

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

HERIBERTO SOLIS, *Applicant*

vs.

**KANSAS CITY ROYALS; ACE AMERICAN INSURANCE COMPANY/CHUBB,
administered by GALLAGHER BASSETT and SEDGWICK CMS; WINDY CITY
THUNDERBOLTS; VIRGINIA SURETY COMPANY, administered by
SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ16588373
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant Kansas City Royals seeks reconsideration of the December 13, 2023 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that the applicant's election pursuant to Labor Code¹ section 5500.5 as against the Windy City Thunderbolts was inappropriate. The WCJ also determined that the Windy City Thunderbolts did not waive a defense of a lack of personal jurisdiction, and that the court lacked personal jurisdiction over the team. The WCJ also determined that evidence in the record may support the exercise of personal jurisdiction over the Kansas City Royals, but that further development of the record was required.

The Kansas City Royals contend their right to due process right was violated by the issuance of a decision without testimony from the applicant, that the WCJ's determination that there may be personal jurisdiction over the Royals is not supported in the evidentiary record, and that the Windy City Thunderbolts waived the defense of a lack of personal jurisdiction.

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

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and substitute new findings that the Windy City Thunderbolts have waived the defense of a lack of personal jurisdiction. We will affirm the WCJ's determination that applicant's election pursuant to section 5500.5 is inappropriate, and that development of the record is necessary prior to determining whether there is personal jurisdiction over the Kansas City Royals.

FACTS

Applicant claimed injury to his head, neck, legs, psyche and "multiple" additional body parts while employed as a professional baseball player by the Kansas City Royals and the Windy City Thunderbolts between June 19, 2003 to October 1, 2006. Both teams deny liability for the claimed injury.

On August 15, 2022, applicant filed an initial Application for Adjudication of Claim listing the Kansas City Royals as the employer.

On October 13, 2022, the Kansas City Royals filed their Notice of Representation, asserting a special appearance for the purpose of contesting jurisdiction.

On January 31, 2023, applicant amended the Application for Adjudication to include the Windy City Thunderbolts. The corresponding proof of service reflects service on both the Windy City Thunderbolts and their insurer Virginia Surety Company in the care of third-party administrator Sedgwick CMS.

On February 21, 2023, applicant and defendant Kansas City Royals appeared at Mandatory Settlement Conference (MSC). There was no appearance by the Windy City Thunderbolts. The WCJ ordered the matter taken off calendar over defense objection, pending the joinder of the Windy City Thunderbolts.

On March 31, 2023, the Kansas City Royals filed a Declaration of Readiness to Proceed to hearing, requesting an MSC and averring a dispute with respect to personal jurisdiction.

On May 23, 2023, applicant and defendant Kansas City Royals appeared at MSC. The Windy City Thunderbolts did not appear. The WCJ continued the hearing to another MSC over defense objection and ordered the Windy City Thunderbolts to appear at the next conference.

On June 27, 2023, applicant and defendant Kansas City Royals again appeared at MSC. The Windy City Thunderbolts did not appear. The WCJ continued the hearing to another MSC over defense objection, and again ordered the Windy City Thunderbolts to appear at the next conference.

On August 3, 2023, defense counsel for the Windy City Thunderbolts filed a Notice of Representation. The notice does not reflect a special appearance of any nature.

On August 8, 2023, applicant and defendant Kansas City Royals appeared at MSC, with Kansas City noting their special appearance. The Windy City Thunderbolts made their first appearance. The minutes do not reflect a special appearance by the Windy City Thunderbolts or that the Thunderbolts asserted a jurisdictional dispute of any nature. The WCJ continued the matter over the objection of the Kansas City Royals, noting that counsel for the Windy City Thunderbolts had recently been retained and was requesting a continuance for the purpose of obtaining their file.

On September 25, 2023, the Windy City Thunderbolts filed their Answer, asserting both a lack of personal and subject matter jurisdiction.

On September 26, 2023, all parties appeared at MSC. The Kansas City Royals asserted a special appearance. The Windy City Thunderbolts did not indicate they were specially appearing. The parties set the matter for trial on issues including, in relevant part, personal jurisdiction over both the Kansas City Royals and the Windy City Thunderbolts.

On October 31, 2023, the parties proceeded to trial, framing issues of personal jurisdiction over both the Royals and the Thunderbolts, the propriety of applicant's election pursuant to section 5500.5 as against the Windy City Thunderbolts, and the request of the Thunderbolts for applicant's testimony in the absence of a subpoena or Notice to Appear. (Minutes of Hearing, October 31, 2023, at p. 3:2.)

On December 13, 2023, the WCJ issued his F&O, determining in relevant part that the Windy City Thunderbolts had not waived their defense of a lack of personal jurisdiction, and that the court lacked personal jurisdiction over the Thunderbolts. (Findings of Fact Nos. 2 & 3.) The WCJ also determined that the evidence in the record "may support the exercise of personal

jurisdiction by this Court over Kansas City Royals, but further development of the record, namely Applicant’s testimony, is required.” (Finding of Fact No. 4.)

