

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

**DANIEL HUNTER, *Applicant***

**vs.**

**LOUISIANA WORKERS' COMPENSATION CORPORATION; INSURANCE  
COMPANY OF NORTH AMERICA/ACE USA; DENVER BRONCOS, *Defendants***

**Adjudication Number: ADJ9078233  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant Louisiana Workers' Compensation Corporation (LWCC) seeks reconsideration<sup>1</sup> of the May 18, 2023 Arbitrator's Findings and Order (F&O), wherein the workers' compensation arbitrator found that the insurance policy issued by the LWCC does not contain a clear and legal exclusion of coverage for employees working temporarily out of state, and because the terms are unclear, the policy affords coverage to football players with the Shreveport Pirates who were injured while playing football for the team while out-of-state.

The LWCC contends that the arbitrator incorrectly analyzed relevant case law, and that a plain and clear reading of the LWCC policy limits the coverage to claims for Louisiana benefits filed in Louisiana.

We have received an Answer from the Denver Broncos. The arbitrator 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.

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<sup>1</sup> Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been assigned in her place.

## FACTS

This matter involves an insurance coverage dispute. The parties have stipulated that applicant Daniel Hunter filed an Application for Adjudication of Claim alleging a continuous trauma injury from January 13, 1984 to June 1, 1995 as a professional football player for various teams, and claims to have sustained an injury arising out of and occurring in the course of his employment to his head, neck, upper extremity, leg and “multiple body parts.” (Report, at p. 10:22.) The parties have further stipulated that applicant was employed by the Shreveport Pirates from January 6, 1994 to November 4, 1994, and that during this period, the Shreveport Pirates were insured by the LWCC. (Arbitrator’s Opinion on Decision, March 18, 2023, at p. 2:13.)

In an August 9, 2018 Findings and Decision, the arbitrator determined that the policy issued by the LWCC provided insurance coverage for applicant’s injuries sustained while applicant was temporarily working in California. (Arbitrator’s Findings and Decision, August 9, 2018, Finding Nos. 6, 9 & 10.) Following defendant LWCC’s August 9, 2018 appeal, we granted reconsideration.

We began our discussion with the observation that “[b]ecause each state has the ability [to] regulate the content of workers’ compensation policies, most insurers use a standard workers’ compensation policy form authored by the National Council on Compensation Insurance (NCCI) that is approved in all states.” (Opinion and Decision After Reconsideration, September 21, 2022, p. 3.) We noted that the standard policy includes Part One, providing workers’ compensation coverage, and Part Two, providing employer liability coverage. (*Ibid.*) We noted that the arbitrator’s August 9, 2018 decision appeared to rely on *Watkins et. al. v. New York Giants* (2015) (May 7, 2015, ADJ6710001) [2015 Cal. Wrk. Comp. P.D. LEXIS 291] (*Watkins*) for the proposition that Part Two of a standard NCCI policy “may provide coverage for workers’ compensation claims,” and that such reliance was inconsistent with the California Supreme Court’s decision in *La Jolla Beach & Tennis Club, Inc. v. Industrial Indemnity Co.* (1994) 9 Cal.4th 27 [59 Cal.Comp.Cases 1002].) We further noted that a recent panel decision in *Stabler v. KS Adams* (2022) (May 6, 2022, ADJ17762424) [2022 Cal. Wrk. Comp. P.D. LEXIS 129] (*Stabler*) discussed issues similar to those issues at bar. (*Id.* at p. 4.) We thus concluded that, “[g]iven the recent clarification of the law in this area, the parties and the arbitrator should be provided with an opportunity to reframe the issues and make arguments based on the relevant law.” We rescinded the arbitrator’s Findings of Fact and returned the matter to the arbitrator for further proceedings. (*Ibid.*)

Further arbitration proceedings were held on March 14, 2023 at which time the parties reframed the stipulations and issues, and submitted the matter for decision.

