WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

FELIX RODRIGUEZ, *Applicant*

vs.

LOS ANGELES DODGERS, et al., *Defendants*

Adjudication Number: ADJ9477566
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendants New York Yankees, Philadelphia Phillies, San Francisco Giants and Cincinnati Reds ("Petitioners") jointly sought reconsideration of the August 14, 2019 Findings & Order ("F&O"), wherein the workers' compensation administrative law judge (WCJ) found that the provisions of Labor Code section 3600.5, subdivisions (c) and (d)[1] did not bar applicant's cumulative injury claim because defendants failed to prove the factual predicates necessary to meet the requirements of the subdivisions. Petitioners assert that the WCJ erred because applicant's last employer was exempt according to subdivision (d), meaning his entire claim is barred because he worked for more than seven years for non-California-based teams, thereby failing to meet the safe harbor clause of that subdivision.

We did not receive an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration ("Report"), recommending that the Petition be denied.

Subsequent to the grant of reconsideration, the Court of Appeal issued *Atlanta Falcons v. Workers' Comp. Appeals Bd.* (*Gandy*) (2025) 114 Cal.App.5th 1268 [90 Cal.Comp.Cases 997] ("*Gandy*"), a decision interpreting section 3600.5, subdivisions (c) and (d), and in particular, what constitutes "hire" in California for purposes of California workers' compensation proceedings

[1] Further references are to the Labor Code unless otherwise stated.

more generally. (See *id.* at p. 1280.) We therefore allowed the parties to provide supplemental briefing, both on the impact of *Gandy* on the present matter and on a number of ancillary issues. (See Order Allowing Further Briefing, 4/07/26.) We received supplemental briefing from the Los Angeles Dodgers ("Dodgers") and from Petitioners. We did not receive further briefing from applicant.

We have considered the Petition for Reconsideration, the supplemental briefing, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the F&O and return the matter to the trial level for further proceedings, because we conclude that (1) section 3600.5, subdivisions (c) and (d) potentially apply to the claim, but that (2) the record requires further development to determine the proper period of applicant's professional career, a necessary factual predicate to application of those subdivisions.

FACTS AND PROCEDURAL HISTORY

Applicant filed an Application for Adjudication, alleging a cumulative trauma injury sustained to multiple body parts during his career as a professional baseball player, from October 17, 1989 to October 27, 2005. According to the stipulations entered into at trial, applicant's playing history during the cumulative trauma period was as follows:

Los Angeles Dodgers	October 17, 1989 to December 18, 1996
Cincinnati Reds	December 18, 1996 to November 11, 1997
Arizona Diamondbacks	November 11, 1997 to December 8, 1998
San Francisco Giants	December 8, 1998 to July 30, 2004
Philadelphia Phillies	July 30, 2004 to December 3, 2004
New York Yankees	December 3, 2004 to October 27, 2005

(Transcript of Proceedings, 5/23/18, at pp. 6–8.) According to Petitioners, applicant also worked for the following teams during the cumulative trauma injurious exposure period:

Washington Nationals	January 31, 2006 to October 2006
Miami Marlins	January 11, 2007 to March 28, 2007
Kia Tigers	Unspecified dates in 2007
Camden Riversharks	June 15, 2008 to September 20, 2008
Boston Red Sox	February 4, 2009 to April 2, 2009
Camden Riversharks	Unspecified dates in 2009
Tigres del Licey	Winters of 2009, 2010 and 2011

(Petition for Reconsideration, at pp. 2–3.)[2]

The matter proceeded to trial on May 23, 2018, with further proceedings on June 18, 2019. The sole issue for trial was jurisdiction pursuant to section 3600.5, subdivisions (b) through (g). (Transcript, 5/23/2018, at p. 9.) Exhibits were largely admitted, with some marked for identification only pending a ruling on admissibility. (*Id.* at pp. 9–13.)

Applicant testified utilizing a Spanish interpreter. (*Id.* at p. 14.) Applicant was born and grew up in the Dominican Republic. (*Id.* at pp. 14–16.) He was signed by the Dodgers at age 17, in October of 1989. (*Id.* at pp. 16–17.) Applicant played for the Dodgers at a variety of locations from 1989 to 1996, including periods in both the Major and Minor Leagues. (*Id.* at pp. 17–30.)

