WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHAEL JENKINS, *Applicant*

vs.

OAKLAND RAIDERS; DALLAS COWBOYS; TAMPA BAY BUCCANEERS; ARIZONA CARDINALS; GREAT DIVIDE INSURANCE, administered by BERKLEY ENTERTAINMENT, *Defendants*

Adjudication Number: ADJ12332497
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] 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.

Defendant Great Divide Insurance Company, administered by Berkley Entertainment (defendant) seeks reconsideration of the July 13, 2021 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from April 1, 2008 to March 1, 2017, claims to have sustained industrial injury to "multiple body parts." The WCJ found that applicant's regular work in California was sufficient to vest the Workers' Compensation Appeals Board (WCAB) with subject matter jurisdiction over applicant's claim.

Defendant contends that Labor Code[2] section 3600.5(d) exempts the parties from WCAB jurisdiction, and that applicant does not qualify for any exception to the exemption.

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[1] Commissioner Lowe, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been substituted in her place.

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

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

In addition, on April 30, 2026 we provided the parties with the opportunity to file supplemental briefing responsive to the decision of the Fourth District Court of Appeal in *Atlanta Falcons v. Workers' Comp. Appeals Bd.* (*Gandy*) (2025) 114 Cal.App.5th 1268 [90 Cal.Comp.Cases 997] ("*Gandy*"). Both applicant and defendant filed supplemental briefs which we have read and considered.

We have considered the Petition for Reconsideration, the Answer, the parties' 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 Findings of Fact and substitute new findings that section 3600.5 precludes California subject matter jurisdiction over applicant's claim.

FACTS

Applicant claimed injury to his head, neck, shoulders, elbows, hands, wrists, fingers, back, hips, knees, ankles, feet, toes, neurological issues, internal issues, memory issues, sleep issues, psychiatric issues, chronic pain, and headaches, while employed as a professional athlete by the Dallas Cowboys from July 26, 2008 to March 12, 2013; the Oakland Raiders from April 8, 2013 to March 11, 2014; the Tampa Bay Buccaneers from March 20, 2014 to March 9, 2016; and the Arizona Cardinals from July 19, 2016 to March 9, 2017. Defendant contends the WCAB lacks subject matter jurisdiction over the claim.

On January 12, 2021, the parties proceeded to trial and framed for decision the applicability of sections 3600.5(c)-(g) and whether applicant's right to recovery was barred under Assembly Bill (AB) 1309. (Minutes of Hearing, dated January 12, 2021, at p.2:24.) Applicant asserted that section 5305 conferred subject matter jurisdiction based on a California hiring. (*Id.* at p. 3:1.)

On May 24, 2021, the WCJ heard testimony from applicant and from defense witness Daniel Ventrelle. The WCJ ordered the matter submitted for decision as of June 14, 2021. (Minutes of Hearing and Summary of Evidence, dated May 24, 2021, at p.1:22.)

On July 13, 2021, the WCJ issued the instant Findings of Fact, determining in relevant part that the court had "jurisdiction over this case." (Finding of Fact No. 2.) The accompanying Opinion on Decision explained that the jurisdiction exemption of section 3600.5(d) applied because all of

the employers in applicant's last year of work as a professional athlete were exempt from California jurisdiction under section 3600.5(c). The WCJ further considered the exceptions available under section 3600.5(d)(1)(A)-(B), but found that applicant could not claim the exceptions because applicant had not worked two seasons for a California-based team and because he did not perform 20 percent of his duty days in California. (Opinion on Decision, at p. 7.) Notwithstanding the exemption of section 3600.5(d), however, the WCJ determined that subject matter jurisdiction was available under section 3600.5(a) if applicant was "regularly employed" in California. (*Id.* at p. 8.) Because applicant was employed by the Oakland Raiders for an entire season, the WCJ concluded that applicant's regular employment in California was sufficient to warrant the exercise of subject matter jurisdiction over applicant's claim. The WCJ also determined that applicant was hired in California by the Oakland Raiders sufficient to confer WCAB subject matter jurisdiction over the claim under section 5305.

