**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**NATHAN RUHL, *Applicant***

**vs.**

**KANSAS CITY T-BONES, BERKLEYNET MANASSAS; NEWARK BEARS, TRAVELERS INSURANCE/LIBERTY MUTUAL; LAS VEGAS 51'S, JACKSONVILLE, for the LOS ANGELES DODGERS; ACE AMERICAN, adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES – RIVERSIDE; CHATTANOOGA for the CINCINNATI REDS, self-insured; BAKERSFIELD BLAZE; ST. PETERSBURG, CHARLESTON, PRINCETON and GULF COAST LEAGUE for the ORLANDO RAYS; *Defendants***

**Adjudication Number: ADJ10622392**
**Santa Ana 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.[1]

Applicant seeks reconsideration of the Findings and Order dated August 10, 2018, wherein the workers' compensation administrative law judge (WCJ) found that applicant's claim was exempt from the California workers' compensation system pursuant to Labor Code section 3600.5, subdivision (d)(1)(B).[2] Applicant contends the WCJ erred in determining that he had spent at least seven seasons playing for teams based outside California.

We received an Answer from the Los Angeles Dodgers ("Dodgers"), arguing that the WCJ correctly determined that applicant had spent at least seven seasons playing for teams based outside California, and further alleging that the WCJ erred in finding that applicant met the requirements of section 3600.5, subdivision (d)(1)(A).

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[1] Commissioner Lowe, who was on the panel that granted reconsideration to further study the factual and legal issues in this case, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] All further references are to the Labor Code unless otherwise stated.

We have reviewed the record and considered the allegations of the Petition and the Answer. For the reasons discussed below, as our decision after reconsideration, we will affirm the WCJ's finding that applicant's claim is barred pursuant to section 3600.5, subdivision (d)(1)(B).

## FACTUAL BACKGROUND

Applicant Nathan Ruhl asserts that, while employed as a professional baseball player, he sustained a cumulative trauma injury to multiple body parts during the period from 1996 to 2005. Although the parties are somewhat vague in their briefing as to applicant's precise dates of employment, neither party appears to contest the dates of employment found by the WCJ in her Opinion on Decision, which states that applicant was employed by the following teams for the following periods:

| | |
|---|---|
| Tampa Bay Devil Rays | June 12, 1996 to August 9, 2002 |
| Cincinnati Reds | August 16, 2002 to December 16, 2002 |
| Los Angeles Dodgers | December 16, 2002 to August 10, 2004 |
| Newark Bears | Approximately 1 month circa August 2004 |
| Kansas City T-Bones | June 2005 to September 2005 |

(Opinion on Decision, at p. 8.) While employed by the Tampa Bay Devil Rays ("Devil Rays"), applicant was dispatched to a variety of minor league affiliates; two of those affiliates were California-based. (Exs. 1, A, D; see also Applicant's Revised Games Played & Duty Days; Answer, Appendix A.) While employed by the Dodgers, applicant did not actually play for the Dodgers, instead playing for a number of out-of-state minor league affiliates. (Exs. 1, A, D; see also Applicant's Revised Games Played & Duty Days; Answer, Appendix A.) Applicant also played in the Australian Winter League for the 2001–2002 Winter League season, which began after Thanksgiving and ended in January of the following year. (Transcript, 3/19/2018, at p. 89–90.) The parties agree that none of applicant's contracts were signed in California.

The matter proceeded to trial on March 19, 2018, with applicant as the only witness to testify, and without any objections to offered exhibits. (*Id.* at pp. 1–9.) Applicant testified at length about his playing career, both from memory and in consultation with the parties' exhibits.[3]

[3] Because the parties' dispute centers on the appropriate legal characterization of various periods of applicant's career, rather than factual disagreements, applicant's testimony is summarized here only in the briefest of terms.

(*Id.* at pp. 9–101.) After applicant's testimony concluded, the WCJ announced that the matter would be taken under submission after receipt of post-trial briefs from the parties, due on April 23, 2018. (*Id.* at pp. 101–102.)