On May 18, 2023, the arbitrator issued his F&O, finding in relevant part (as summarized by the arbitrator):

The applicant claims an injury while employed as a football player for the Shreveport Pirates of the Canadian Football League and was playing in a game in Sacramento California against the Sacramento Gold Miners, another team in the Canadian Football League. The applicant was temporarily in the state of California for this football game and was playing in the game while he was an employee of the Shreveport Pirates, a team head quartered in the state of Pennsylvania. The Shreveport Pirates were insured during that entire period by Louisiana Workers' Compensation Corporation.

The Louisiana Workers' Compensation Corporation is a statutorily created private, nonprofit insurance company established in 1992 to provide an alternative to private insurance in Louisiana. The Louisiana Workers' Compensation Corporation is a company that competes with other providers of workers' compensation coverage and discovered by the statutes and regulations of the state of Louisiana.

The Workers' Compensation Insurance Policy issued to the Shreveport Pirates by the Louisiana Workers' Compensation Corporation indicates on Page 1 (Information Page) in paragraph 3(A) as follows:

Workers' Compensation Insurance: Part One of the policy applies to workers' compensation law of the state listed here: LOUISIANA.

On Page 1 paragraph 3(C) the policy states as follows: Other States Insurance: Part Three of the policy applies to the states, if any, listed here: NONE.

The Workers' Compensation Insurance Policy issued to the Shreveport Pirates by the Louisiana Workers' Compensation Corporation on Page 9 indicates as follows: this other states insurance applies only if one or more states are shown in Item 3C of the Information Page.

The insurance policy on Page 4 as to the location indicates as follows: This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page, and it covers all other workplaces in Item 3A states unless you have other insurance or are self-insured for such workplaces.

The Workers' Compensation Insurance Policy issued to the Shreveport Pirates by the Louisiana Workers' Compensation Corporation on Page 15 indicates as follows:

Part Three - Other States Insurance section of this policy is deleted and replaced by the following. This change reduces coverage. This policy provides coverage for your responsibilities under the workers' compensation law in the state of Louisiana. Other Terms - all other terms remain the same.

The insurance policy issued by the Louisiana Workers' Compensation Corporation to the Shreveport Pirates contained no other clauses, exclusions or language regarding injuries while employees of the Shreveport Pirates were employed in other states. The insurance policy made no mention of covering or not covering employees temporarily in another state while providing services to the Shreveport Pirates or while working in another state as a commercial traveler.

(Report, at pp. 10-12.)

Defendant LWCC's Petition avers the arbitrator failed to properly apply the analysis in *Stabler*, and failed to address whether the employer was illegally uninsured in California pursuant to Labor Code<sup>2</sup> section 3700. LWCC avers it is not an admitted insurer in California, and that by its own terms, the policy restricts claims and benefits according to Louisiana law. (Petition, at 2:16.) LWCC further contends that a plain and clear reading of the policy limits its coverage to claims for Louisiana benefits, filed in Louisiana. (*Id.* at p. 3:9.) LWCC notes that the language of the policy endorsement clearly states that it is reducing coverage, and that a reasonable interpretation is that the coverage limits the responsibilities of the LWCC to those obligations set forth under the workers' compensation laws of the State of Louisiana. (*Id.* at pp. 3-4.)

In its Answer, the Denver Broncos aver the arbitrator correctly determined that the policy issued in favor of the Shreveport Pirates provided workers' compensation coverage for applicant's injury while temporarily working in California. (Answer, at 2:6.)

## DISCUSSION

A petition is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.) However, we believe that "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice...." (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied the applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor

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<sup>2</sup> All further statutory references are to the Labor Code unless otherwise stated.

Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shipley, supra*, 7 Cal.App.4th at p. 1108.)

In this case, the arbitrator issued the Findings and Order on May 18, 2023, and defendant LWCC filed a timely petition on June 7, 2023. Thereafter, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. Therefore, considering that defendant filed a timely petition and that the Appeals Board's failure to act on that petition was in error, we find that our time to act on defendant's petition was tolled.

