WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DONALD EDWARDS, *Applicant*

vs.

CHARGERS FOOTBALL COMPANY, LLC, a CALIFORNIA LIMITED LIABILITY COMPANY, dba SAN DIEGO CHARGERS; GREAT DIVIDE INSURANCE COMPANY c/o BERKLEY; TRAVELERS INSURANCE COMPANY; KANSAS CITY FOOTBALL CLUB, dba KANSAS CITY CHIEFS, *Defendants*

Adjudication Number: ADJ7393455
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration to further study the factual and legal issues in this case. This is our decision after reconsideration.

Defendant the Kansas City Chiefs, specially appearing (the Chiefs) filed a Petition for Reconsideration (Petition), seeking review of the Findings and Orders (F&O) issued on November 24, 2021, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant alleged cumulative injury to his head, upper extremities, lower extremities, musculoskeletal system, and stress/strain of occupation as a professional athlete with the San Diego Chargers and the Chiefs from July 24, 1996 to March 1, 2010; and that there was personal jurisdiction over the dismissed parties. She vacated the December 3, 2014 Order dismissing the Chiefs and "Berkley Specialty Irving"[1] with prejudice and ordered that they were rejoined to the case as party defendants.

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[1] The correct name of the Chiefs' insurer is Great Divide Insurance Company, and Berkley Entertainment is the administrator. The December 3, 2014 Order identifies "defendant Kansas City Chiefs and its insurance carrier, Berkley Specialty Irving." It is defendant's responsibility to ensure that they are identified by their correct legal name and properly designated as an insurer or a third party administrator, and failure to do so could render an order unenforceable and subject a defendant to sanctions. (*DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007 (Appeals Board en banc).)

We received an Answer from applicant. We received a Supplemental Reply to Applicant's Answer, which we have accepted. (Cal. Code Regs., tit. 8, § 10964.) We received a Report and Recommendation on Petition for Reconsideration from the WCJ, recommending that reconsideration be denied.

We have considered the allegations in the Petition, the Answer, the Supplemental Reply to the Answer, and the contents of the Report. Based on our review of the record and for the reasons discussed below, as our decision after reconsideration, we will rescind the F&O and substitute a new F&O finding that the December 3, 2014 Order is final (Finding of Fact 5) and finding that there is no personal jurisdiction over the Chiefs in this case (Finding of Fact 6); and ordering correction of the clerical error in the December 3, 2014 Order Dismissing to identify Great Divide Insurance Company (Great Divide) as the insurer for the Chiefs (see *Toccalino v. Worker's Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543, 558 [47 Cal.Comp.Cases 145] [clerical errors may be corrected without further proceedings at any time]) (Order a) and that further litigation by applicant against the Chiefs and Great Divide as their insurance carrier is barred by res judicata (Order b). Finally, in the interest of clarity, we will add findings to conform to the parties' stipulations at trial with respect to insurance coverage (Findings of Fact 2, 3, 4).

FACTS

The WCJ's Report sets forth the relevant factual history as follows:

> The applicant, Donald Edwards, born [---], originally filed an Application for Adjudication ("Application") on August 11, 2010, alleging industrial injury on a cumulative trauma basis to his head, upper extremities, lower extremities, musculoskeletal system, and stress/strain of occupation, as a professional athlete with the San Diego Charge[r]s and Kansas City Chiefs, from July 24, 1996 to March 1, 2010. The Application outlined various carriers for each team and noted various locations where injury is alleged to have occurred. The Application was filed by applicant's counsel at the time, Leviton, Diaz, Ginocchio, et al.
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> In 2011, a request to change venue was denied. Defendant CIGA for Legion Insurance, in liquidation, filed a Petition for Dismissal without Prejudice, as a party defendant, and The Honorable Tien Nguyen (Retired) issued an Order Dismissing CIGA for Legion Insurance, in liquidation, without Prejudice, on December 7, 2011. Significant action did not occur again until June 13, 2013, when defendant TIG Specialty Insurance Company (TIG), by and through counsel,

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However, here, the failures to correctly identify Great Divide and Berkley Entertainment in the November 24, 2021 F&O and in the December 3, 2014 Order appear to be clerical errors by the WCJs.

