WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANTHONY BARRON, *Applicant*

vs.

PHILADELPHIA PHILLIES; UNITED STATES FIDELITY AND GUARANTY INSURANCE, administered by Gallagher Bassett; LOS ANGELES DODGERS; NATIONAL UNION FIRE INSURANCE COMPANY, administered by Gallagher Bassett; PACIFIC EMPLOYERS INSURANCE/ACE, administered by ESIS, *Defendants*

Adjudication Number: ADJ13208164
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O) issued on January 19, 2024, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed from June 1, 1987, through October 1, 2002, as a professional baseball player, claims to have sustained injury arising out of and in the course of employment to his head, neck, legs, shoulders, elbows, wrists, hands, fingers, back, knees, ankles, feet, toes, and injury in the form of sleep and nervous system while employed by the Los Angeles Dodgers from June 3, 1987, to October 15, 1993; the Seattle Mariners from February 18, 1994 to May 13, 1995; the Montreal Expos from May 17, 1995 to October 15, 1996; the Philadelphia Phillies from November 21, 1996 to September 30, 1998; the Pittsburgh Pirates from February 16, 1999 to April 5, 2000; and the Mexican League from 2000 to 2002. The WCJ found that applicant's claim is barred by section 3600.5, subdivision (d), and that the court lacked subject matter jurisdiction over the claimed injury.

Applicant contends that his regular employment with the Los Angeles Dodgers is a sufficient basis for the exercise of California subject matter jurisdiction pursuant to Labor Code[1] section 3600.5(a). Applicant further contends that once subject matter jurisdiction is conferred

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

under section 3600.5(a), any additional jurisdictional requirements set forth under section 3600.5(c) and (d) are inapplicable.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

We highlight the following legal principles that may be relevant to our review of this matter:

Applicant contends that applicant's seven seasons playing for the Los Angeles Dodgers, a California-based team, is sufficient to confer subject matter jurisdiction under section 3600.5(a). Applicant further contends a finding of subject matter jurisdiction under section 3600.5(a) obviates the exemption/exception analyses of section 3600.5 subdivisions (c) and (d).

Defendant's Answer contends that subject matter jurisdiction is determined under section 3600.5(d), which bars applicant's claim. (Answer, at p. 4:20.) Defendant further contends that the legislature intended to bar claims meeting the criteria set forth in section 3600.5(d) notwithstanding that they might otherwise meet the requirements of "regularly working" under section 3600.5(a). (*Id.* at p. 5:25.) Because applicant did not enter a California contract of hire and was not regularly working in California, defendant avers the WCJ was correct in determining the court lacked subject matter jurisdiction over applicant's claimed injury.

The WCJ's Report acknowledges applicant's contentions, but reiterates the analysis discussed in the Opinion on Decision, as follows:

> [A]pplicant meets the requirements of subdivision 3600.5(d)(1)(A), in that he worked two or more seasons for a California-based team, the Los Angeles Dodgers, from June 3, 1987, through October 15, 1993. (MOH 2/27/23, page 2, lines 14 to 17). Applicant does not meet the requirements of subdivision 3600.5(d)(1)(B). Applicant played in 8 seasons, from February 1994 through 2002 with other than a California-based teams (2/27/23, page 2, lines 16 to 19). Under subdivision 3600.5(d)(2), applicant and his employers would be exempt from California subject matter jurisdiction.
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> (Report, at p. 5.)

Thus, we must determine to what extent, if any, a finding of subject matter jurisdiction under section 3600.5(a) obviates the jurisdictional exemption of section 3600.5(c) or the exception described in section 3600.5(d).

Labor Code section 3600.5 provides, in relevant part:

> (a) If an employee who has been hired or is regularly working in the state receives personal injury by accident arising out of and in the course of employment outside of this state, he or she, or his or her dependents, in the case of his or her death, shall be entitled to compensation according to the law of this state.
> …
>
> (c)
>
> (1) With respect to an occupational disease or cumulative injury, a professional athlete who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for his or her employer if both of the following are satisfied:
>
> (A) The employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California.
>
> (B) The employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this state.
>
> (2) In any case in which paragraph (1) is satisfied, the benefits under the workers' compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any occupational disease or cumulative injury, whether resulting in death or not, received by the employee while working for the employer in this state.
>
> (3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete's last day of work for the employer within the state,

the professional athlete performs less than 20 percent of his or her duty days in California during that 365-day period in California.

(d)

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

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

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

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

(Lab. Code, § 3600.5(a), (c)-(d).)

In *Wilson v. Florida Marlins* (February 26, 2020, ADJ10779733) [2020 Cal. Wrk. Comp. P.D. LEXIS 30], a panel of the Appeals Board addressed the fundamental question of whether "subdivisions (c) and (d) of section 3600.5 override the general jurisdictional provisions of sections 3600.5(a) and 5305 that provide for jurisdiction where there is a California hire during the period of injury, or [whether] these subdivisions apply only to claims where there is no California hire." (*Id.* at p. 10.) The *Wilson* decision held that by its own terms, subdivision (c) of section 3600.5 would only apply in situations where the contract of hire was made outside of California. (*Id.* at p. 11.) The panel further observed that section 3600.5 was amended in 2013 for the purpose of limiting the ability of "'out of state professional athletes' with 'extremely minimal

California contacts' to file workers' compensation claims in California." (*Id.* at p. 15.) The panel therefore concluded that, "[t]aken together, these two expressions suggest that the Legislature did not intend for subdivisions (c) and (d) to apply to athletes who have been hired in California by at least one employer during the cumulative trauma injury period." (*Id.* at p. 17; see also *Hansell v. Arizona Diamondbacks* (2022) 87 Cal.Comp.Cases 602 [2022 Cal. Wrk. Comp. P.D. LEXIS 83] ["a careful reading of [section 3600.5] suggests that subdivision (d)(1) is concerned with determining under what circumstances an athlete who does not meet the requirements of section 3600.5, subdivision (a) or section 5305 should nevertheless be able to bring a claim in California, because their relationship to the state is sufficiently strong despite the lack of a hire in California or regular California employment"].)

However, in *Ruhl v. Kansas City T-Bones* (December 30, 2022, ADJ10622392) [2022 Cal. Wrk. Comp. P.D. LEXIS 372], a panel of the Appeals Board observed, "[t]he 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." (*Id.* at p. 16.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely

developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id*. at p. 404.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

II.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57

Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp*. *Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp*. *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

III.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on January 19, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2024

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

ANTHONY BARRON
PRO ATHLETE LAW GROUP
ALBERT & MACKENZIE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
BOBER, PETERESON & 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*