Defendant's Petition contends the evidence is insufficient to support a California hiring based on an oral agreement between applicant and the Oakland Raiders. (Petition, at p. 5:7.) Defendant further contends the written contract executed by applicant and the Oakland Raiders contains an integration clause that vitiates any assertion of a prior oral contract of hire. (*Id.* at p. 7:23.) Defendant also asserts that the jurisdictional exemption of section 3600.5(d) precludes further analysis under section 3600.5(a). (*Id.* at p. 9:9.)

Applicant's Answer asserts the WCJ properly found the formation of an oral contract of hire in California when applicant accepted an offer from the Oakland Raiders while physically present in California, and that a later written contract may not divest the subject matter jurisdiction conferred by a California hiring. (Answer, at p. 5:13.) Applicant further contends his regular employment in California by the Oakland Raiders satisfies the jurisdictional requirement of section 3600.5(a), thereby eliminating the need to consider the exemptions to jurisdiction found in section 3600.5(d). (*Id.* at p. 6:13.)

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; Lab. Code, §§ 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."].)

In general, the 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 Lab. Code, §§ 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 [78 Cal.Comp.Cases 1257].) 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, and is considered on the basis of the claim as a whole. (*New York Knickerbockers v. Workers' Comp. Appeals Bd.* (*Macklin*) (2015) 240 Cal.App.4th 1229, 1238; *Johnson*, *supra*, 221 Cal.App.4th at 1128.)

In addition to injuries occurring in California, 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." (Lab. Code, § 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."[3] (Lab. Code, § 5305.)

For nearly a century, it has been established law that a hiring in California within the meaning of 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, even when

[3] 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].)

the injuries are sustained fully out-of-state. (*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"]; *Johnson*, *supra*, 221 Cal.App.4th at p. 1126.)

Under certain circumstances, additional requirements apply to professional athletes filing workers' compensation claims involving occupational disease or cumulative injuries. Section 3600.5, subdivision (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.
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> > (B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.
>
> (2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5

(Lab. Code, § 3600.5(d).)

As section 3600.5, subdivision (d)(1) makes clear by reference, an important provision for determining the meaning of section 3600.5, subdivision (d) is section 3600.5, subdivision (c), which 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.
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> > (B) The employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this state.
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> (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.
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> (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.

(Lab. Code, § 3600.5(c).)

This statutory provision applies to a cumulative injury claim asserted by a professional athlete who is hired in a state other than California, while 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 6 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).)

Here, applicant asserts that because he was "regularly working in the state" by the Oakland Raiders for a period of time during his cumulative injury claim, section 3600.5(a) provides for compensation under California law. (Lab. Code, § 3600.5(a).) To the extent that subject matter jurisdiction is conferred by section 3600.5(a), applicant contends that the jurisdiction exemption analysis otherwise required by section 3600.5(d) is inapplicable.

We have previously addressed the applicability of section 3600.5(d) in cases involving professional athletes who were "regularly working" in California for some but not all of their employers during a claimed cumulative injury in *Bellinger v. San Francisco Giants* (2025) 90 Cal.Comp.Cases 543 [2025 Cal. Wrk. Comp. P.D. LEXIS 90], an Appeals Board panel decision.[4] Therein, we considered whether applicant, who played for four different teams including two California teams during his lengthy professional sports career was exempt from the application of section 3600.5(c) and (d). We stated:

> Historically, a California contract of hire and regular California employment have been treated as two largely interchangeable roads leading to the same destination, each providing an equally viable path to subject-matter jurisdiction for injuries that occur outside the state. This default position is reflected in section 3600.5, subdivision (a)'s grant of subject-matter jurisdiction over the out-of-state injuries of any "employee who has been hired or is regularly working in the state." (§ 3600.5(a).) By contrast, the subdivisions of section 3600.5 which follow on from subdivision (a) denote exceptions that carve out certain employment situations from California jurisdiction. Subdivision (b), for example, is a carveout applicable to all employees injured while working temporarily within the state when there is reciprocity with the state where they are normally based, subject to certain conditions. (§ 3600.5(b).) Subdivisions (c) and (d) are limitations on jurisdiction, but of a different sort: they are limited solely to professional athletes bringing occupational disease or cumulative injury claims. As such, they clearly represent a legislative intent to limit access to the California workers' compensation system to certain athletes who would otherwise be eligible.
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> …

[4] 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, 242, 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].) Here, we refer to these panel decisions because they considered a similar issue.