Shaw, Jacobsmeyer, et al, filed a Petition for Dismissal of TIG and Kansas City Chiefs. It doesn't appear action was taken on the petition.

The following year, applicant, by and through counsel, Leviton, Diaz, Ginocchio, et al, filed a Petition for Dismissal with Prejudice for Kansas City Chiefs and Berkley Specialty Irving, and amended the cumulative trauma to a shorter period, April 25, 2002 to March 1, 2007. The petition was signed November 20, 2014, and filed December 3, 2014. On December 3, 2014, Judge Nguyen issued an order Dismissing Kansas City Chiefs and Berkley Specialty Irving, based on applicant's petition.

Various hearings occurred during 2016 and 2017, mostly outlining discovery. A Substitution of Attorney was filed by applicant, indicating his desire to be represented by All Sports Law, LLP, on October 17, 2016. A Substitution of Attorney was filed by applicant, indicating his desire to be represented by Pro Athlete Law Group, P.C., on January 4, 2018. The Applicant remains represented by Pro Athlete Law Group, P.C.

The Court received a Petition for (Re)Joinder of Kansas City Chiefs, dated March 23, 2020, and issued an Order Deferring on April 6, 2020, as the Order Dismissing with Prejudice was issued by a retired Workers' Compensation Judge, and the Court wanted all parties to be heard on the matter prior to issuing a decision. The Court set a Status Conference for May 21, 2020. At that Status Conference, discussion occurred and the Court noted a Trial with briefs was needed. The matter was continued to a Mandatory Settlement Conference (MSC) on July 23, 2020. At MSC, the matter was set for Trial on September 30, 2020. Several requests for continuance were filed, and the matter was eventually heard on January 27, 2021. This Court was not available on that day, and the matter was heard by Acting Presiding Judge, The Honorable Sallie Doyle. The Minutes of Hearing (MOH) indicate "Petition for Joinder of KC Chiefs / Great Divide is withdrawn. Defendant wants to remain at Trial as Amended Application now lists Kansas City Chiefs." The applicant requested the matter be Ordered Taken Off Calendar (OTOC) and defendant was in opposition. Judge Doyle issued an OTOC. Defendant Kansas City Chiefs, by and through counsel, Pearlman Brown, et al, filed a Declaration of Readiness to Proceed (DOR) on the issue of improper joinder via Application, on February 5, 2021[.] Applicant filed an Objection to the DOR, and the matter was set for an MSC on March 25, 2021. At the March MSC, the matter was continued to April 29, 2021, for service of discovery and a Trial date was to be scheduled. At the hearing in April, a Trial date was set for July 12, 2021. At the July Trial date, the Court reviewed the Pre-Trial Conference Statement (PTCS) with the parties, clarified issues, and set a plan for all documents to be uploaded to the Court's EAMS system. The Trial was continued to September 7, 2021, at which time the issues were outlined …and the matter was submitted[.]

(Report, at pp. 2-5.)

The primary issue at trial was whether there is good cause to rejoin the Chiefs. (9/7/21 Minutes of Hearing, at p. 2.) Additional "sub-issues" included: (a) Special appearance with filed Petition to Strike Amended Application Rejoining Chiefs; (b) Great Divide Insurance Company for the Chiefs contest personal jurisdiction based on the December 3, 2014 Dismissal with Prejudice; and (c) In addition to lack of WCAB personal jurisdiction over the Chiefs, the Amended Application dated January 26, 2021 is barred by doctrines of res judicata, waiver, laches, and/or estoppel, based on the prior Dismissal with Prejudice. (*Id*. at pp. 2-3.) The WCJ admitted applicant's exhibits 1 to 4 and defense exhibits A to G, and took judicial notice of both parties' trial briefs, the July 9, 2010 Application, the January 1, 2021 Minutes of Hearing, and the February 5, 2021 Declaration of Readiness (DOR). (*Id*. at pp. 3-4.) There was no testimony.