On May 18, 2018, the WCJ issued an Order Vacating Submission, ordering the parties to appear on July 17, 2018 with more comprehensive information on applicant's dates of employment, including information related to applicant's duty days with teams based in California and out-of-state. (Order Vacating Submission, at pp. 1–2.) On July 17, 2018, the matter was taken under submission again, after receipt of the requested information. (Minutes of Hearing, 7/7/2018.)

The WCJ issued her Findings and Decision on August 10, 2018, finding that applicant's claim was barred because he had spent seven or more seasons working for teams based outside California, pursuant to section 3600.5, subdivision (d)(1)(B). (F&A, at pp. 2–3.) The Opinion on Decision makes clear that the WCJ's calculations did not include seasons spent employed by the Dodgers, even though applicant was dispatched to out-of-state affiliates during the entirety of his employment with that team; the WCJ did, however, include time spent playing in the Australian Winter League, as well as time spent playing for the Newark Bears ("Bears") and the Kansas City T-bones ("T-Bones"). (Opinion on Decision, at pp. 6–8.)

This Petition for Reconsideration followed.

## DISCUSSION

Under California 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. Pan American World Airways* (1959) 270 F.2d 355, 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 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]

Under certain circumstances, additional requirements apply to professional athletes filing workers' compensation claims involving occupational disease or cumulative trauma injuries. Section 3600.5, subdivision (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 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.

[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.)

(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).)

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).)

Here, the parties do not dispute that section 3600.5, subdivision (d) applies to applicant's claim. Where the parties differ, however, is on their interpretation of how to apply the statute to applicant's career. Specifically, the parties appear to disagree on three key issues. First, the parties disagree as to whether applicant's time spent under contract to the Dodgers but playing for out-of-state affiliates should be credited as time spent working for a California-based team, or as time spent working for out-of-state teams. Second, applicant believes that time spent working for the Bears and T-Bones should not be included when determining whether he worked seven or fewer seasons for out-of-state teams. Third, the parties dispute whether applicant's 1997 season, during which applicant was injured and testified that he did not receive compensation, should count as a season for purposes of section (d)(1)(B), or whether it should be omitted from the calculations. In addition to these three key disputes, the parties also appear to differ on how a few other periods of applicant's career should be counted; these disputes will be considered after resolution of the first three issues.

Initially, we consider the question of the proper characterization of applicant's employment with the Dodgers. The characterization of this time is key to determining both whether applicant had 20% or more duty days in California or with California-based teams, and whether he had seven or more seasons with teams based outside California. If this time is considered time worked for a California-based team, applicant meets the 20% duty-day threshold of subdivision (d)(1)(A). Conversely, if this time is considered time spent working for teams based outside California,

applicant has no hope of meeting either prong of the statute – he would not have two or more seasons or 20% or more duty days with a California-based team, and he would clearly have seven or more seasons with teams based outside California.

The fundamental principle of statutory interpretation is "the ascertainment of legislative intent so that the purpose of the law may be effectuated . . .." (*People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 40.) Turning first to the language of the statute itself, subdivision (d) refers to "work" for California or non-California teams, not to "playing" for those teams. (§ 3600.5(d)(1)(A)&(B).) Given that applicant's contract of employment was with the Dodgers, it is difficult to argue that applicant was no longer "working" for the Dodgers during those periods he was dispatched to out-of-state affiliates, even if he was "playing" for the minor league affiliate in question. Furthermore, the definition of duty day states that services must be performed "under the direction and control of his or her employer pursuant to a player contract." (§ 3600.5(g)(3).) Because applicant's contract was with the Dodgers, the Dodgers were the "employer" for purposes of exercising direction or control, and services were performed "pursuant to a player contract" with the Dodgers, not with those teams. Accordingly, the plain language of the statute appears to favor an interpretation that would include this time as time spent playing for a California-based team.