The fact that hire in California and regular employment in California have historically been equally viable as paths to jurisdiction makes it initially tempting to conclude that the Legislature would not have intended to create a distinction between the two by applying subdivisions (c) and (d) to athletes who were regularly employed in California, while sparing those who were hired here. However, the very fact that the Legislature acted specifically to limit the ability of at least some professional athletes to file claims and obtain awards in the California workers' compensation system shows an indication to depart from the historical status quo. After all, just as hire in California and regular employment in California were historically interchangeable for purposes of subject-matter jurisdiction, whether an injured worker was a professional athlete had no legal relevance to their ability to file a California workers' compensation claim prior to the addition of subdivisions (c) and (d). We must therefore carefully consider the subdivisions to discern whether they show an intent to distinguish between hire in California and regular employment in the state, just as they clearly show an intent to distinguish between professional athletes and other injured workers.

The major stumbling block to holding that subdivisions (c) and (d) do not apply to athletes who can establish regular employment in California comes from subdivision (d)(1)(A) & (B), which provides a limited failsafe mechanism for athletes whom subdivision (d) would otherwise bar from filing California workers' compensation claims. This exception to the exemption applies to athletes who can demonstrate that they (1) either worked two or more seasons for a California based team or more than 20 percent of their career in California or for California-based teams, and (2) worked fewer than seven seasons for non-California-based teams. (§ 3600.5(d)(1)(A) & (B).) The text of subdivision (d) is silent as to whether it is intended to apply to athletes with regular employment in California.

However, the very structure of the exemption certainly appears designed to apply to such athletes. This is because the vast majority of athletes who can demonstrate eligibility under the first condition – two or more seasons played for a California based team or 20 percent or more of their career duty days either played for California-based teams or in California – will in fact be athletes who have at least some period of regular employment in California. In other words, because California-based teams are necessarily based in California, in the ordinary course of events athletes employed by California-based teams will be regularly employed in California. Accordingly, if we were to rule that subdivisions (c) and (d) are not intended to apply to athletes with regular employment in California, it would leave subdivision (d)'s failsafe mechanism applicable to only an extremely narrow category of athletes. Practically speaking, the only way an athlete without regular California employment could meet the first condition would be through employment for a California-based team, but with that employment based out-of-state. Admittedly, cases of athletes hired by California teams but employed out-of-state do exist – particularly in

baseball, where athletes are not infrequently hired by California-based teams and then dispatched to out-of-state minor league affiliates. Such athletes occasionally do complete their entire contract with a California-based team without ever having a period of regular California employment. Theoretically, an athlete could also qualify by having spent 20 percent or more of their duty days in California, despite never having been regularly employed in California.

In practice, however, this is exceedingly unlikely, as it would be virtually impossible for an athlete in any of the covered sports to have spent 20 percent or more of their duty days over their entire career in California without at least one period of regular California employment.

However, we question whether it is reasonable to believe that the Legislature would have intended to create a failsafe mechanism that in practice applied to such a limited category of athletes, essentially only baseball players who play for out-of-state minor league affiliates of California-teams without ever being called up to the major league team for any regular period of employment. In the absence of any statutory language or legislative history suggesting such an intent, it seems unlikely to us that the Legislature would have created such a detailed framework designed to apply to such a small sliver of athletes. Conversely, if we read subdivision (d) as being intended to apply to athletes with regular California employment, the structure of subdivision (d)'s safe harbor provisions are much more comprehensible, because they are applicable to a much wider range of athletes. In contrast to the very small number of athletes who could show multiple seasons of employment with a California based team without regular California employment, a comparatively large number of professional athletes who have played multiple seasons for California-based teams were not hired in California. These athletes would be unable to have their claims heard in the California workers' compensation system without some kind of failsafe mechanism designed to catch those professional athletes who, despite the lack of a California hire, the Legislature believed should still be able to file for California workers' compensation benefits based upon a combination of the strength of their ties to this state, and the absence of a long period of employment in other states.