In the F&O, issued November 24, 2021, the WCJ found that: applicant filed his original application on August 11, 2010, alleging industrial injury on a cumulative trauma basis to his head, upper extremities, lower extremities, musculoskeletal system, and stress/strain of occupation, as a professional athlete with the San Diego Chargers and the Chiefs, from July 24, 1996 to March 1, 2010; the Court has personal jurisdiction over dismissed parties; the December 3, 2014 Order Dismissing the Chiefs and Berkley Specialty Irving, with Prejudice, will be vacated; the Chiefs and Berkley Specialty Irving will be ordered rejoined as parties defendant herein; and the issues of laches, waiver, and estoppel will be deferred and reserved as defenses to the case-in-chief trial. The WCJ vacated the December 3, 2014 Dismissal Order; rejoined the Chiefs and Berkley Specialty Irving as party defendants; and ordered that the issues of laches, waiver, and estoppel are deferred.

Defendant's timely Petition followed.[2]

DISCUSSION

In her Opinion on Decision, the WCJ characterizes the issue as "whether there is good cause to rejoin the Chiefs?"

[2] Applicant's attorney contends in the January 21, 2022 Answer that they were not properly served with the Petition for Reconsideration. Defendant's December 17, 2021 proof of service indicates that applicant's attorney was timely served at their address of record. Even if there was a delay in receiving the Petition, applicant was not prejudiced by the delay as they filed their Answer, and we have accepted it and considered it.

Pursuant to Labor Code Section 5307.5(b)[3], a WCJ has broad powers to join interested parties to a case. (Lab. Code, § 5307.5(b); *Superior Care Facilities v. Workers' Comp. Appeals Bd*. (1994) 27 Cal.App.4th 1015, 1023; see also Cal. Code Regs., tit. 8, § 10382.) Section 5500.5 provides that liability for occupational disease or cumulative injury claims "shall be limited to those employers who employed the employee" in the one-year period "immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first." (Lab. Code, § 5500.5(a).) The statute thus sets the liability period among multiple employers for a claimed cumulative injury (*Ibid*.) and provides specific dispensation for an employee election against a single employer during the claimed cumulative injury (Lab. Code, § 5500.5(c)), and for the liable employer to seek contribution from other employers (Lab. Code, § 5500.5(e)). Joinder of a party in a cumulative injury case with multiple employers is addressed in section 5500.5, subdivisions (b) and (c). Subdivision (b) requires that each liable employer be named in the application; if the application omits necessary employers, "any interested party, at or prior to the first hearing, may request the appeals board to join as defendant any necessary or proper party"; and provides direction to the Appeals Board about how to handle requests, depending on when they are made. (Lab. Code, § 5500.5(b).) Subdivision (c) permits an employee to elect to proceed against any one or more of the employers, and after any such election, if "it should appear that there is another proper party not yet joined, the additional party shall be joined as a defendant by the appeals board on the motion of any party in interest…". (Lab. Code, § 5500.5(c).) However, sections 5307.5 and 5500.5 do not address dismissal of a previously joined party, and here, applicant seeks to join a party that has been previously joined and dismissed.

Former WCAB Rule 10780 provided that in the absence of good cause, an order dismissing an Application at the request of applicant "shall issue forthwith." (Former Cal. Code Regs., tit. 8, § 10780, repealed and replaced by § 10850, eff. 1/01/20.) A "final" order is defined as one that 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*

[3] All sections references are to the Labor Code, unless otherwise indicated.

Foundation Hospitals v. Workers' Comp. Appeals Bd. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650]), and as explained below, an order dismissing an Application with prejudice is a final order. Failure to timely petition for reconsideration of a final order bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.)

> Code of Civil Procedure, section 581, subdivision (c) states:
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> A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial.

(Code of Civ. Proc., § 581(c).)

