contract with the Reds in Victorville, California.

During the 1995 season, applicant played for the Princeton Reds in West Virginia. (*Id.* at p. 4:2.) Following the end of the season, applicant returned to California where he worked in retail sales but continued to work out with his high school baseball coach. During this time, Mr. Cassero instructed applicant to pitch in junior college games. Applicant believed that Mr. Cassero continued to be affiliated with the Reds. Mr. Cassero was present at applicant's pickup games. (*Id.* at p. 5:6.)

Applicant participated in spring training in Florida in February and March, 1996. Applicant was then sent to play for a team in Billings, Montana, where he played until he was released at the end of the 1996 season. (*Id.* at p. 4:24.) During his time in professional baseball, applicant never played a game in California. (*Id.* at p. 5:10.)

The WCJ conducted additional trial proceedings on November 8, 2023, and the parties submitted the matter for decision the same day.

On January 3, 2024, the WCJ issued his Findings of Fact, determining in relevant part that the Workers' Compensation Appeals Board has personal jurisdiction over the Cincinnati Reds. (Finding of Fact No. 3.) The WCJ's Opinion on Decision concluded there was no general personal jurisdiction. However, the WCJ also observed that following the completion of applicant's first season with the Reds, applicant returned to California where the scouting agent initially

responsible for his hiring with Reds arranged for applicant to play in community college baseball games. The WCJ also determined that the scouting agent continued to represent the Reds organization, and that applicant reasonably believed that his participation in the community college games was necessary. (Opinion on Decision, at pp. 6-7.) The WCJ concluded that “the Red’s direction and control over the action of the applicant (through arranging the community college games he was instructed to play) through Mr. Cassero, a representative of the Reds, demonstrate contact with the applicant in California.” (*Id.* at p. 7.) Accordingly, the WCJ determined the contacts were sufficient to warrant the exercise of specific personal jurisdiction over the Reds.

Defendant’s Petition avers “applicant was not directed by the Reds to perform any activities in California, and all the applicant’s work with the Reds took place outside California.” (Petition, at 5:10.) Defendant also contends that applicant’s off-season activities were essentially self-directed and that the Reds exerted no control over where off-season activities were performed. Defendant asserts applicant has not established that there is a connection between the alleged injury and California, because applicant’s claimed injurious activities all took place outside California. (*Id.* at p. 7:14.)

Applicant’s Answer contends that “the formation of a contract of hire, standing alone, is sufficient to confer jurisdiction over an industrial injury that occurs outside the state.” (Answer, at p. 4:9.) Applicant also contends that defendant maintained multiple contacts with California, including the process of identifying applicant as a potential player, hiring applicant, and maintaining the availability of applicant between the 1995 and 1996 seasons. (Petition, at pp. 4-5.) Applicant avers that defendant’s contact with California were sufficient to warrant the exercise personal jurisdiction.

## **DISCUSSION**

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 [1973 Cal.App. LEXIS 991], citing *International Shoe Co. v. State of Washington*, 326 U.S. 310 [66 S.Ct. 154] and *Michigan Nat. Bank v. Superior Court*, 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) [1964 Cal.App.LEXIS 1319].)

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].)

Here, the WCJ determined that there were sufficient contacts between the Cincinnati Reds and the forum state of California to support the court's exercise of personal jurisdiction over the defendant. (Report, at pp. 7-8.) Citing to *AMA Multimedia, LLC v. Wanat* (2020) 970 F.3d 1201, 1208 [2020 U.S. App. LEXIS 25986], the WCJ's report observes that the exercise of personal jurisdiction requires:

[A] three-part inquiry to determine whether a nonresident defendant has such "minimum contacts" with the forum to warrant the court's exercise of specific jurisdiction:

- (1) the defendant must either "purposefully direct his activities" toward the forum or "purposefully avail[] himself of the privileges of conducting activities in the forum";
- (2) "the claim must be one which arises out of or relates to the defendant's forum-related activities"; and
- (3) "the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable."

(*Id.* at p. 1208.)

The WCJ's Report observes that the same scout for the Reds that initially recruited applicant also oversaw some of applicant's off-season training, including directing applicant to play junior college baseball in the off-season. (Report, a p. 6.) As such, the Reds through their agent Mr. Cassero, continued to exert control over the actions of the applicant in the off-season. The WCJ further observes that the claimed cumulative injury period encompasses the off-season applicant was in California, thus creating a relationship between the claimed injury and the forum state. (Report, at p. 7.) With respect to the requirement for reasonableness, the WCJ observed that

the Reds would have had a reasonable interest in maintaining and improving the quality of its players. Accordingly, the WCJ concluded that the Reds' contacts with California were of a sufficient number and nature to support California's exercise of personal jurisdiction over the defendant. (*Id.* at p. 8.)

Defendant's Petition characterizes the applicant's off-season activities as essentially self-directed and disclaims involvement or direction by the Cincinnati Reds. (Petition, at 5:10.) Applicant chose where to return to at the end of the 1995 season and took positions in retail sales of his own choosing. Applicant also instituted a workout plan on his own. Applicant testified that he was aware that Mr. Caserro left his employment with the Reds at some point but could not pinpoint exactly when that happened. (Petition, at 6:11.) Because the Reds had no involvement with applicant's off-season activities, and the claimed injury took place outside California, defendant asserts the court lacks personal jurisdiction over the team. (*Id.* at p. 7:4.)