Additionally, in interpreting a different provision of the same statute, we have held that periods of play for an out-of-state minor league affiliate do not transform an applicant's employment into employment for a non-California team when the applicant remains employed by a California team. Specifically, in *Neu v. Los Angeles Dodgers*, a panel held that the Dodgers, as applicant's admitted employer, were required to provide him notice of his workers' compensation rights for an injury sustained in Nevada while playing for the Dodgers' Nevada minor league affiliate. (*Neu v. Los Angeles Dodgers* (September 28, 2015, ADJ9223382) [2015 Cal. Wrk. Comp. P.D. Lexis 603].) The Dodgers had argued they were exempt from providing notice pursuant to subdivision 3600.5(e), which states that non-California teams are exempt from providing such notice; in effect, the Dodgers argued that the employer was its out-of-state affiliate, which as an out-of-state team did not need to provide notice. (*Id.* at p. *8.) We rejected that argument, holding that the Dodgers were applicant's employer for purposes of providing notice, even though the injury may have occurred while playing for the Nevada affiliate. (*Id.* at p. *9–

10.) We noted that the applicant's professional baseball activities were subject to the direction and control of the Dodgers, and performed for their benefit. (*Ibid.*)

The same considerations that compelled the finding in *Neu* apply here. Most significantly, the Dodgers, as applicant's uninterrupted California employer, retained control over applicant during his period of play for out-of-state affiliates, including the power to recall him at any time. Moreover, applicant's time with these affiliates was for the Dodgers' benefit. It would be incongruous to hold that an applicant's work while employed by a California employer, for that employer's benefit, takes applicant's claim outside of the jurisdiction of the California workers' compensation system, simply because that work occurred out of state while dispatched to an affiliate team.

The limited legislative history to which the parties have drawn our attention does not undermine this conclusion. The Dodgers submitted a letter published in the Assembly Journal by Henry Perea, the sponsor of AB 1309, which amended section 3600.5. (See Henry T. Perea, Legislative Intent – Assem. Bill No. 1309 Assem. Daily J. (2013–2014 Reg. Sess.) at p. 3370.) In the letter, Mr. Perea writes "to clarify my intent regarding the provisions of AB 1309 and specifically those relating to the definition of a 'duty day'." (*Ibid.*) Mr. Perea goes on to explain that according to his own interpretation of the statute, "a player playing for an out of state minor league team, who plays a game outside California would qualify for an out of state duty day, but not for either a California duty day or one for a California based team." (*Ibid*.)

However, Mr. Perea's letter does not specify whether the player in question is playing for an out-of-state minor league affiliate while contracted to a California-based team, as opposed to while contracted to an out-of-state team. In fact, there is some suggestion that Mr. Perea was talking about the latter situation, because the next sentence reads: "Further, the same player who works in California during an offseason day . . . would qualify for a California duty day provided his employer exercised direction and control over those services." (*Ibid.*) If Mr. Perea had been referring to a player employed by a California team, such a day would also count as a duty day for a California-based team, in addition to a California duty day – a distinction explicitly spelled out in the statute.[5] Mr. Perea's recognition of the distinction between a duty day for a California-based team and a California duty day in the first sentence shows he was being careful with his wording;

[5] Of course, such a day would be counted only once for purposes of meeting the 20% threshold, no matter how categorized.

the lack of the same distinction in the second sentence suggests there was no need to do so, because an athlete employed by an out-of-state team would obviously not qualify for a duty day with a California-based team, whether or not the duty day was performed in California.

In short, at best, Mr. Perea's letter is ambiguous as to how he intended the statute to be applied to an athlete employed by a California-based team who is dispatched to an out-of-state minor league affiliate, much less as to the intent of the Legislature as a whole. In the absence of any clear legislative intent to the contrary, for the reasons described above, we think the better interpretation is to count time as time worked for a California-based team.

Having determined that applicant's time spent working for the Dodgers should be credited as time spent working for a California-based team, we must also consider the converse case, that of time applicant spent while employed by the Devil Rays but dispatched to California-based minor league affiliates. Here, we believe the most consistent approach is to apply the same rationale as above – namely, to consider this time as time spent playing for applicant's employer, the Devil Rays, and therefore as time spent playing for a non-California-based team. But this time must also clearly be considered as California duty days for purposes of subdivision (d)(1)(A), and therefore ends up contributing toward both (d)(1)(A) as California duty days, and toward (d)(1)(B) as time spent playing for a non-California based team.