A dismissal with prejudice is the modern name for a common law retraxit. (*Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 820-821, citing *Robinson v. Hiles* (1953) 119 Cal.App.2d 666, 672.) "A *retraxit* occurred at common law when a plaintiff came into court in person and voluntarily renounced his suit or cause of action, and when this was done and a judgment was entered in favor of defendant the plaintiff's cause of action was forever gone." (*Chase v. Van Camp Sea Food Co.* (1930) 109 Cal.App. 38, 46 [292 P. 179] citing *Westbay v. Gray* (1897) 116 Cal. 660, 666 [48 P. 800].) "[T]he authority to make a *retraxit* is vested in an attorney of record." (*Ibid*.) Dismissal with prejudice "has the same effect as a common law retraxit and bars any future action on the same subject matter." (*Torrey Pines*, *supra*, 216 Cal.App.3d at pp. 820-821; *Wouldridge v. Burns* (1968) 265 Cal.App.2d 82, 84; *Ghiringhelli v. Riboni* (1950) 95 Cal.App.2d 503, 506; *Gagnon Co. v. Nevada Desert Inn, Inc*. (1955) 45 Cal.2d 448, 455 ["It would seem clear that a dismissal with prejudice by plaintiff of its action is a bar to a subsequent action on the same cause; otherwise there would be no meaning to the 'with prejudice' feature"].) "At common law for a *retraxit* to be sufficient to bar the bringing of the same cause of action thereafter, there had to be an open and voluntary renunciation of the suit in open court. In this state the statutory method of dismissal provided in [CCP] section 581…dispenses with the requirement of renunciation in open court, but a dismissal under that section has the same legal effect as a common law *retraxit*." (*Ghiringhelli*, *supra*, 95 Cal.App.2d at p. 506.) The California Supreme Court, in the 2010 opinion in *Boeken v. Philip Morris*, reiterated that dismissal with prejudice is equivalent to a final judgment on the merits:

> The record before us does not indicate the reason for the dismissal; for purposes of applying the doctrine of res judicata, however, a dismissal with prejudice is the equivalent of a final judgment on the merits, barring the entire cause of action. (See *Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1332; *Torrey Pines Bank v. Superior Court* (1989) 216 Cal. App.3d 813, 820–821; *Roybal v. University Ford* (1989) 207 Cal.App.3d 1080, 1086–1087; *Palmquist v. Palmquist* (1963) 212 Cal.App.2d 340, 343–344.) As the court explained in *Roybal*, *supra*, 207 Cal.App.3d at pages 1086–1087: "The statutory term 'with prejudice' clearly means the plaintiff's right of action is terminated and may not be revived. … [A] dismissal with prejudice … bars any future action on the same subject matter."

(*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 793.)

Accordingly, the doctrine of res judicata bars further litigation of issues after a voluntary dismissal with prejudice to the same extent it does after a judgment on the merits.[4] (*Boeken*, *supra*, 48 Cal.4th at p. 793; *Torrey Pines*, *supra*, 216 Cal.App.3d at p. 821; *Sears v. DeMota* (1958) 157 Cal.App.2d 216, 222.) Res judicata precludes further litigation of issues when the same issue has already been litigated and finally decided in a case involving the same parties. (*Pac. Coast Medical Enters. v. Dep't. of Benefit Payments* (1983) 140 Cal.App.3d 197, 214, *quoting Henn v. Henn* (1980) 26 Cal.3d 323, 329-330.) Res judicata is not jurisdictional, and, as such, it may be waived if not properly raised by pleading or evidence. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 977 [37 Cal.Comp.Cases 641].)

A voluntary dismissal of an entire action deprives the court of subject matter jurisdiction as well as personal jurisdiction of the parties. (*Casa de Valley View Owner's Assn. v. Stevenson* (1985) 167 Cal.App.3d 1182, 1192.) Subject matter jurisdiction "cannot be conferred by consent, waiver, or estoppel, . . ." (*Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 207.) Accordingly, an order issued after voluntary dismissal of an entire action is void on its face for lack of subject matter jurisdiction and may be set aside at any time; the doctrine of waiver does not apply. (See *Harris v. Billings* (1993) 16 Cal.App.4th 1396, 1405.)

However, a voluntary dismissal of a portion of a lawsuit, as opposed to a voluntary dismissal of the entire case, deprives the court only of personal jurisdiction over the dismissed party or parties; the court retains subject matter jurisdiction over the controversy. (*Noble v.*

[4] We observe that the bar on further litigation applies only to matters in which the dismissal was with prejudice; there is no such bar when a case is dismissed without prejudice.

Washington Redskins, 2018 Cal. Wrk. Comp. P.D. LEXIS 631, at p. *8[5], citing *Casa De Valley View Owner's Assn.*, *supra*, 167 Cal.App.3d at p. 1192; *Mickens v. Cleveland Browns,* 2023 Cal. Wrk. Comp. P.D. LEXIS 102, at pp. *5-*6.) Any challenge to personal jurisdiction is waived by a party's further appearance in the case without objecting to personal jurisdiction, specifically. (*Janzen v. Workers' Comp. Appeals Bd.* (1997) 61 Cal.App.4th 109, 116 [63 Cal.Comp.Cases 9]; *see also*, *Parker v. Indy Fuel Hockey*, 2017 Cal. Wrk. Comp. P.D. LEXIS 547; *Mickens*, *supra*, 2023 Cal. Wrk. Comp. P.D. LEXIS 102, at pp. *5-*6.)