Moreover, the limited legislative history we do have in relation to subdivisions (c) and (d) reinforces the conclusion that the provisions were intended to apply to those with regular California employment. As explained in *Hansell*, the bill as originally introduced and amended in the Assembly went much further in restricting the ability of professional athletes to file claims in California than the final statute. (See *Hansell*, *supra*, 87 Cal.Comp.Cases at pp. 615-18.) As particularly relevant here, it did not contain any statement of legislative intent to retain the holding of Bowen. (See Assem. Amend. To Assem. Bill 1309 (2013-2014 Reg. Sess.) April 25, 2013.) Of equal relevance, what became subdivision (d) was a part of subdivision (c), and read:

> (A) An employer of a professional athlete that is subject to this division is not liable for occupational disease or cumulative injury pursuant to Section 5500.5 if at the time application for benefits is made the professional athlete performed his or her last year of work in an occupation that exposed him or her to the occupational disease or cumulative injury as an employee of one or more other employers that are exempt from this division pursuant to paragraph (1) or any other law.
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> (B) This paragraph shall apply to all occupational disease and cumulative injury claims filed against an employer of professional athletes if the employer is subject to this division, unless the professional athlete was employed for eight or more consecutive years by the same California-based employer pursuant to a contract of hire entered into in California, and 80 percent or more of the professional athlete's employment as a professional athlete occurred while employed by that California-based employer against whom the claim is filed.

(*Ibid*.)

> The original text of the bill, therefore, made it abundantly clear that it would have applied to all professional athletes, regardless of whether they were hired in this state or had regular California employment, unless they met extremely stringent requirements. In response to concerns raised in the Senate about the wide-ranging impact of the Assembly bill, the bill was altered to become what is now subdivisions (c) and (d), including adding the explicit statement of legislative intent to retain *Bowen*. It is relevant that the Senate did not also include any statement of legislative intent to affirm regular employment in California as an alternative basis for jurisdiction that would also take an injured worker's claim outside of the ambit of the new amendments. Instead, they modified what became subdivision (d) to make it less restrictive, by removing the necessity of hire in California, lowering the threshold of employment in California or for a California-based team to two seasons from eight, and replacing the 80 percent requirement with the requirement of less than seven seasons played for non-California-based teams. In other words, the Senate chose to widen the applicability of the exception to make it easier for those with regular California employment to meet its requirements, rather than to carve out regular California employment entirely, as it chose to do with California hire.

(*Id.* at pp. 550-554.)

We thus concluded that subdivisions (c) and (d) of section 3600.5 "do apply to athletes who have had a period of regular employment in California during the relevant injury period," and that "[t]his interpretation best accords with both the plain language of the statute, and the expressions of legislative intent we have reviewed." (*Id.* at p. 555; see also *Kouzmanoff v. Texas*

Rangers (May 17, 2024, ADJ10501182, ADJ10501198) [2024 Cal. Wrk. Comp. P.D. LEXIS 189].)

Here, we find that a similar analysis would apply. The record establishes that applicant was "regularly working" in California for a single season while employed by the Oakland Raiders, with the balance of his professional sports career working for teams outside California. The Legislative decision to define and quantify "temporarily working" in California under section 3600.5(c) coupled with the general jurisdictional exemption of section 3600.5(d) and the broad-based *exceptions* to that exemption found in section 3600.5(d)(1)(A) and (B), reflect the Legislature's intent that sections 3600.5(c) and (d) apply to professional athletes even where some but not all of the claimed cumulative injury took place while regularly working in California. Accordingly, we conclude that the question of subject matter jurisdiction must be evaluated under the provisions of section 3600.5, subdivisions (c) and (d), rather than under subdivision (a).

As we have noted, *infra*, evaluation of section 3600.5 subdivision (d) is predicated in part on the applicability of subdivision (c), which exempts the professional athlete and their employer from these proceedings where the athlete was hired outside California, is temporarily working in California, the employer has furnished workers' compensation insurance coverage or its equivalent under non-California law, and the employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this state. (Lab. Code, § 3600.5(c)(1).)

Typically, the burden of establishing the applicability of section 3600.5(c) as an integral consideration in the evaluation of a potential bar to the entire claim under section 3600.5(d) would necessarily rest with the team or teams asserting the exemption, i.e., the team or teams in the professional athlete's last year of work as a professional athlete. (Lab. Code, § 3600.5(d)(1).) While there may be situations in which a party seeking the general claim exemption of section 3600.5(d) must assert the applicability of section 3600.5(c) vicariously, e.g., where the Appeals Board lacks personal jurisdiction over the terminal employer, we note that is not the case in the present matter. Here, the Arizona Cardinals were regularly joined to these proceedings, and thereafter the parties stipulated to applicant's employment by the Arizona Cardinals in his final year of work as a professional athlete. (Minutes of Hearing, dated January 12, 2021, at p. 2:12.) Thereafter, the Cardinals were dismissed as a party defendant without prejudice on the initial day of trial, January 12, 2021.