We begin our discussion with a discussion of the issues surrounding *Watkins, supra*, 2015 Cal. Wrk. Comp. P.D. LEXIS 291. Our August 9, 2018 Opinion on Decision raised the issue of whether the arbitrator had improperly relied upon *Watkins* to for the proposition that Part Two of a standard NCCI policy may provide coverage for workers' compensation claims. However, in his Report, the arbitrator explains that the citation to *Watkins* in the August 9, 2018 Findings of Fact was offered rather for the premise that an insurance policy must be clear in describing the exclusions and limitations on coverage, and in the absence of clear exclusions, the policy will be read to cover all injuries. (Report, at 14:21.) In *Watkins*, we affirmed that "the language of an insurance policy must be clear in describing exclusions and limitations on coverage," and that the lack of clarity in the exclusions and limitations of the New York State Insurance Fund policy in question was one of several bases for the enforcement of the policy in favor of the New York Giants. (*Watkins, supra*, at p. 4.) We therefore concur with the arbitrator's interpretation and clarification with regard to *Watkins*.

In addition, our August 9, 2018 Opinion on Decision also invited the parties and the arbitrator to review the Appeals Board panel decision in *Stabler, supra*, 2022 Cal. Wrk. Comp. P.D. LEXIS 129. In *Stabler*, we observed that all insurance policies in California are subject to regulation by the Department of Insurance, and must contain a clause "to the effect that the insurer will be directly and primarily liable to any proper claimant for payment of ... compensation." (*Stabler, supra*, at p. 6, citing Ins. Code, § 11651.) In *Stabler*, the insurance company in question wrote an insurance policy that provided for reimbursement to the employer for payment made as a result of a workers' compensation claim, and that reimbursement was substantively similar to an

excess insurance policy, rather than providing for direct or primary liability for the carrier. Because the insurance policy in *Stabler* did not provide for direct or primary liability, we held that the employer failed to secure payment of compensation under section 3700. (*Id.* at pp. 8-9.)

In the instant matter, the arbitrator explains why the facts at bar distinguish this case from *Stabler*:

In this case, the insurance policy issued by the Louisiana Workers' Compensation Corporation could not be determined to be in excess policy as there was no reimbursement language contained in the policy. In this case, the insurance policy issued by the Louisiana Workers' Compensation Corporation is a standard workers' compensation insurance policy with extraterritorial insurance coverage for an injury to an employee while temporarily working assignment in another state, here California. In the opinion of the Arbitrator, for the reasons set forth above, this case involves a finding of coverage based on Part Three of the insurance policy issued by the Louisiana Workers' Compensation Corporation and Louisiana law which covers out-of-state injuries when an employee who is employed in the state of Louisiana is injured while temporarily out-of-state on assignment and is injured.

(Report, at p. 29:7.)

We agree with the arbitrator's analysis, and again note that although the LWCC policy was written in Louisiana, "LWCC used the same NCCI standard policy that a California insurer would use." (Opinion on Decision, September 21, 2022, p. 3.) We therefore concur with the arbitrator that *Stabler* is distinguishable herein.

LWCC contends that "the issue is compliance with Labor Code section 3700 on securing direct payment of compensation which is not present ... consistent with *Stabler*, the LWCC policy does not provide for direct payment." (Petition, at 4:23.) The Report observes, however, that the LWCC policy provides coverage for employees of the Shreveport Pirates temporarily in another state who were injured on the job. The arbitrator frames the issue and analysis as follows:

**Whether at the time the Louisiana Workers' Compensation Corporation policy was written for the Shreveport Pirates, was the Louisiana Workers' Compensation Corporation not an admitted insurer licensed to write workers' compensation insurance in California and, therefore, the Shreveport Pirates did not fulfill their obligation to secure the payment of workers' compensation pursuant to Labor Code §3700 and, accordingly, the Shreveport Pirates were illegally uninsured despite the existence of the Louisiana Workers' Compensation Policy.**

The Louisiana Workers' Compensation Corporation is not authorized to write a policy in the state of California.