As noted above, rejoinder of a party previously dismissed with prejudice is not addressed in section 5500.5. Reading section 5500.5 in light of the established legal principles discussed above, clarifies that section 5500.5, subdivisions (b) and (c), confer the right to join additional parties only when those parties have not previously been joined and then dismissed with prejudice. Once an applicant has joined a defendant, and then specifically asked the WCJ to dismiss that defendant with prejudice, the principles of retraxit, dismissal with prejudice, and res judicata preclude the court from re-joining the same party, absent waiver.

Here, applicant voluntarily filed a Request for Dismissal of Party Defendant on November 20, 2014.[6] (Defendant's Exh. A, 11/20/2014 Request for Dismissal of Party Defendant.) In that Request, applicant requested that the Chiefs "be Dismissed as a Party Defendant with Prejudice" and amended the Application to indicate that his dates of injury were April 25, 2002 through March 1, 2007. (*Id*. at p. 2.) Applicant's petition did not specify the reasons for these requests, and no reason was required by the applicable law.

Based on applicant's Request, the WCJ issued an Order Dismissing Party Defendant with prejudice, as to the Chiefs and their insurance carrier, on December 3, 2014. (Applicant's Exh. 2, 12/3/2014 Order Dismissing Party Defendant.) The Order allowed any party to file a written objection to the dismissal order and indicated "This order is void if written objection is filed within 20 days of the service of the order showing good cause why it should not be issued."

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[5] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].)

[6] We note that the Chiefs had filed a Petition for Dismissal, over a year earlier, in May 2013, but there is nothing in the record indicating that action was taken on that petition, and the WCJ observed in the Report that "It doesn't appear action was taken on the petition." (5/14/2013 Petition to Dismiss Party Defendant; Report, at p. 3.)

(*Ibid*.) No such objection was filed. Because the December 2014 dismissal order was entered with prejudice, it "has the same effect as a common law retraxit and bars any future action on the same subject matter." (*Torrey Pines*, *supra*, 216 Cal.App.3d at pp. 820-821; *Wouldridge*, *supra*, 265 Cal.App.2d at p. 84; *Ghiringhelli*, *supra*, 95 Cal.App.2d at p. 506.) As a result, the December 2014 dismissal order with prejudice is final as against the Chiefs and Great Divide as their insurance carrier to the same extent as if the case has been finally litigated and decided in the Chiefs' favor. (*Boeken*, *supra*, 48 Cal.4th at p. 793; *Torrey Pines*, *supra*, 216 Cal.App.3d at p. 821; *Sears*, *supra*, 157 Cal.App.2d at p. 222.)

Applicant subsequently sought to rejoin the Chiefs by filing a joinder petition in March 2020, later withdrawing that petition at the January 2021 trial, and then seeking to join the Chiefs by way of naming them as the sole defendant in an Amended Application. (Applicant's Exh. 3, 3/23/2020 Petition for Joinder of Party Defendant; 1/27/21 MOH; 1/20/21 Amended Application, at p. 2.) The Chiefs responded to applicant's attempts to rejoin them by repeatedly making special appearances for the purposes of objecting to the rejoinder on the grounds that there was no personal jurisdiction. (Defendant's Exh. D, 4/17/20 "Special Appearance for the Purpose of Contesting Personal Jurisdiction - Objection to Petition for Joinder Based on Lack of Personal Jurisdiction, Res Judicata, Laches, Waiver and Estoppel; 1/25/21 Trial Brief; 1/27/21 PTCS, at p. 3a; 1/27/21 MOH; Defendant's Exh. F, 1/27/21 Special Appearance Objection to Amended Application and Petition to Strike.) Defendant argued that "[b]ased on the finality of the order of dismissal with prejudice issued on December 3, 2014 there is no legal or equitable basis for rejoinder of the Chiefs and Great Divide Insurance Company." (Defendant's Exh. D, 4/17/20 Special Appearance and Objection, at pp. 2-4.) The trial on the re-joinder petition was taken off calendar, despite the Chiefs' objection; the trial on the applicant's January 2021 Amended Application was held on September 7, 2021, resulting in the F&O at issue here. (1/27/21 MOH; 9/7/21 Minutes of Hearing.)

