

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

SCOTT GORGEN, *Applicant*

vs.

BKK SPORTS, LLC, dba CAMDEN RIVERSHARKS, *Defendant*

**Adjudication Number: ADJ12937354
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact issued on March 1, 2023, wherein the workers' compensation administrative law judge (WCJ) found that the WCAB holds personal jurisdiction over defendant.

Defendant contends that the evidence fails to establish that it had contacts with California sufficient for the exercise of personal jurisdiction.¹

We did not receive an Answer.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be dismissed or denied.

We have reviewed the contents of the Petition and the Report. Based upon our review of the record, and for the reasons set forth in the Report as discussed below, we will deny the Petition.

FACTUAL BACKGROUND

On December 7, 2022, the matter proceeded to trial as to the issue of whether "there is personal jurisdiction over BKK/Camden Riversharks in the State of California in consideration of Labor Code § 3600.5 et seq., and Labor Code § 5305." (Minutes of Hearing and Summary of Evidence, December 7, 2022, p.2:13-14.)

In the Report, the WCJ states:

¹ The Petition also seeks reconsideration of the WCJ's decision to the extent that it finds that the statute of limitations defense is without merit. However, because the issue of the statute of limitations defense was not framed for trial, and because the Findings of Fact contain no decision thereon, we conclude that the WCJ made no finding as to the statute of limitations issue and, as such, we need not address it.

The applicant filed this claim of a cumulative trauma injury to his neck, arm back, shoulder and other parts of body as against St. Louis Cardinals/Ace USA during the period from 06/15/2008 through 09/01/2014 while employed as a professional baseball player on 01/21/2020.

On 11/16/2020 WCJ Feddersen issued an Order Joining the Camden Riversharks and Liberty Mutual to this case.

On 12/16/2020 Liberty Mutual issued a denial of claim to the applicant:

"Based on the available information there is no evidence of an injury under California jurisdiction. Per Labor Code 5405, the employee has one year from the date of injury to file a claim. You claim an injury for 9/1/2014 but did not file a claim until 1/23/2020.

Also, per our investigation, the minor league baseball outfit "BKK Sports LLC dba Camden Riversharks" do not appear to have a California coverage policy with Liberty Mutual and therefore we do not appear to have coverage for this claim. Liberty Mutual does not have coverage for the Employer BKK SPORTS LLC dba Camden Riversharks for the State of California for their Baseball players, the jurisdiction alleged (California) is inappropriate as the Policy Holder does not conduct any business in that state nor did Mr. Gorgen play in the state of CA during his tenure with the insured.

For claims reported on or after April 19, 2004, regardless of the date of injury, if you submitted a claim form to your employer or claims administrator, Labor Code section 5402(c) provides that within one working day after you file the claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treating guidelines, for the alleged injury and shall continue to provide such medical treatment until the claims administrator accepts or denies liability for the claim. Until the date the claim is accepted or rejected, liability for medical treatment under this Labor Code section shall be limited to a maximum of ten thousand dollars (\$10,000)."

On 07/21/2021 this matter was heard before WCJ Feddersen who continued the matter to an MSC before Judge Marrone.

On 09/29/2021 this matter came before WCJ Cole who dealt with a discovery matter between the defendants and noted the need for arbitration on the coverage dispute as between Ace Insurance and Liberty Mutual.

On 12/01/2021 this matter came before WCJ Graff who noted further discovery and in the comments section stated:

"As to the issue of provision of the complete Liberty Mutual Policy, Liberty Mutual agrees to tender the complete policy within 20 days, with only the dollar amounts

redacted. All other pages will be included. The parties have agreed to conduct medical legal discovery and have exchanged names of potential AME's. Parties are amenable to OTOC."

On 01/26/2022 applicant's attorney filed another DOR stating that Liberty Mutual still disputes jurisdiction and needs a trial to resolve the dispute.

On 05/04/2022 Judge Mehrpoo-Jacobson set the matter for trial on 07/06/2022.

On 07/06/2022 defense attorney for Ace Insurance had computer issues and parties agreed to a continuance. Parties agreed to file position briefs prior to the trial date. Both defendants filed briefing.