The Kansas City Royals’ Petition for Reconsideration (Petition) avers it was denied due process because the WCJ’s decision was made without testimony from the applicant. (Petition, at p. 4.) The Petition further contends the Windy City Thunderbolts waived any defense of personal jurisdiction because the team filed a Notice of Representation and made two subsequent appearances at MSC, all without notice of a special appearance. (*Id.* at pp. 8-9.) The Petition also challenges the WCJ’s determination that there may be a basis for the exercise of personal jurisdiction over the team, pending development of the record. (*Id.* at pp. 9-10.)

DISCUSSION

I.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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 [260 Cal.Rptr. 76]; *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. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* at p. 1075 [“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”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues. A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory

issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes findings regarding issues of personal jurisdiction over the parties. A judicial determination with respect to jurisdiction is a threshold order subject to reconsideration and not removal. (*Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Petitioner Kansas City Royals challenge the WCJ's determination that the Windy City Thunderbolts have not waived their defense that the court lacks personal jurisdiction over the team. The Royals assert the Thunderbolts waived the personal jurisdiction defense by filing a Notice of Representation and making two appearances at MSC without asserting a special appearance. The F&O determines that that the Windy City Thunderbolts have not waived their personal jurisdiction defense, and that the court is without personal jurisdiction over the team. (Findings of Fact Nos. 2 & 3.)

A California court may exercise jurisdiction over a nonresident defendant only within the perimeters of the due process clause as delineated by the decisions of the United States Supreme Court. (*Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472, 475 [108 Cal. Rptr. 23, 1973 Cal.App. LEXIS 991], citing *International Shoe Co. v. State of Washington*, 326 U.S. 310 [90 L.Ed. 95, 66 S.Ct. 154, 161 A.L.R. 1057] and *Michigan Nat. Bank v. Superior Court*, 23 Cal.App.3d 1, 6 [99 Cal.Rptr. 823]; Code Civ. Proc., § 410.10.) Due process requires that a defendant have certain minimum contacts with a state so that the maintenance of an action in the state does not offend traditional notions of fair play and substantial justice. (*McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23, 26 [2013 Cal. Wrk. Comp. LEXIS 2]; *Buckner v. Industrial Acci. Com.* (1964) 226 Cal.App.2d 619, 623) [38 Cal. Rptr. 332, 1964 Cal. App. LEXIS 1319].)

Personal jurisdiction is not determined by the nature of the action, but by the legal existence of the party and either its presence in the state or other conduct permitting the court to exercise jurisdiction over the party. Subject matter jurisdiction, by contrast, is the power of the court over a cause of action or to act in a particular way. (*Greener v. Workers' Comp. Appeals Bd. of California* (1993) 6 Cal.4th 1028 [58 Cal.Comp.Cases 793, 795].)

However, unlike subject matter jurisdiction which cannot be waived or consented to by the parties, a lack of personal jurisdiction is subject to waiver, and is automatically waived by a general appearance. (See, e.g. *Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341 [25 Cal.Rptr.3d 488] [“...it has long been the rule in California that a party waives any objection to the court’s exercise of personal jurisdiction when the party makes a general appearance in the action.”].) Moreover, and notwithstanding a party’s initial assertion that it is “specially appearing,” a subsequent request by that party for action by the Appeals Board or by a court on a basis other than lack of personal jurisdiction constitutes a general appearance. (*Greener, supra*, 6 Cal.4th 1028; *Roy v. Superior Court, supra*, 127 Cal.App.4th 337 [party waived objection to exercise of personal jurisdiction by making a general appearance through the filing an answer and pursuit of discovery without first moving to quash]; see also *Parker v. Indy Fuel Hockey* (November 29, 2017, ADJ10184700) [2017 Cal. Wrk. Comp. P.D. LEXIS 547].)

Here, applicant served an Amended Application for Adjudication of Claim, identifying the Windy City Thunderbolts as a party defendant on January 31, 2023. The amended application was served on both the Thunderbolts and the administrator for its insurance carrier the same day.

Following the service of the Amended Application, two additional MSCs were held on May 23, 2023 and June 27, 2023. In both instances, the WCJ issued an order for the Thunderbolts to appear at the next conference.

On August 3, 2023, counsel for the Thunderbolts filed a Notice of Representation. The Notice makes no mention of a special appearance or of the issue of personal jurisdiction.

On August 8, 2023, the Windy City Thunderbolts made their first appearance at MSC, more than six months after service of the Amended Application and following two interim orders for their appearance at hearing. However, the hearing minutes reflect neither special appearance by the Thunderbolts nor any assertion of a jurisdictional dispute. The WCJ continued the matter over the objection of the Kansas City Royals on the grounds that the Thunderbolts had only recently retained counsel, and because counsel needed to obtain a file. It was not until September 25, 2023 that the Windy City Thunderbolts filed their Answer, raising for the first time the defense of a lack of both personal and subject matter jurisdiction.

Based on the above, we are persuaded that the Thunderbolts have made a general appearance in this matter. The Thunderbolts filed a Notice of Representation on August 3, 2023 which makes no mention of a special appearance, followed shortly thereafter by an appearance at

the MSC held on August 8, 2023. The minutes from that hearing reflect no assertion of a special appearance by the Thunderbolts or any indication of a jurisdictional dispute of any nature. Following their initial appearance, the Thunderbolts did file an Answer raising personal jurisdiction for the first time on September 25, 2023, but the next day appeared again at MSC, and again, the minutes reflect no assertion of special appearance.