As discussed above, the dismissal order precludes further litigation against the Chiefs and Great Divide as their insurance carrier to the same extent as if the case has been finally litigated and decided in their favor. Moreover, the dismissal order deprived the WCJ of personal jurisdiction over the Chiefs. (*Noble*, *supra*, 2018 Cal. Wrk. Comp. P.D. LEXIS 631, at p. *8, citing *Casa De Valley View Owner's Assn.*, *supra*, 167 Cal.App.3d at p. 1192; *Mickens*, *supra*, 2023 Cal. Wrk. Comp. P.D. LEXIS 102, at pp. *5-*6.) Applicant was thus precluded by res

judicata from re-joining the Chiefs in this matter, regardless of whether applicant did so via a joinder petition or an Amended Application. There is no legal basis for the findings and orders rejoining the Chiefs and Great Divide as their insurance carrier, and those findings and orders will be rescinded.

Two recent panel opinions with similar fact patterns support this conclusion. In our 2018 panel opinion in *Noble*, *supra*, 2018 Cal. Wrk. Comp. P.D. LEXIS 631, the Washington Redskins had been dismissed with prejudice in 2014, re-joined in 2017, and then dismissed again in 2018 based on the prior dismissal order. (*Id.* at pp. *2-*5.) We held that the team "could have objected to their rejoinder to the case at that time [when they were rejoined], based upon the dismissal with prejudice; had they done so, they would presumably have prevailed, absent some extraordinary facts not apparent from the face of the record." (*Id*. at p. *7.) However, the Redskins failed to object to the rejoinder at the first opportunity and therefore waived their right to object later. (*Id*. at pp. *7-*9.) Based on this waiver, we rescinded the 2018 dismissal order and thus effectively reinstated the rejoinder order. (*Id*. at p. *11.) Here, unlike in *Noble*, there was no waiver. The Chiefs objected to rejoinder at the first opportunity, when applicant sought to rejoin them, and continued to preserve their rights by objecting to each request for joinder and indicating at each subsequent appearance that they were specially appearing for the sole purpose of contesting personal jurisdiction. (Defendant's Exh. D, 4/17/20 "Special Appearance for the Purpose of Contesting Personal Jurisdiction - Objection to Petition for Joinder Based on Lack of Personal Jurisdiction, Res Judicata, Laches, Waiver and Estoppel; 1/27/21 PTCS, at p. 3a; 1/25/21 Trial Brief: Special Appearance Contesting Personal Jurisdiction and Rejoinder; 1/27/21 MOH.) As we stated in *Noble*, if the party seeking to be rejoined after a dismissal with prejudice timely objects, they will prevail, absent extraordinary facts. We conclude that no such extraordinary facts are present here, and thus the rejoinder order cannot be affirmed.

In *Mickens*, *supra*, 2023 Cal. Wrk. Comp. P.D. LEXIS 102, the Cleveland Browns and the New England Patriots were voluntarily dismissed with prejudice, based on a stipulation by the parties. (*Id*. at p. *6.) Later, the WCJ discussed rejoinder with the remaining parties, and issued the rejoinder order. But, instead of providing the Browns and the Patriots with an opportunity to be heard, the WCJ simply rejoined them, without affording them any opportunity to specially appear or to contest the rejoinder. (*Ibid*.) We concluded that the teams' due process rights to be heard were violated by this procedure, and on this basis, we rescinded the rejoinder

order and sent the matter back for further proceedings. (*Id*. at pp. *6-*7.) Here, no such due process violations occurred, and thus no further proceedings on the rejoinder issue are required.