On 09/19/2022 P J Velzy granted parties request for a virtual proceeding and the matter was set for 12/07/2022.

On 12/07/2022 this matter was heard on a phone trial where the only issue was whether there is personal jurisdiction over the BKK/Camden Riversharks, The only documentary evidence submitted by defendant petitioner was the Liberty Denial dated 12/16/2020.

The applicant was sworn and testified:

"The applicant was sworn and testified that he attended high school in Concord, California. In 2008 he was drafted to the St. Louis Cardinals. At that time, he was residing in Concord, California. He signed his contract with the Cardinals in Concord, California.

His employment with the St. Louis Cardinals ended in 2013. He returned to his home in Concord, California. He next signed with the Camden Riversharks. He signed the contract with the Riversharks in Concord, California.

The season for 2013 ended in August or early September, and he returned to his home in Concord, California.

He re-signed with the Camden Riversharks while he was in Concord, California in the off-season. In 2013 to 2014 he did not play any games in California when he was with the Camden Riversharks. He never traveled to California with the Camden Riversharks."

On cross examination by counsel for petitioner he testified the stadium for the Camden Riversharks was in New Jersey and all his practices were in New Jersey.

On cross examination by counsel for Ace Insurance the applicant testified:

"Applicant signed his contract with the Camden Riversharks in 2013 while he was in California. He signed a second contract in the off-season with the Camden Riversharks in California. He returned to California after the season ended.

He did all baseball workouts in California to get ready for his next season with the Camden Riversharks in 2014. When asked of how he learned about the Riversharks, he informed parties that a former teammate who played with him on the St. Louis Cardinals was on the Riversharks. He was contacted by the Riversharks' front office for the next contract. In 2013 he signed the contract with the Camden Riversharks while he was residing in California. He signed the 2014 contract with the Riversharks while he resided in California."

On redirect by his attorney he testified that:

"When he was signed by the Camden Riversharks he was contacted by the front office. They reached out to him at his home in California.

Regarding his off-season workouts when the first contract ended with the end of the 2013 season, he estimates that he signed the 2014 contract in the first part of the year 2014, a little before or maybe a little after. He then left for Camden, New Jersey in March or April. Up until the time he left for Camden for the 2014 season, he was still residing in California.

In the 3 to 4 months doing workouts after signing with Camden, he would do weight training, general conditioning, cardiovascular, and a throwing program. He trained 5 to 6 days a week, four hours a day.

During this time, all workouts were done while he was under contract with the Camden Riversharks. The Riversharks expected him to show up to spring training in excellent physical condition."

On re-cross by petitioner's attorney applicant testified:

"Applicant first learned about the Riversharks from a former teammate. He was then contacted by the team. The conditioning he did for the Riversharks was the same as he would do for any team he was under contract with. The workouts in California were at facilities he chose. They were not chosen by the Camden Riversharks."

This concluded testimony. On 03/01/2023 the Finding and Opinion on Decision regarding jurisdiction issued.

On 03/20/2023 the Petition for Reconsideration was filed. There have been no Answer by other parties.

...

Relevant facts show that the applicant was hired by the Camden Riversharks in California, when the applicant resided here before and after the contract was signed by parties. Petitioner did not present any evidence that would support an alternative contract formation. California has jurisdiction over a claimed injury if the contract of hire was made here, in California.

In the off season applicant did his physical conditioning here in California as he testified he was expected to arrive to training camp in Camden in excellent condition. This directly benefited the Camden Riversharks.

California has jurisdiction over claims by professional athletes has also been found when the employment contract was made within the state regardless of whether any games were played in the state.[fn]

Defendant finally seeks to disclaim liability under the provisions of LC §3600.5. All the evidence supports that the 2013 and 2014 contracts with the applicant were executed here in California. California has a legitimate established interest and connection with the applicant, a California resident. Contracts made in California are subject to California jurisdiction. Defendant, Camden Riversharks submitted no evidence to support a lack of personal jurisdiction over the Camden Riversharks. (Report, pp. 1-5.)