We recognize the apparent oddity of the fact that time spent playing in California while employed by an out-of-state team can count both for and against an applicant in establishing the applicant's right to file a workers' compensation claim in California. However, our interpretation must be bound by the actual words of the statute, and here the Legislature clearly chose to condition the applicability of subdivision (d)(1)(B) solely upon time spent for non-California-based teams, unlike subdivision (d)(1)(A), which considers both time spent working for California-based teams, and time spent working in California for out-of-state teams.

We also note that the same result pertains any time an athlete employed by an out-of-state team visits California and plays games here for their employer – for example, to participate in away games, or for training camps. Such time, per the language of the statute, must be credited both as time spent playing for an out-of-state team, and as time spent playing in California.

Furthermore, the nature of the seven-season limit itself is arguably consistent with this approach. The very fact that the Legislature included subdivision (d)(1)(B) at all shows an intent to bar the claims of some athletes who would otherwise qualify under subdivision (d)(1)(A), solely

based upon time spent working for out-of-state-teams. It appears that the Legislature believed that seven seasons represents the point at which an athlete's ties to out-of-state employers so predominate over ties to in-state employers that the athlete can fairly be required to seek a workers' compensation remedy under the laws of the states those employers are based in, regardless of how much time that athlete may have spent in California. It is not for us to question the appropriateness of a legislative judgement of this kind.

Finally, we note that subdivision (d) itself only applies when all of an athlete's employers during the last year of their career are exempt according to subdivision (c) or according to "some other law," meaning the subdivision does not apply at all to athletes who finish their careers in California, or who have been hired in California. This eliminates the possibility that an athlete could finish their career in California and still be unable to file a claim based on time spent playing in other states prior to that last year, and therefore athletes who finish their careers in California, or who were hired in this state, will always be able to file for workers' compensation benefits here, without the need to meet the time requirements of subdivision (d).

Therefore, for all the reasons expressed above, we believe the best approach is to count time applicant worked for the Dodgers as time for a California-based team. Similarly, we will count applicant's work for the Devil Rays as work for an out-of-state team, with the caveat that such time could also count as California duty days if the work was performed in California.

Moving on to the second dispute, we disagree with applicant that applicant's time with the Bears and T-Bones should not be included in calculating whether he played seven or more seasons for out-of-state teams. Applicant asserts this employment should not be included because "there is no California subject-matter jurisdiction whatsoever" over those teams. (Petition for Reconsideration, at p. 7.)

We are not convinced that a lack of subject-matter jurisdiction over applicant's employment with the Bears and T-bones should result in ignoring them when calculating applicant's career history. The purpose of subdivision (d)(1)(B) appears to be to bar the claims of athletes who, although they may have played at least two seasons or 20% of their duty days in California, nevertheless have such strong ties to out-of-state teams that they should be required to file their claims in those states, rather than here. It would undermine the entire purpose of the subdivision to exempt from that calculation out-of-state teams with no ties to California – the entire purpose of the subdivision being to count such employment, in order to determine where an athlete

should be required to file their claim. We therefore reject this contention – the clear text of the subdivision, as well as the purposes for which it was enacted, compel us to include all time spent by athletes playing for out-of-state teams.

The parties' third dispute centers on whether applicant's 1997 season, when he was employed by the Devil Rays but injured early in preseason training, should be included as a season spent working for an out-of-state team. Applicant does not dispute that he was under contract with the Devil Rays during the 1997 season. However, applicant also testified that he was injured "a couple of weeks" into the 1997 spring training camp, did not play further during the 1997 season, and never received any compensation either for spring training or during the season itself, other than room and board during the spring training prior to his injury. (Transcript, 3/19/2018, at p. 16–17.) Applicant appears to argue that this lack of compensation should exempt the 1997 period from inclusion towards the seven-season limit. (Petition for Reconsideration, at p. 6.)

Although we understand why applicant feels that uncompensated time should not be counted against him, we simply do not see any way to avoid including the 1997 season in calculating whether he has exceeded the seven-season limit. In the California Workers' Compensation system, it is services provided that determine the existence of an employment relationship, not the provision of compensation. Pursuant to section 3351, an employee is any "person in the service of an employer under any appointment or contract of hire . . .." (§ 3351.) Pursuant to section 3357, "[a]ny person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee." (§ 3357.) Moreover, the definition of "season" in section 3600.5(g) includes preseason team activity, meaning that applicant's injury occurred during the "season" for purposes of the statute, not prior to the season. (See § 3600.5(g)(4).)