In *Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472 [108 Cal. Rptr. 23], a football player filed suit in California seeking damages arising out of a contract dispute with out-of-state employer Detroit Lions. The Lions responded by asserting the court lacked personal jurisdiction over the team. The superior court agreed, quashing the service of summons on the grounds that the Lions owned no property in California and transacted no business in California. Martin sought review by the Court of Appeal, which reversed and found personal jurisdiction. The court observed:

It is undisputed that appellant [football player] was scouted by respondent [Detroit Lions] while he was playing football in California, that he was recruited in the City of Bakersfield and that the employment contract was signed in that city. It is also undisputed that respondent derives a substantial part of its income from paying customers who attend professional football games, that respondent's team, the Detroit Lions, plays at least one of the four California professional football teams regularly in California, that when the Detroit Lions play in California respondent receives a portion of the California gate receipts, that in 1970 the Detroit team played the Los Angeles Rams in Los Angeles before a sellout crowd, and that respondent's team was scheduled to play the San Francisco Forty Niners in this state in 1971. Finally, it is undisputed that in 1970 respondent employed a professional scout, that the scout maintained a residence in California and that he scouted and recruited football players in California for respondent.

(*Id.* at p. 475.)

Accordingly, the contacts between the out-of-state employer and the forum state were sufficient that the exercise of personal jurisdiction did not “offend traditional notions of fair play and substantial justice.” (*Id.* at p.476.)

We note that here, as in *Martin, supra*, the question of whether the court may reasonably exercise personal jurisdiction over an out-of-state defendant is an inherently factual inquiry. Here, applicant was initially scouted in California by Mr. Casero for the Cincinnati Reds. Mr. Cassero “came to watch the applicant throw a bullpen.” (Minutes at p. 3:19.) Applicant was subsequently evaluated by two additional members of the Reds’ organization, Mr. Casero’s supervisor, and the Western Regional Director for the Reds. (*Ibid.*)

The Cincinnati Reds opted to present applicant with an initial contract. However, further negotiations transpired based on “input from the Western Regional Director.” (*Id.* at p. 3:21.) The applicant then signed a contract with the Reds from the living room of his parents’ home in Victorville, California. (*Id.* at p. 3:24.) Thereafter, applicant flew from California to West Virginia, at the Reds’ behest. (*Id.* at p. 4:2.)

Following the completion of the 1995 season, applicant returned to California of his own accord, and without direction from the Reds. (*Id.* at p. 4:20.) In addition, applicant had no earnings from the Reds during the off-season. (*Id.* at p. 4:17.) Applicant was told to “go home,” and that the Reds would contact him with respect to spring training. (Further Minutes of Hearing and Summary of Evidence, dated November 8, 2023, at p. 2:20.)

Following applicant’s return to California for the off-season, the scouting agent that initially signed applicant to the Reds organization directed applicant to participate in Junior College baseball games. The applicant attended “every game he was asked to by Mr. Cassero,” and “the only person from the Reds present at his pick-up games was Mr. Cassero.” (Minutes at p. 5:6.) While applicant could not testify with certainty, applicant testified that he believed Mr. Cassero remained affiliated with the Reds in 1995. (*Id.* at p. 4:5.) We also note that in this regard, defendant offers no evidence that challenges applicant’s understanding of the relationship between Mr. Cassero and the Reds in 1995 or 1996. In addition, the WCJ found applicant’s testimony to be fully credible (Report, at p. 6), and we accord to this determination the great weight to which it is entitled. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

We also observe that the claimed cumulative injury period encompasses the time applicant pitched in off-season games in California. (Minutes at p. 2:4; 4:15.)

Based on the foregoing, we conclude the Cincinnati Reds had multiple contacts with California. Applicant, a California resident at all relevant times, was scouted on several occasions in California by the Cincinnati Reds. Applicant signed a contract in California with the Reds. Thereafter, applicant promptly traveled at the expense of the Reds to play in West Virginia. Upon the completion of the baseball season applicant returned to California. The Reds informed applicant at the time he would be contacted regarding spring training. The Reds continued to exercise control over applicant's activities in the off-season, directing him to play in junior college games, always attended by the same scout that was responsible for applicant's original hiring by the Reds. Following his participation in the junior college games in California in the off-season, applicant returned to spring training and played for the affiliate team for the Reds during the 1996 season.

On these facts, we are persuaded that the contacts between the Cincinnati Reds and California were sufficient to warrant the exercise of personal jurisdiction over the defendant. As was the case in *Martin v. Detroit Lions*, the defendant "moved through this state with more than a 'footfall,' and the maintenance of [applicant's] lawsuit in a California court 'does not offend "traditional notions of fair play and substantial justice.'" ( *Martin v. Detroit Lions, supra*, 32 Cal.App.3d at p. 476.) We will affirm the January 3, 2024 Findings of Fact, accordingly.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 20, 2024**

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

**CHAD FONCECA  
PRO ATHLETE LAW GROUP  
BOBER, PETERSON & KOBY**

**SAR/abs**

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