Notwithstanding their dismissal, the Cardinals would normally bear the burden of establishing the applicability of section 3600.5(c) in the first instance. (Lab. Code, § 5705.) The corresponding evidence required to establish the exemption of section 3600.5(c) would include the insurance coverage documentation described in subdivisions (c)(1)(A) and (B). Moreover, to the extent that applicant was able to satisfy the exceptions of section 3600.5(d)(1)(A) and (B), the liability for the claim would be determined in accordance with section 5500.5 per section 3600.5(d)(2), thus rendering the Cardinals a potentially liable party to the extent they employed applicant in the year preceding the earlier of either the last date of injurious exposure or the date of injury under section 5412. (Lab. Code, § 3600.5(d)(2); § 5500.5(a).) Thus, and notwithstanding their dismissal on the first day of trial, we observe that typically the Cardinals would not be appropriately dismissed from these proceedings prior to determining the *party exemption* of section 3600.5(c), where the applicability of section 3600.5(c) is contested and is necessary to evaluate the applicability of the *claim exemption* of 3600.5(d).

However, we also observe that in the instant matter, the Cardinals were regularly joined to, and participated in, these proceedings as late as the commencement of trial on January 12, 2021, and that documentary evidence pertaining to their insurance coverage was submitted at trial. (Ex. G, Arizona Cardinals Policies and Statutes, various dates.) We further observe the WCJ's review and reliance on this evidence as an integral consideration in her section 3600.5(d) analysis, as follows:

> Defendant asserts that both Tampa Bay and the Cardinals are exempt and should be dismissed unless they met both criteria set forth in LC 3600.5(d)(1)(A) and (d)(1)(B). (Post Trial Brief, page 6.) A review of the record demonstrates that both the Tampa Bay Buccaneers and the Arizona Cardinals were dismissed without prejudice on January 12, 2021.
> …
> Applicant did not work for two seasons for a California based team. Therefore, applicant must prove that over the course of his professional athletic career, he worked 20% or more of his duty days in California. The evidence demonstrates that applicant did not perform 20% of his duty days in the state of California. Applicant also worked as a professional athlete for more than seven seasons. Applicant worked a total of nine seasons and only one with a California based team. Therefore based on a review of the record and applicant's testimony at trial, the applicant does not meet the criteria set forth in LC 3600.5(d).

(Opinion on Decision, at pp. 6-7.)

Following our independent review of the evidence, we concur with the WCJ's determination that the insurance requirement of section 3600.5(c)(1)(A) and (B) were satisfied herein. (Opinion on Decision, at p.6.) We further concur with the WCJ's analysis that applicant was not employed by a California-based team for two or more seasons, and that applicant did not perform 20 percent or more of his overall duty days in the state of California. (*Id.* at p. 7.) Accordingly, applicant has not met the exceptions available under section 3600.5(d)(1)(A) and (B), and section 3600.5(d)(1) precludes our exercise of subject matter jurisdiction as to this claim.

The WCJ also determined that applicant was hired in California by the Oakland Raiders, and that this hiring was an alternative basis for the exercise of subject matter jurisdiction under section 5305. The WCJ's Opinion on Decision notes applicant's trial testimony that he was an unrestricted free agent when he met with the Raiders; that applicant and the representatives from the Raiders discussed a short term contract; that they "threw out numbers"; that they scheduled a pre-employment physical; that the written contract was sent to applicant within a week of the meeting; and that upon leaving applicant felt he had a final agreement with the Raiders. (Opinion on Decision, at pp.13-14.) The WCJ also observed that a significant body of California jurisprudence allows for the formation of an oral contract of hire notwithstanding attendant conditions subsequent. Moreover, under California law a completed oral contract of hire appropriately serves as the basis for California subject matter jurisdiction over a resulting workers' compensation claim. (Opinion on Decision, at pp.12-13; see *Bowen v. Workers' Comp. Appeals Bd.* (1993) 73 Cal.App.4th 15 [64 Cal.Comp.Cases 745]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd.* (*Egan*) (1966) 65 Cal.2d 429 [31 Cal.Comp.Cases 415]; *Travelers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Coakley*) (1967) 68 Cal.2d 7, 12-13 [32 Cal.Comp.Cases 527].) The WCJ thus concluded that the evidence including applicant's trial testimony established an oral agreement of hire sufficient to trigger the subject matter jurisdiction of section 5305. (Opinion on Decision, at p. 13.)