DISCUSSION

Labor Code section 3600.5(a)² provides that, "[i]f 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.

Section 5305 provides:

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. Any employee described by this section, or his or her dependents, shall be entitled to the compensation or death benefits provided by this division.

The burden of establishing that a contract of hire was made in California rests with applicant, who has the affirmative of the issue. (§ 5705; § 3202.5.) The question in determining whether section 5305 applies to a contract of hire is whether the acceptance took place in

² Unless otherwise stated, all further statutory references are to the Labor Code.

California. (*Aetna Casualty and Surety Co. v. Workers' Comp. Appeals Bd. (Salvaggio)* (1984) 156 Cal.App.3d 1097, 1103 [203 Cal.Rptr. 396, 49 Cal.Comp.Cases 447]. A contract of employment is governed by the same rules applicable to other types of contracts, including the requirements of offer and acceptance. (*Reynolds Electrical & Engineering Co. v. Workmen's Comp. Appeals Bd. (Egan)* (1966) 65 Cal.2d 429 [31 Cal.Comp.Cases 415].) Where parties have agreed in writing upon the essential terms of a contract, there is a binding contract even though a formal one is to be prepared and signed later. (*Commercial Casualty Insurance Company of Newark, New Jersey v. Indus. Acc. Comm. (Porter)* (1952) 110 Cal. App. 2d 83 [17 Cal. Comp. Cases 84].)

In California, the formation of a contract of hire, standing alone, is sufficient to confer jurisdiction over an industrial injury that occurs outside the state. "[T]he creation of the [employer-employee] status under the laws of this state is a sufficient jurisdictional basis for the regulation of that relationship within this state and the creation of incidents thereto which will be recognized within this state, even though the relation was entered into for purposes connected solely with the rendition of services in another state." (*Alaska Packers Asso. v. Industrial Acci. Com. (Palma)* (1934) 1 Cal.2d 250, 256 [34 P.2d 716, 1934 Cal. LEXIS 358], *affd.* (1935) 294 U.S. 532 [55 S. Ct. 518, 79 L. Ed. 1044, 20 I.A.C. 326] (*Palma*). Hence, where the only connection of the employment and injury to California was the fact that the employee signed a contract of employment in California, sufficient contact with California is shown to warrant the application of California workers' compensation law. (See *Palma, supra*, at p. 252; *Benguet Consol. Mining Co. v. Industrial Acci. Com.* (1939) 36 Cal.App.2d 158, 159 [97 P.2d 267, 1939 Cal. App. LEXIS 28]; *McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23, 32-33 [2013 Cal. Wrk. Comp. LEXIS 2]; *Jackson v. Cleveland Browns* (December 26, 2014, ADJ6696775) [2014 Cal. Wrk. Comp. P.D. LEXIS 682].)

As an example, in *Bowen v. Workers' Comp. Appeals Bd.* (1993) 73 Cal.App.4th 15 [64 Cal.Comp.Cases 745], the court of appeal determined that a contract of hire between a player and a major league baseball team was formed in California, conferring California jurisdiction, notwithstanding the need for the contract to be ratified by the baseball Commissioner. Citing the St. Clair workers' compensation treatise, the court of appeal observed:

[T]he fact that there are formalities which must be subsequently attended to with respect to such extraterritorial employment does not abrogate the contract of hire or California jurisdiction. Such things as filling out formal papers regarding the

specific terms of the employment or obtaining a security clearance from the federal government are deemed 'conditions subsequent' to the contract, not preventing it from initially coming into existence.

(Bowen, supra, at p. 22.)

Here, as stated by the WCJ in the Report, inasmuch as it is uncontroverted that applicant executed his contracts with defendant in California, the record shows that defendant had contacts with California sufficient for the exercise of personal jurisdiction herein.

Accordingly, we are unable to discern merit in the Petition.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact issued on March 1, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 19, 2023

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

**SCOTT GORGEN
LAW OFFICES OF MARK SLIPOCK
LAW OFFICES OF KIRK & MEYERS
GOLDBERG SEGALLA**

SRO/cs

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

CS