In 1997, applicant signed a contract with the Cincinnati Reds ("Reds"), where he played at both the Major and Minor League levels. (*Id.* at p. 30). Applicant played games in California while playing for the Reds. (*Id.* at p. 30-31.)

In 1998, applicant was traded to the Arizona Diamondbacks ("Diamondbacks"), where he played at the Major League level for the season, aside from a period of injury. (*Id.* at pp. 32–33.)

In 1999, applicant was traded to the San Francisco Giants ("Giants"). (*Id.* at p. 34.) Applicant testified that he signed his contract with the Giants in 1999 in Arizona. (*Ibid.*) Applicant played the entire 1999 season for the Giants at the Major League level, based in San Francisco. (*Id.* at p. 35.) Applicant signed another one-year contract with the Giants in 2000, and then a four-year contract the following year, in 2001. (*Id.* at pp. 35–37.) The four-year contract was signed in Arizona. (*Id.* at pp. 36–37.)

In 2004, applicant was traded to the Philadelphia Phillies ("Phillies") mid-season, so he did not sign a new contract. (*Id.* at p. 38.) That same year, applicant was again traded, this time to the New York Yankees ("Yankees"). (*Id.* at p. 39.) He still had a year to go on his contract, so he did not sign a new one. (*Ibid.*)

After the expiration of his contract in 2005, applicant was a free agent, ultimately signing with the Washington Nationals in 2006 ("Nationals"). (*Id.* at p. 41.) Applicant did not recall playing in California during his time with the Nationals. (*Id.* at p. 42.)

[2] The Petition also alleges that applicant worked in the Dominican Republic from 1989 to 1990, without providing any team name or specific dates.

In 2007, applicant went to spring training with the Florida Marlins ("Marlins"), but he did not make the team. (*Id.* at p. 44.) He then went to play in Korea for the Kia Tigers, but he didn't have a visa, so he could only play there for two months. (*Id.* at p. 45.)

In 2008, applicant went to the Independent League mid-season, where he played in New Jersey. (*Id*. at p. 46.) He played in the Independent League again in 2009, but he didn't last the whole season, and he retired subsequently. (*Id.* at pp. 46–47.) Applicant testified that he did not play professional baseball after 2009. (*Id.* at p. 47.)

On cross-examination, applicant testified that he played "Winter Ball" in the Dominican Republic in 2009. (*Id.* at p. 50.) He was paid to play. (*Ibid.*) Applicant did not recall playing Winter Ball in 2010; upon having his memory refreshed with documentary evidence, applicant stated that he did not remember how many games he played, but that it was "very little." (*Id.* at p. 52.) Applicant also did not remember playing Winter Ball in 2011, but he didn't have any reason to question if documentary evidence showed otherwise. (*Id.* at p. 54.)

Applicant further clarified that he did not play regularly in California while employed by the Dodgers, playing instead for a variety of Minor League teams located in other states. (*Id.* at pp. 56–59.)

Applicant spent only about 10 days with the Marlins during spring training, before being let go. (*Id.* at p. 67.) He signed his contract with the Marlins in either December or January. (*Id.* at p. 68.) Applicant thought he was released by the Marlins at the beginning of April. (*Id.* at p. 69.)

Applicant arrived "late" in Korea, where he played only about two months. (*Ibid.*) As far as he knows, the Korean league lasts about six months, the same as in the United States. (*Ibid.*)

In 2008, applicant trained with the Boston Red Sox ("Red Sox"), in March. (*Id.* at p. 70.) Applicant only pitched one day in training camp for the Red Sox, but he also practiced with them other days. (*Id.* at p. 71.) The Red Sox let applicant go in April of 2008. (*Ibid.*)

After leaving the Red Sox, applicant re-signed with the Camden Riversharks ("Riversharks"), a team located in New Jersey that was part of the Atlantic League. (*Id.* at p. 73–75.) The Atlantic League season lasts five months, as compared to the Major League season, which lasts six months. (*Id.* at p. 75.)