Had applicant been working in California at the time of his 1997 injury, there is no doubt that he would have been entitled to file for workers' compensation benefits despite the lack of compensation. (See e.g. *Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771 [worker injured during tryout prior to official employment still entitled to workers' compensation benefits].) That being the case, we cannot see any reason why the 1997 season would not be counted for purposes of the seven-season-limit – for all other purposes this time would be counted as time applicant worked for his employer, and therefore we cannot see any basis for discounting it solely for purposes of subdivision (d)(1)(B). Nor do we think it would be reasonable in the

opposite situation – an athlete injured while working for a California-based team – not to count that season as work for a California-based team for purposes of meeting the requirements of subdivision (d)(1)(A), as would follow from applicant's argument. Accordingly, we reject applicant's contention that the 1997 season should not count as a season of work for an out-of-state team.

With these three key issues determined, we can now review the WCJ's calculations, and assess whether applicant's claim was correctly found exempt pursuant to subdivision (d). Determining whether applicant meets the requirements of subdivision (d)(1)(A) – two or more seasons with a California-based team, or 20% or more duty days either for a California-based team or performed in California – is straightforward. Based upon our conclusion that applicant's employment with the Dodgers should be counted as work for a California-based team, and the WCJ's calculations in the Opinion on Decision, which defendant does not appear to dispute, applicant spent 20% or more of his duty days over his career either employed by a California-based employer or working in California. (See Opinion on Decision, at p. 7.) We therefore agree with the WCJ that applicant meets the requirements of subdivision (d)(1)(A).

The question of whether applicant can meet the requirements of subdivision (d)(1)(B) – less than seven seasons with teams based outside California – is less straightforward, because it requires us to determine which periods of applicant's employment constituted seasons for purposes of the statute, as well as whether some of those periods amounted to less than full seasons. As always, we are guided by the words of the statute itself, which defines "season" as "the period from the date of the first preseason team activity for the contract year, through the date of the last game the professional athlete's team played during the same contract year." (§ 3600.5(g)(4).)

Here, it appears the parties and the WCJ measured applicant's seasons not by his ultimate employer, but instead by the specific affiliate teams to which he was dispatched. Although we understand the impulse behind focusing on the teams to which applicant was actually dispatched, it does not appear to be consistent with the state's definition of "season," which defines the word "season" by reference to the "contract year" of the player's employment contract. (§ 3600.5(g)(4).) This language appears to tie the calculation of each season to the season of the athlete's actual employer, not of the team they may have been dispatched to. Because we are first and foremost charged with following the plain language of the statute, we think the best approach in cases such as these is to measure seasons by reference to their contract with their employer.

Focusing on the season of the athlete's employer provides practical benefits, as well. Because the length of seasons of affiliate teams may differ from the length of the season of the athlete's employer, or from the length of the seasons of other affiliates, focusing solely on the season of the employing team makes it much easier to resolve the question of how to calculate the time of an athlete who was dispatched to an affiliate for only part of the season, or to more than one affiliate during a single season. Section 3600.5 is convoluted and difficult enough for practitioners and judges to apply without also mandating complicated calculations to determine how many seasons an athlete has played for a given team. All parties benefit from a more straightforward system of calculation, because it provides more certainty in the outcome of cases, and therefore more ability for the parties to predict the likely outcome without the need for costly and time-consuming litigation.[6]

We therefore hold that based upon the reference to "contract year" in subdivision 3600.5(g)(4), the start and end date of seasons for purposes of section 3600.5 should be based upon the season of the athlete's employing team. In this case, this means that applicant's first six years, spent with the Devil Rays from 1996 to 2001, amount to six seasons of work for a non-California team.[7] In the 2002 season, applicant began the season with the Devil Rays, before being released by the Devil Rays and subsequently joining the Cincinnati Reds ("Reds") for the remainder of the 2002 season – however, because both teams are based outside California, there is no need to calculate partial seasons; applicant played substantially the entirety of the 2002 season for out-of-state teams. This means that through 2002, applicant worked seven seasons for non-California-based teams.

