

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

GERARD WARREN, *Applicant*

vs.

OAKLAND RAIDERS; ACE AMERICAN INSURANCE, administered by TRISTAR RISK MANAGEMENT; ACE AMERICAN INSURANCE, administered by ESIS; NEW ENGLAND PATRIOTS; GREAT DIVIDE INSURANCE COMPANY, administered by BERKLEY ENTERTAINMENT, *Defendants*

**Adjudication Number: ADJ9318664
Santa Ana District Office**

ORDER ALLOWING FURTHER BRIEFING

We previously granted reconsideration¹ in this matter. Defendant Oakland Raiders/ACE American Insurance administered by TriStar Risk Management (“Tristar” and/or “Raiders”) sought reconsideration of the June 4, 2021 Findings of Fact & Findings And Order (“F&O”), wherein the workers’ compensation administrative law judge (WCJ) found applicant can bring his claim in California based upon his regular employment with the Raiders, and that Labor Code section 3600.5, subdivisions (c) and (d) do not apply to his claim as a result of that regular California employment. Tristar asserts that the WCJ erred, and that subdivisions (c) and (d) apply to all claims filed after the effective date of the subdivisions, whether or not there was regular employment for previous employers during the injurious exposure period.

We received 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 Labor Code² section 3600.5, subdivisions (c) and (d), including

¹ Commissioner Lowe, who was on the panel that granted reconsideration, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

² Further references are to the Labor Code unless otherwise specified.

their applicability when an athlete can establish statutory subject-matter jurisdiction pursuant to Labor Code section 3600.5, subdivision (a).

Here, the issue is whether subdivisions (c) and (d) apply to applicant's claim despite the establishment of subject-matter jurisdiction pursuant to subdivision (a) based upon regular employment with the Raiders, who employed applicant during the injurious exposure period, but not during the last year of his professional career. Accordingly, *Gandy* appears directly relevant to the question presented, and clearly requires consideration and discussion in our determination of the merits of the pending Petition for Reconsideration.

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.

In light of the above, the interests of due process favor providing the parties with the opportunity to submit further briefing on what impact *Gandy* has on the issues raised in the Petition for Reconsideration and in the instant case. (See generally *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295–1296.) If desired, the parties may also take the opportunity to address any other caselaw issued subsequent to our August 27, 2021 order granting reconsideration that they believe relevant.

WCAB Rule 10605 provides that when a document is served, the time to respond is extended by ten (10) days when it is served on a party outside of California. (Cal. Code Regs., tit. 8, § 10605(a)(2).) To be clear, and to allow all parties equal time to respond, we shall apply WCAB Rule 10605(a)(2) to all responding parties, whether outside of California or not. Briefing shall be filed in the Electronic Adjudication Management System (EAMS) within twenty (20) days of the date of service of this order plus an additional ten (10) days for mailing, so that all parties have thirty (30) days to respond. Untimely or misfiled responses may not be accepted or considered.

Once the period for submission of additional briefing elapses, we will consider any filings and render a final decision.

For the foregoing reasons,

NOTICE IS HEREBY GIVEN that the Appeals Board provides the parties with the opportunity to submit further briefing on the issues raised in the Petition for Reconsideration and in this case in light of the decision in *Atlanta Falcons v. Workers' Comp. Appeals Bd. (Gandy)* (2025) 114 Cal.App.5th 1268 [90 Cal.Comp.Cases 997] and any other caselaw issued subsequent to the Opinion and Order Granting Reconsideration on August 27, 2021 that they believe relevant.

IT IS FURTHER ORDERED that any further briefing must be electronically filed in the Electronic Adjudication System (EAMS) within twenty (20) days of the date of service of this order plus ten (10) additional days for mailing for all parties. **All parties have a total of thirty (30) days to respond. Untimely or misfiled responses may not be accepted or considered.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 28, 2026

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

**GERARD WARREN
PRO ATHLETE LAW GROUP
BOBER, PETERSON & KOBY
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

AW/kl

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