Returning on June 18, 2019, applicant testified that he did not remember how long he played for the Riversharks, but that it was less than a full season. (Minutes of Hearing / Summary

of Evidence, 6/18/2019, at p. 3.)[3] Applicant signed his contract with the Riversharks in 2009, but didn't remember exactly when. (*Id.* at pp. 3–4.) Applicant was on the 40-man roster for the Washington Nationals for the whole season, but only played one and a half months. (*Ibid.*)

Subsequent to the conclusion of testimony but prior to the issuance of the F&O, applicant filed a Motion to Suspend Trial, seeking to further develop the record with regard to the exact dates of applicant's employment after 2006 and the insurance policies covering each of those post-2006 employers. The Motion noted that section 3600.5, subdivision (c) requires proof of insurance coverage, and alleged that the record did not contain sufficient information to analyze that issue. (Motion to Suspend Trial, at pp. 6.)

On August 14, 2019, the WCJ issued her F&O, denying the Motion to Suspend Trial while finding that defendants failed to prove the applicability of section 3600.5, subdivisions (c) and (d). (F&O, at p. 3.) The appended Opinion on Decision makes clear that the WCJ's decision was based upon the judgment that subdivision (c) did not exempt the Tigres, applicant's last employer, because he never played temporarily in California during his employment with them. (Opinion on Decision, at p. 7.) The Opinion on Decision also indicates that the WCJ found that applicant was hired in California by the San Francisco Giants, and that he played under that same California contract for the Phillies and Yankees. (*Id.* at p. 8.)

The instant Petition for Reconsideration followed.

DISCUSSION

Under California's 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."].)

[3] Although a Transcript of Proceedings was prepared for the May 23, 2018 hearing, apparently no such transcript was prepared for the June 18, 2019 hearing date. We accordingly refer to the Minutes of Hearing and Summary of Evidence prepared for the June 18, 2019 hearing date.

In general, the Workers' Compensation Appeals Board ("WCAB") may assert its subject matter jurisdiction in a given workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a significant connection or nexus to the state of California. (See §§ 5300, 5301; *King, supra,* 270 F.2d at 360; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116, 1128.) Whether there is a significant connection or nexus to the State of California is best described as an issue of due process, though it has also been referred to as a question of subject matter jurisdiction. (*New York Knickerbockers v. Workers' Comp. Appeals Bd.* (*Macklin*) (2015) 240 Cal.App.4th 1229, 1238; *Johnson, supra,* 221 Cal.App.4th at 1128.)

The WCAB is solely a creation of the Legislature, and thus its fundamental subject matter jurisdiction is limited by statute. Article XVI, section 4, of the California Constitution provides that the Legislature "is … expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation." (Cal. Const., art. XIV, § 4.) Thus, in the absence of a statute affirmatively conferring subject matter jurisdiction over a claim to the WCAB, we cannot exercise jurisdiction over the claim. (*Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556, 562.) The requirement to demonstrate statutory subject matter jurisdiction is in addition to the significant connection or nexus to the state required by due process to support the exercise of jurisdiction under the *Johnson* line of cases referenced above. (See *Johnson, supra,* 221 Cal.App.4th at 1128.)

Section 5300 provides a general grant of jurisdiction over claims for compensation for work-related injuries occurring in the state of California. In addition, 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]

For nearly a century, it has been established law that a hiring in California within the meaning of Labor Code sections 3600.5(a) and 5305 provides this state with sufficient connection to the employment to support adjudication of a claim of industrial injury before the WCAB. (*Alaska Packers Assn. v. Industrial Acc. Com.* (*Palma*) (1934) 1 Cal.2d 250, affd. (1935) 294 U.S. 532; *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] ["an employee who is a professional athlete residing in California, such as Bowen, who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract"]; *Johnson, supra,* 221 Cal.App.4th at p. 1126.)

Beginning in 2013, under certain circumstances additional requirements apply to professional athletes filing workers' compensation claims involving occupational disease or cumulative trauma injuries. Section 3600.5(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.

[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 [64 Cal.Comp.Cases 745].)

> (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.

(§ 3600.5(d).)

As section 3600(d)(1) makes clear by reference, an important provision for determining the meaning of section 3600.5(d) is section 3600.5(c).

Section 3600.5(c) provides as follows:

> (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.

(§ 3600.5(c).) This statutory provision applies to a cumulative trauma claim asserted by a professional athlete who is hired in a state other than California, when that athlete is temporarily doing work in California. (See, e.g., *Carroll v. Cincinnati Bengals* (2013) 78 Cal.Comp.Cases 655, 660 (Appeals Board en banc); *Dailey v. Dallas Carriers Corp.* (1996) 43 Cal.App.4th 720, 727.)

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).)