However, that is not what occurred in this case.

The Louisiana Workers' Compensation Corporation issued a valid Workers' Compensation policy to the Shreveport Pirates providing workers' compensation coverage for the employees of the Shreveport Pirates. They charged a premium for football players they knew were playing games outside the state of Louisiana on a temporary basis.

The insurance policy issued by the Louisiana Workers' Compensation Corporation and the law of Louisiana provided that the policy covers employees of the Shreveport Pirates temporarily in another state when injured on the job.

Therefore, coverage in this case in California is not based on Part One of the policy of the Louisiana Workers' Compensation Corporation with the Shreveport's Pirates, but is rather based on the Part Three: Other States Insurance coverage section which covers out-of-state injuries and with no valid exclusions for those injuries as set forth above, the policy covers injuries in California, however, the Louisiana Workers' Compensation Corporation only would need to be approved to write a policy in California under Part One of the policy and since coverage in this case is under Part Three, Other States Insurance coverage (extraterritorial provision of the policy), it is not required that the Louisiana Workers' Compensation Corporation be authorized to write insurance in the state of California.

The Louisiana Workers' Compensation Corporation need not be licensed to write insurance in the state account in order to have an insurance policy that has extraterritorial coverage for injuries to employees temporarily in another state on business.

(Report, at p. 27:3, emphasis original.)

We agree with the above analysis, and accordingly find that *Stabler* is distinguishable under the present facts.

The LWCC also contends that a plain and clear reading of the LWCC policy limits the coverage to claims for Louisiana benefits, filed in Louisiana. (Petition, at 3:6.) The LWCC notes the language at p. 15 informing the policy holder that changes made will reduce coverage. The LWCC contends that "a plain and clear reading of the relevant policy language is reasonably interpreted to reduce coverage to responsibility under the Workers' Compensation Laws of the state of Louisiana." (Petition, at 3:27.)

The arbitrator determined that the changes made at p. 15 created ambiguity in the nature and scope of the coverage, rather than clarifying it. The arbitrator concluded that just as in *Watkins, supra*, a failure of clarity in the purported policy exclusions resulting in ambiguity as to the nature of the coverage extended resulted in the policy being read to extend coverage:

Language in an insurance policy is interpreted according to plain, ordinary meanings. Language in the insurance policy describing exclusions and limitations must be in clear language. The insurance policy must clearly describe limitations and exclusions. (*Watkins et al. v. New York Giants, New York Compensation Fund* (2015 Cal. Wrk. Comp. P.D. LEXIS 291) In the absence of a clear exclusion, the insurance policy will be read to cover all injuries. [*Ibid.*]

The Arbitrator finds that the language in the insurance policy issued to the Shreveport Pirates by the Louisiana Workers' Compensation Corporation is ambiguous, unclear and open to multiple interpretations.

(Report, at p. 21:15.)

The arbitrator discusses the policy exclusion found at p. 15, which states:

Part Three - Other states insurance section of this policy is deleted and replaced by the following. This change reduces coverage.

This policy provides coverage for your responsibilities under the Workers' Compensation Law of the State of Louisiana.

Other Terms

All other terms remain the same.

(Ex. B, Workers' Compensation and Employers Liability Policy, May 27, 1994, p. 15.)

The arbitrator observes:

This language is open to the interpretation requested by the Louisiana Workers' Compensation Corporation that extraterritorial injuries are excluded from the policy unless the action is filed in Louisiana.

This language also is open to the interpretation by the Denver Broncos. The change on Page 15 deletes the other states' coverage language in the policy and replaces it with the language that is stated above. That language is open to the interpretation made by the Denver Broncos that if Louisiana law imposes liability upon the Shreveport Pirates to pay benefits for its former players alleged injuries while occurring outside the state of Louisiana, the liability would be the responsibility of the policy.