The WCJ's Report characterizes the August 8, 2023 appearance of the Thunderbolts at MSC not a jurisdictional waiver, but "simply a need of information to review in order find out what the case is about." (Report, at p. 6.) However, as the Court of Appeal in *Roy v. Superior Court, supra*, has observed:

The contention that judicial economy would in fact be served by a rule that would permit a defendant to withhold his jurisdictional challenge until he could confirm its validity through investigation is without merit. Of all issues, whether a state has personal jurisdiction over a defendant is the one most uniquely within his own knowledge. He knows where he lives and he knows what business he has done in the forum state. To the extent that discovery may be necessary, it is typically the plaintiff who needs to gather information supporting jurisdiction.

(*Roy v. Superior Court, supra*, 127 Cal. App. 4th 337, 344-345.)

We also observe that the Thunderbolt's August 8, 2023 request for a continuance from MSC due to the recent retention of counsel, and in order to source its own file, was tantamount to a request that the WCJ forego the closure of discovery that would have otherwise attached pursuant to section 5502(d)(3). Thus, the Thunderbolts submitted to the court's authority and requested that the WCJ exercise her discretion to continue the matter rather than set the matter for trial with the concomitant closure of discovery.

For the above reasons, we conclude that the Windy City Thunderbolts have waived the defense of a lack of personal jurisdiction by making a general appearance in this matter. (*Roy v. Superior Court, supra*, 127 Cal.App.4th at p. 341.) Accordingly, we will rescind Findings of Fact Nos. 2 and 3 and will substitute a finding that the Windy City Thunderbolts have waived the defense of a lack of personal jurisdiction in this matter.

II.

Petitioner further challenges the WCJ's determination that there *may* be personal jurisdiction over the Kansas City Royals, but that further development of the record is necessary

to determine the issue. (Finding of Fact No. 4.) Orders of the Appeals Board for development of the record are interlocutory in nature and subject to removal, rather than reconsideration. Therefore, with respect to petitioner's contentions regarding the WCJ's findings on personal jurisdiction over the Kansas City Royals, we will apply the removal standard to our review. (See *Gaona, supra*, 5 Cal.App.5th 658, 662.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, the WCJ's report observes:

The question is whether there is specific personal jurisdiction, which depends on the relationship between the Royals activity in the state and applicant's claimed injury. However, there is as yet no "decision" relative to personal jurisdiction over the Royals, only an observation that the evidence available so far shows possible sufficient contacts with California, but that more evidence is needed, specifically testimony from the person most desired by the Royals as having the necessary information to support its defense.

(Report, at pp. 3-4.)

We agree with the WCJ's analysis. The WCJ's finding of fact does not make a final determination with respect to personal jurisdiction over the Kansas City Royals, and specifically predicates any future decision on the development of the record. Thus, applying the removal standard to the issue, we conclude that the Royals have not demonstrated they will suffer irreparable harm if the Petition is not granted. We will therefore deny the Petition to the extent it challenges the WCJ's determination that development of the record is necessary prior to determining whether the court has personal jurisdiction over the Kansas City Royals.

In summary, we find that the Windy City Thunderbolts have made a general appearance in this matter, and as such, have waived the defense of a lack of personal jurisdiction. Accordingly, we will grant reconsideration, rescind the F&O, and substitute new findings that the defense of a

lack of personal jurisdiction has been waived by the Thunderbolts. However, we also conclude that the WCJ's determination that development of the record is necessary to determine the issue of personal jurisdiction with respect to the Kansas City Royals is an interim order. Accordingly, and applying the removal standard, we will affirm the WCJ's determination regarding development of the record as it relates to the defense of a lack of personal jurisdiction raised by the Kansas City Royals. Finally, as no party has challenged the WCJ's determination with respect to the propriety of the applicant's election pursuant to section 5500.5, we will not disturb the corresponding finding of fact that the election was inappropriate.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of December 13, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of December 13, 2023 is **RESCINDED**, and the following is **SUBSTITUTED** therefore:

FINDINGS OF FACT

1. The "election" pursuant to Labor Codes section 5500.5 against Windy City Thunderbolts in order to litigate multiple defendants' defense of lack of personal jurisdiction is inappropriate.
2. The Windy City Thunderbolts have made a general appearance in this matter, waiving the defense of a lack of personal jurisdiction.
3. Evidence in the record may support the exercise of personal jurisdiction by this Court over Kansas City Royals, but further development of the record, namely Applicant's testimony, is required.

ORDER

IT IS ORDERED THAT the issue of lack of the Court's jurisdiction over the Kansas City Royals be returned to the trial Calendar for testimony by Applicant.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 1, 2024

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

**HERIBERTO SOLIS
PRO ATHLETE LAW GROUP
LLARENA MURDOCK LOPEZ & AZIZAD
GOLDBERG SEGALLA**

SAR/abs

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