The Legislature also included a note of intent, stating that the 2013 amendments to section 3600.5 should "have no impact or alter in any way the decision of the court in [*Bowen]*." (Stats. 2013 ch. 653 (AB 1309) § 3.). Because *Bowen* affirmed the exercise of jurisdiction based upon a hire in California, we previously held that subdivisions (c) and (d) of section 3600.5 did not apply to claims filed by professional athletes who could establish hire in California by at least one of their employers during the cumulative trauma injury period. (See, e.g., *Hansell v. Arizona Diamondbacks* (2022) 87 Cal. Comp. Cases 602, 611–618; *Kouzmanoff v. Texas Rangers* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 189.)

However, in *Gandy* the Court of Appeal disagreed with our interpretation of section 3600.5, subdivisions (c) and (d), instead holding that both subdivisions apply to all claims filed by professional athletes after the effective date, even those where the professional athlete was hired in California during the cumulative trauma injury period by a prior employer. (*Gandy, supra,* 114 Cal.App.5th at p. 1278.) Here, applicant did not file supplemental briefing addressing the holding of *Gandy*. *Gandy* is binding appellate law to which we must defer to in the absence of a split of authority, and so we will apply *Gand*y's holding to this case.

Turning to the dispute before us, *Gandy*'s holding that section 3600.5, subdivisions (c) and (d) apply even in the face of a California hiring by a prior employer renders irrelevant the parties' dispute as to whether applicant was hired in California by the Giants, because subdivisions (c) and (d) apply to this claim either way. Moreover, contrary to the representations in Petitioners' supplemental briefing, the lack of a California hire would not result in a lack of statutory subject-matter jurisdiction over applicant's claim. Applicant was regularly employed in California by the Giants, whether or not he was hired in California by them, thereby establishing statutory subject-

matter jurisdiction under the regular employment prongs of 3600.5, subdivision (a) and/or 5305.[5] As such, given the holding of *Gandy*, we need not resolve the question of whether applicant was hired in California in order to determine whether applicant's claim can proceed before the WCAB: statutory subject-matter jurisdiction over the claim exists, unless it is exempted by section 3600.5, subdivision (d).

We turn next to the application of subdivisions (c) and (d) to this case. Subdivision (d), as quoted above, exempts the entire claim if every employer during applicant's last year of employment as a professional athlete is exempt according to either subdivision (c) or "any other law," unless applicant can meet the further requirements found in subdivision (d)(1)(A) and (B). (§ 3600.5(d).) It is axiomatic, therefore, that in order to determine whether (d) exempts applicant's claim, we must first determine the end date of applicant's career as a professional athlete.

Before reaching that question, however, it behooves us to clear up some of the ancillary issues surrounding the way the case was framed at the trial level. To that end, the WCJ appears to have considered applicant's employment with the Tigres as within his career as a professional athlete, on the way to concluding that the Tigres were not exempt according to subdivision (c) and therefore that the claim as a whole was not exempt. (Opinion on Decision, at p. 7.) Petitioners' supplemental briefing makes clear that petitioners no longer contest the WCJ's determination that the Tigres are not exempt according to subdivision (c); instead, they argue that the Tigres are exempt according to "any other law" because applicant was not hired or regularly employed by the Tigres in California, nor did he sustain any injurious exposure in this state while employed by that team. (Petitioners' Supplemental Briefing, at p. 4.)

Petitioners' supplemental briefing acknowledges that the primary issue presented to the WCJ was exemption according to subdivision (c), not according to "any other law," but argues that the issue was not waived because the issue was framed as "whether the applicant's employers will be exempt from the Board's jurisdiction based on Labor Code Section 3600.5(c) through Labor Code Section 3600.5(g)," thereby including the exemption according to "any other law" referenced in subdivision (d). (*Id.* at p. 5.)

We must admit that we are disappointed by applicant's decision not to respond to our invitation to file supplemental briefing, because it would presumably have provided clarity as to

[5] Applicant also sustained injurious exposure in California, thereby establishing subject-matter jurisdiction according to the general grant of jurisdiction found in section 5300.

applicant's position on these issues. However, it is clear from the Motion to Suspend Trial, which the WCJ denied, that applicant believed that further discovery was required to determine the legal significance of his employment with his post-2005 employers, including the Tigres. (See Motion to Suspend Trial, at pp. 4–7.)