Lastly, we address two panel decisions relied upon by the WCJ to support the rejoinder order here. (Opinion on Decision, at pp. 3-4.) These cases are factually distinguishable from the present case and provide no legal basis for rejoining the Chiefs. In *Booker v. Atlanta Falcons,* 2013 Cal. Wrk. Comp. P.D. LEXIS 352, the WCAB rescinded the dismissal order as to the Tennessee Titans and returned the matter for further proceedings. (*Id*. at pp. *3-*6.) In *Booty v. New York Giants,* 2014 Cal. Wrk. Comp. P.D. LEXIS 167, the WCAB affirmed the dismissal order, but changed the order from a dismissal with prejudice to one without prejudice. (*Id*. at p. *7.) We observe that the facts in *Booker* and *Booty* differ from those in the present matter, because in both cases, an objection was made to the dismissal order, and, in both cases, the party requesting the rejoinder was not the same party that had previously requested the dismissal. First, in both cases, after the defendant team (the Tennessee Titans, in *Booker*, and the Arizona Cardinals, in *Booty*), was dismissed with prejudice, there was an objection to the dismissal order, by the co-defendant team (the Atlanta Falcons in *Booker*, and the New York Giants, in *Booty*) which took the form of a timely filed Petition for Reconsideration. (*Booker*, *supra*, at p. *3; *Booty*, *supra*, at pp. *2, *5.) Although it does not appear that an objection was lodged in the lower court in either case, there is no statutory requirement that the co-defendant do so. Thus, the timely Petition for Reconsideration served as a valid objection to the dismissal with prejudice, in both *Booker* and *Booty*. Here, in contrast, there was no timely objection to the December 2014 dismissal order by any party. Second, in both *Booker* and *Booty*, the objection to the dismissal order was filed by a co-defendant, not by the applicant who previously requested the dismissal. In *Booker*, protecting the rights of a co-defendant was the stated basis upon which the dismissal order was rescinded. (*Booker, supra*, at pp. *4-*5.) Whereas here, the party that sought to reverse the dismissal order was the same party that had requested dismissal with prejudice many years prior; since the original dismissal with prejudice order was requested by applicant, applicant is barred by res judicata from rejoining the Chiefs. Thus, we conclude that the holdings in *Booker* and *Booty* provide no legal basis for affirming the order rejoining the Chiefs in the present case.

Accordingly, as our decision after reconsideration, we rescind the F&O and substitute a new F&O finding that the December 3, 2014 Order is final (Finding of Fact 5) and finding that

there is no personal jurisdiction over the Chiefs in this case (Finding of Fact 6); and ordering correction of the clerical error in the December 3, 2014 Order Dismissing to identify Great Divide as the insurance carrier (Order a) and ordering that further litigation by applicant against the Chiefs and Great Divide as their insurance carrier is barred by res judicata (Order b). Finally, in the interest of clarity, we add findings to conform to the parties' stipulations at trial with respect to insurance coverage (Findings of Fact 2, 3, 4).

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&O issued November 24, 2021 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Donald Edwards filed an Application for Adjudication on August 11, 2010, alleging cumulative injury to his head, upper extremities, lower extremities, musculoskeletal system, and stress/strain of occupation, while employed as a professional athlete by the San Diego Chargers and the Kansas City Chiefs from July 24, 1996 to March 1, 2010.

2. At the time of injury the employer's workers compensation carrier was Great Divide Insurance Company, as administered by Berkley Entertainment, for the Kansas City Chiefs and the San Diego Chargers, and Travelers Insurance Company for the San Diego Chargers.

3. The period of coverage by Great Divide Insurance, as administered by Berkley Entertainment, for the Kansas City Chiefs is March 19, 2007 through February 25, 2009.

4. The period of coverage by Great Divide Insurance, as administered by Berkley Entertainment, for the San Diego Chargers is May 1, 2005 through March 1, 2007. The period of coverage by Travelers Insurance for the San Diego Chargers is May 1, 2002 through March 1, 2007.

5. The December 3, 2014 Order Dismissing Party Defendant is final.

6. There is no personal jurisdiction over the Kansas City Chiefs in this case.

ORDERS

IT IS ORDERED that:

a) The December 3, 2014 Order Dismissing Party Defendant is corrected to identify GREAT DIVIDE INSURANCE COMPANY as defendant's insurer.

b) Further litigation by applicant against the Kansas City Chiefs and Great Divide Insurance Company as the insurance carrier for the Kansas City Chiefs is barred by res judicata.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 14, 2026

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

DONALD EDWARDS
PRO ATHLETE LAW GROUP, P.C.
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MB/*ara*

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