We note, however, that in *Coakley*, *supra*, 68 Cal.2d 7, our Supreme Court identified the essential terms to the subject contract of hire as including "the parties, time and place of employment, salary, and the general category of employment." (*Id*. at p. 17.) Here, we observe that the question of applicant's salary with the Raiders was specifically *not* reasonably finalized when applicant met with team representatives in California. (Minutes of Hearing and Summary of Evidence, dated May 24, 2021, at p. 4:16.) Rather "applicant wanted his agent to be involved and

to be the one that had the last say-so on the numbers." (*Id.* at p. 4:17.) Applicant further testified that following his meeting with the Raiders in California, "he wanted to further speak with his agent after the visit and upon his return to Florida." (*Id.* at p. 5:21.) It was not until applicant had returned to Florida that "they finalized the numbers discussed, and the contract was sent to the applicant in Florida … the agent gave the applicant the final numbers when he got back to Florida." (*Id.* at p. 5:23.) Thereafter, applicant signed the written contract while physically present in Florida. (*Id.* at p. 5:24.)

Thus, applicant's testimony supports defendant's assertion that applicant's salary, an important consideration in any contract of hire, was not finalized or agreed upon until after applicant left California and returned to Florida. Applicant's own testimony calls into question whether he could have reasonably accepted a valid offer of employment while physically located in California when significant aspects of the employment agreement remained undetermined. However, intervening mandatory authority from the California Court of Appeal obviates further analysis of the issue. The WCJ's analysis relied in part on our panel decision[5] in *Wilson v. Florida Marlins* (February 26, 2020, ADJ10779733) [2020 Cal. Wrk. Comp. P.D. LEXIS 30] as persuasive authority for the proposition that a valid California hiring at any point during a claimed cumulative injury *standing alone* was sufficient to confer California subject matter jurisdiction under sections 3600.5(a) and 5305. (See also *Hansell v. Arizona Diamondbacks* (2022) 87 Cal.Comp.Cases 602 [2022 Cal. Wrk. Comp. P.D. LEXIS 83].)

In *Gandy, supra,* 114 Cal.App.5th 1268, however, the Court of Appeal disagreed with our interpretation of section 3600.5, instead holding that subdivisions (c) and (d) 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 period by a prior employer, as long as they were not hired in California by the employer seeking to benefit from the subdivision (c) exemption. (*Id.* at p. 1278.) As an inferior tribunal, we are constrained to apply the holdings in *Gandy* in the present matter. Accordingly, the jurisdictional bar of section 3600.5(d) applies irrespective of whether the applicant reached a valid oral employment agreement with the Raiders while physically present in California.

In summary, section 3600.5(d) precludes our exercise of subject matter jurisdiction as to the instant claim notwithstanding the fact that applicant spent one season regularly working for the

[5] See fn. 3, ante.

Oakland Raiders, and irrespective of whether applicant may have been hired in California by oral agreement with the Raiders. Accordingly, as our decision after reconsideration, we will rescind the WCJ's decision and substitute new Findings of Fact that section 3600.5 precludes the exercise of California subject matter jurisdiction over applicant's claim.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact issued on July 13, 2021 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Michael Jenkins, while employed during the period April 1, 2008 to March 1, 2017 (disputed date of injury), as a professional football player, for the Dallas Cowboys (July 26, 2008 to March 12, 2013); Oakland Raiders (April 8, 2013 to March 11, 2014); Tampa Bay Buccaneers (March 20, 2014 to March 9, 2016); and Arizona Cardinals (July 19, 2016 to March 9, 2017), claims to have sustained injury arising out of and in the course of employment to multiple body parts.

2. Labor Code section 3600.5, subdivision (d), precludes the exercise of California subject matter jurisdiction as to applicant's claim.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 30, 2026

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

MIKE JENKINS
PRO ATHLETE LAW GROUP
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

SAR/abs

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