Here, assuming for purposes for decision that the Tigres are subject to analysis under subdivisions (c) and (d), we agree with the WCJ that subdivision (c) cannot possibly exempt applicant's employment with the Tigres. Subdivision (c) exempts only temporary employment *in California*, and the parties do not contest that applicant was never temporarily in California while employed by that team. As such, the provision cannot possibly apply. (See, e.g., *Sutton v. San Jose Sharks* (2018) 83 Cal.Comp.Cases 1613, at pp. 1619–21; *Bellinger v. San Francisco Giants* (2025) 90 Cal.Comp.Cases 543, 559.) Based on the supplemental briefing, it does not appear that Petitioners contest this determination, and we therefore treat it as established that the Tigres are not exempt according to subdivision (c).

That said, we also agree with Petitioners that the issue of exemption according to the "any other law" language of subdivision (d) was not waived. Although Petitioners could and should have been clearer in articulating that they were arguing that the Tigres were also exempt according to subdivision (d)'s "any other law" language, the argument was technically preserved by the way the issue was framed at trial. (See Transcript, 5/23/2018, at p. 9.) We further note that at first glance the Tigres do appear to meet the requirements of the "any other law" language of subdivision (d), because the Tigres did not hire applicant in California, regularly employ him in California, or expose him to any injury while in California. (See *Bellinger, supra,* 90 Cal.Comp.Cases at 557–558.)

However, there is a more fundamental question that must be resolved prior to considering whether the Tigres are exempt according to the "any other law" language of subdivision (d): whether the Tigres are even part of applicant's professional career at all for purposes of section 3600.5. Subdivision (d) applies only to "professional athletes," which are defined under subdivision (g) as athletes "employed at either **a minor or major league level** in the sport of baseball, basketball, football, ice hockey, or soccer." (§ 3600.5(g)(1) (emphasis added).) If the Tigres did not compete at the minor or major league level at the time they employed applicant, that employment would not be considered part of applicant's career as a professional athlete, and therefore the Tigres would not be the last employer for purposes of subdivision (d). Instead,

analysis would key off whichever of applicant's employers was the last employer to have employed him at the minor or major league level.

Our request for supplemental briefing highlighted this language, requesting input from the parties as to whether the Tigres (along with the Kia Tigers and the Riversharks) are employers at the minor or major league level. We specifically requested briefing on whether there was sufficient evidence in the record to make that determination. (See Order Allowing Further Briefing, at p. 3.)

Petitioners' supplemental briefing[6] argues that the Tigres (and the other named teams) meet the requirements of the statute because we have previously applied the statute to other teams that are either based outside the country – like the Tigres and the Kia Tigers – or members of independent leagues, like the Riversharks. (Petitioners' Supplemental Briefing, at p. 5–6.) Petitioners did not, however, cite to any actual evidence in the record.

The fact that prior cases may have applied subdivision (d) to other teams based either outside the United States or in independent leagues within the United States is only relevant to the extent that those cases actually considered whether those teams qualify as employers at the minor or major league level. Based on our review of the cases Petitioners cited, in each case it was simply assumed that the employer in question met the requirements of subdivision (g). Cases are not authority for propositions they did not consider; as such, these cases shed no real light on the matter one way or the other. (See *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.)

By contrast, the Appeals Board has considered this issue once before, concluding that a Puerto Rican team playing in a "winter league" was *not* a team at the minor or major league level. As stated in that case:

> Applicant's undisputed trial testimony established that he played for the Mayaguez team in a winter league in Puerto Rico that was neither minor nor major league baseball. Applicant testified that the Mayaguez league was a "winter league," where players attend to get in shape for spring training in the major leagues. (*Id.* at p. 6:18.) The winter league season is timed to occur in the off season for major league play and is split between the winter of one year and the spring of the next. Applicant would play less than 10 games during the winter league season. (*Id.* at p. 6:23.) Applicant testified that "Mayaguez is not a professional organization … it is winter ball." (*Id.* at p. 7:23.) In addition, the documentary evidence submitted in the record distinguishes between applicant's time spent playing in the major leagues, the minor leagues, and "foreign" leagues. (Ex. Z, Baseball Reference player page dated August 20, 2019.) The

[6] The Dodgers' supplemental briefing did not address this point, and, as noted above, applicant did not file supplemental briefing.