The focus on contract years also implies that applicant's time with the Australia Winter League should not be counted as an additional season – because applicant remained employed by the Devil Rays during the entirety of this period, and because the definition of "season" refers to the "contract year," it would be incongruous to hold that more than one season could be counted

[6] To be sure, such calculations may still be required in the case of an athlete who changes employers in the middle of a season, at least if one employer is California-based while the other is not. Such cases are much rarer than the cases of athletes who are dispatched and/or recalled from affiliate teams during a season, however, and are generally limited to a single change per season, meaning the actual calculations will tend to be much simpler.

[7] Applicant appears to argue that the 1996 season should only be counted as a half season, because it was a "short season." (Petition for Reconsideration, at p. 6.) However, applicant does not appear to dispute that he was employed by the Devil Rays for the entirety of their season that year; the fact that their season was shorter than "normal" does not make it less than a full season for purposes of section 3600.5.

against an athlete for work all performed during the same contract year. We therefore will not count this time as an additional season.

During the 2003 season and for most of the 2004 season, applicant was employed by the Dodgers, a California-based employer; as such, this time does not count towards the seven-season limit.

From August 2004 until the end of the 2004 season – approximately one month according to applicant's testimony – applicant worked for the Bears, an out-of-state team. (Transcript, 3/19/2018, at p. 24.) According to applicant's post-trial submission, the Bears' 2004 season lasted from April to August. (Applicant Games Played and Duty Days Log: Nathan Ruhl (Revised 6/15/2018).) Applicant therefore worked for approximately one fifth of the Bears' 2004 season, meaning roughly one fifth of a season should be added to the total for purposes of subdivision (d)(1)(B), taking the tally to 7.2 seasons worked for out-of-state teams.

In the last year of his professional career, applicant worked the entirety of the 2005 season for the T-Bones. This amounts to one more full season for an out-of-state team, taking applicant's tally to 8.2 seasons. Because 8.2 seasons exceeds the requirement of subdivision (d)(1)(B) that an athlete must have worked for "fewer than seven seasons" for out-of-state teams, this means that applicant cannot establish his entitlement to the exception, and his claim is barred from the California workers' compensation system, as the WCJ correctly determined in the F&O.

Applicant protests that the effect of the amendments to section 3600.5 are to punish athletes for attempting to extend their careers, and asks us to "amend" or make an "exception" to the statute to remove the requirement to calculate seasons under subdivision (d)(1)(B) when an applicant meets both the conditions of subdivision (d)(1)(A).[8] Although we are sympathetic to applicant's observation that the effect of subdivision (d)(1)(B) is to exempt the claims of athletes who work a seventh season for an out-of-state team rather than retiring after six seasons and immediately seeking workers' compensation benefits, it is not within our power to "amend" or "make exceptions" to statutes the Legislature has enacted. To the extent that subdivision (d)(1)(B) does amount to "punishment" for athletes who try to prolong their careers by working for out-of-state teams, any remedy must be legislative rather than judicial. Similarly, although applicant's case may be "close" in that his 8.2 seasons for out-of-state teams do not dramatically exceed the "fewer

[8] In point of fact, it does not appear that applicant did meet both conditions – applicant's time with the Dodgers appears to be somewhat less than two seasons, meaning he qualified based only on the 20% duty day minimum.

than seven seasons" the statute allows, the nature of a bright-line rule is that some cases must always be "close" and yet still fall on the wrong side of the line. This is, unfortunately for applicant, one such case.

Accordingly, in light of the above discussion, we will affirm the WCJ's finding that applicant's claim is barred by section 3600.5, subdivision (d)(1)(B).

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 10, 2018 Findings and Order is **AFFIRMED.**

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**


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

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

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

**DECEMBER 30, 2022**

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

**NATHAN RUHL**
**ALL SPORTS LAW LLP**
**BOBER, PETERSON & KOBY**
**SEDGWICK CMS**
**GURVITZ MARLOWE LAW FIRM**
**BERKLEY ENTERTAINMENT**
**GALLAGHER BASSETT**

**AW/*cs***

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