In addition, exclusions and the policy must be clearly stated. In this case, nowhere in the policy does it specifically state that the policy does not cover extraterritorial injuries that are filed in the state where in the injury occurred.

The exclusion had to be clearly stated not merely open to interpretation. This is especially true in light of the fact the employer was a football team that played one-half of its games out-of-state. The Louisiana Workers' Compensation Corporation relies on the out-of-state provision which is stated above is unclear as to its intent. If the Louisiana Workers' Compensation Corporation intended an exclusion for extraterritorial injuries, they should have set forth that exclusion in clear and unambiguous language. There is no language or endorsement contained in the insurance policy issued by the Louisiana Workers' Compensation Corporation of an express limitation of extraterritorial injuries and jurisdiction. There is no express exclusion in the insurance policy for injuries in another state and filed in another state and not defending or paying benefits based on an award issued by another state having jurisdiction. In the opinion of the Arbitrator, in the absence of such express language excluding such injuries and filings in another state and in light of the know business of the insured, the fact that the Shreveport Pirates played approximately one-half their games out-of-state, it is found by the Arbitrator that the insurance policy issued by the Louisiana Workers' Compensation Corporation to the Shreveport Pirates covers applicant's claim in California.

In addition, as cited above, it was the intent of Louisiana law to cover employees in Louisiana companies insured by the Louisiana Workers' Compensation Corporation when injured on assignment temporarily out-of-state. The only issue becomes whether the policy has an endorsement that restricts liability unless the claim is filed in Louisiana. The Arbitrator finds there is no explicit language setting forth that endorsement and there is nothing in Louisiana law that indicates out-of-state injuries of employees injured when temporary out-of-state are restricted to their liability when filed in Louisiana. In the opinion of the Arbitrator, language in the policy is unclear and, therefore, the policy covers out-of-state injuries that occurred when the employee was temporarily on assignment out-of-state. In addition, the insurance policy accepted premium for football players and Louisiana Workers' Compensation Corporation had to be aware that they played out-of-state games and having received premium for these types of injuries are liable even though the injury occurred in another state. In the opinion of the Arbitrator, there is no valid exclusion in the policy issued by the Louisiana Workers' Compensation Corporation to the Shreveport Pirates that restricts the policy to pay for an employee temporarily on assignment in another state when injured only in the case that the compensation claim is filed in Louisiana.

(Report, at p. 21:15.)

We find the analysis of the arbitrator to be persuasive. We agree that the changes made on p. 15 to Part Three of the policy render it susceptible to multiple interpretations, as discussed by the arbitrator. Accordingly, we discern no abuse of discretion in the arbitrator's decision to read the policy as extending coverage to the claimed injuries herein.

We further note that the arbitrator has identified issues of California jurisdiction as falling outside the remit of the arbitrator, which in this instance is limited to issues of insurance coverage, and the arbitrator has therefore deferred such issues to further proceedings before the Workers' Compensation Appeals Board. In *Watkins, supra*, we noted that the insurance carrier "may raise its contention that it has no authority to write compensation insurance in California and that there is not sufficient connection with California and each of the injury claims to support WCAB jurisdiction over the [employer] at the trial level for determination by a WCJ at the time each individual claim is adjudicated." (*Watkins, supra*, at p. 7.) Accordingly, we discern no error in the arbitrator's deferral of the jurisdictional questions herein as well. (F&O, at p. 23:2.)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ NATALIE PALUGYAI, COMMISSIONER**

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



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

**October 16, 2023**

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

**DANIEL HUNTER  
NBO LAW  
TOBIN LUCKS  
LAUGHLIN, FALBO, LEVY & MORESI  
RUSSELL LEGAL  
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK  
MARK L. KAHN, ARBITRATOR**

**SAR/abs**

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