> Mayaguez team is not classified at either the major or minor league level. Moreover, there is no evidence that the Mayaguez team had any affiliation to major- or minor-league baseball, or that applicant's play for those teams was covered under applicable collective bargaining requirements. Accordingly, applicant's time spent playing with the Mayaguez team would not qualify as employment at "either a minor or major league level in the sport of baseball … ." (Lab. Code, § 3600.5(g)(1).) The record supports applicant's contention that his time spent playing for the Mayaguez teams was not equivalent to major or minor league level play, and that applicant's time spent playing for those teams cannot be considered work as a professional athlete as defined under section 3600.5(g)(1). Section 3600.5(g)(4) defines a "season" as a period of time played by a professional athlete. Accordingly, applicant was not a professional athlete as defined by section 3600.5(g)(1) while participating in winter league baseball for the Mayaguez team, and the "seasons" played in Puerto Rico would not qualify as seasons played for non-California-based teams under section 3600.5(d)(1)(B). Accordingly, applicant played less than seven seasons with non-California-based teams and is excepted from the jurisdictional bar of section 3600.5(d)(1).

(*Sanchez v. San Francisco Giants* (2025) 2025 Cal. Wrk. Comp. P.D. LEXIS 32, *18-20.)

This issue was not analyzed by the WCJ in the first instance, nor was it directly raised at the trial level by the parties. However, it was not waived, for the same reason that Petitioners' argument that the Tigres are exempt according to subdivision (d) was not waived: it was reasonably encompassed by the parties' framing of the issue at trial. Moreover, 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. Finally, to the extent that Petitioners seek to benefit from the exemption found in subdivision (d), they bear the burden of proof in establishing entitlement to that exemption, including proving any necessary preconditions to the application of the exemption. (See § 5705.)

Here, we find a lack of substantial evidence in the record to establish that the Tigres, the Kia Tigers, or the Riversharks are employers at a minor or major league level as defined in

subdivision (g)(1).[7] Without such evidence, it is by definition impossible to determine whether applicant's claim is exempt according to subdivision (d), because there is no period from which to measure the exemption provided by that subdivision without a determination as to when applicant's professional career ended. Therefore, we believe the best approach is to return the matter to the trial level for further proceedings to determine (1) which employers qualify as employers of professional athletes under subdivision (g), and (2) for application of subdivision (d) in light of that determination. To the extent required, we find further development of the record on this point appropriate. (See *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal. App. 4th 396, 403–404.)

We note that the question of which employers qualify under subdivision (g)(1) is relevant not only to determining applicant's last employer for purposes of subdivision (d), but also to analyzing the requirements of subdivision (d)(1)(A) and (B) in the event that all of applicant's employers during the last year of his professional career are exempt. In other words, if an applicant was employed by a team that does not play at the minor or major league level, that employment would not count towards either the minimum two seasons played for a California team required by subdivision (d)(1)(A), nor would it count towards the less than seven seasons of employment by non-California teams allowed by subdivision (d)(1)(B).

Finally, we observe that if this case does reach the stage of analysis under subdivision (d)(1)(A) and (B), prior caselaw has established that employment for less than a full season counts only as a partial season for purposes of meeting either the two season or less than seven season requirements, pro-rated based upon the length of that employment. (See, e.g., *Ruhl (Nathan) v. Kansas City T-Bones* (2022) 88 Cal. Comp. Cases 653, 665.) Similarly, caselaw has also established that subdivision (d)(1)(A) and (B) depend on the applicant's employer, not the specific team to which they were dispatched; as such, employment by a California-based team counts as time played for a California-based team even if the athlete was dispatched to an out-of-state affiliate team, and vice versa. (See *id.* at pp. 658–661.) To the extent that the claim reaches the stage of analysis under subdivision (d)(1)(A) and (B), further development of the record as to the precise dates of applicant's employment and the length of the season of each of applicant's employers may also be necessary.

[7] The remainder of applicant's employers are Major League Baseball teams, and therefore there appears to be no reason to question that they are employers at the major league level.

Accordingly, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 14, 2019 Findings and Order is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 28, 2026

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

FELIX RODRIGUEZ
NBO LAW
COLANTONI, COLLINS, MARREN, ET AL.
GUILFORD, SARVAS & CARBONARA, LLP
BOBER, PETERSON & KOBY, LLP
GURVITZ MARLOWE WOODLAND HILLS
LLARENA, MURDOCK, LOPEZ & AZIZAD, APC

AW/kl

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