WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DAVID ROHM, *Applicant*

vs.

ATLANTA BRAVES;
ACE AMERICAN INSURANCE, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ11128025

Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration of the Findings and Order (F&O) issued on July 30, 2019, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that subject matter jurisdiction exists over applicant's claim of cumulative injury as applicant was a California resident who executed his contract of hire in California, and that the Atlanta Braves were not excluded from subject matter jurisdiction pursuant to Labor Code[1] section 3600.5(d). The WCJ further found that the forum selection clause in applicant's contract was not enforceable.

Defendant argues that the WCJ erred because defendant should be excluded from subject matter jurisdiction per section 3600.5(d) and that the provisions of section 3600.5(d) are more specific than the provisions of sections 3600.5(a) and 5305, and thus, they are controlling.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

[1] All future references are to the Labor Code unless noted.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, and for the reasons stated by the WCJ in the Report, as our Decision After Reconsideration we will affirm the July 30, 2019 F&O.

FACTS

The facts of this case do not appear to be in dispute; it is merely application of the law at issue. Per the WCJ's Report:

> Mr. Rohm was scouted by the Atlanta Braves meeting with the scout at his parents' home. Although he currently has a sports agent, Mr. Cerioni of Full Circle Sports in Newport Beach, CA, the applicant signed his contract with the Atlanta Braves without the services of a sports agent. The contract was executed 6/11/2010 in the Clovis, CA, home of his parents where he then resided. He was assigned to the Gulf Coast Braves of the Gulf Coast League. The applicant's contract is with the Atlanta National League Baseball Club, Inc, which is identified in this case as the Atlanta Braves. The applicant signed an addendum to the contract in 2011. The contract is marked and admitted in the record as Defendant's Exhibit I. That amendment was not provided to the court. The addendum changed the applicant's rate of compensation.
>
> Mr. Rohm is described in defense counsel's trial brief as having worked for the Atlanta Braves organization from 6/22/2010 to 9/6/2015. The applicant testified that he arrived for and participated in spring training for the Atlanta Braves organization in 2016 until he was cut by the organization two days before the end of spring training. The applicant played no games in and performed no work for the Atlanta Braves organization except that he played in a 2013 All-Star game in San Jose, CA.
>
> The applicant then signed a contract with the Winnipeg Goldeyes in 2016 executing the contract in Florida. He executed a contract with the Winnipeg Goldeyes in New York in 2017. It is stipulated by the parties that there is no jurisdiction over the Winnipeg Goldeyes. The applicant played no games in California the two seasons he played for the Winnipeg Goldeyes.

(WCJ's Report, pp. 2-3.)

DISCUSSION

The sole issue raised on reconsideration is whether section 3600.5(d) exempts defendant from California subject matter jurisdiction. It does not.

In sports law, as happened here, a professional athlete may sustain a cumulative trauma injury over the span of many years, and in some cases, many jurisdictions. Yet, it must be resolved in a forum. If the claim is filed in California, then we must answer three basic questions:

1) Does California have subject matter jurisdiction over the alleged injury; if so,
2) Over what parties may California exercise personal jurisdiction; and finally,
3) Amongst those parties, and assuming an injury is proven to exist, who employed applicant for the last year of injurious exposure? Where any otherwise liable employers are unlawfully uninsured, then liability falls back to the last lawfully insured employer. (§ 5500.5.)

A. Subject Matter Jurisdiction

Subject matter jurisdiction must exist over the cumulative trauma claim for the Appeals Board to have any power to decide any substantive issue.

> [T]he term "jurisdiction" or "subject matter jurisdiction" in connection with the issue of whether the application of the California workers' compensation law would be unreasonable so as to be a denial of due process. "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 288 [109 P.2d 942].)

(*New York Knickerbockers v. Workers' Comp. Appeals Bd*., (2015) 240 Cal. App. 4th 1229, 1232, FN1.)

The analysis of subject matter jurisdiction begins with the question of where the contract of hire was made. If at least one of applicant's contracts of hire was made in California, subject matter jurisdiction exists to resolve the cumulative trauma injury. (See, § 3600.5(a) [establishing subject matter jurisdiction over extra-territorial injuries where either the contract of hire was made in California, or applicant regularly works in California]; see also, § 5305 [establishing subject matter jurisdiction over extra-territorial injuries where the contract of hire was made in California and applicant is a Californian resident at the time of injury]; see also *Bowen v. Workers' Comp. Appeals Bd.*] (1999) 73 Cal.App.4th 15; see also *Hansell v. Arizona Diamondbacks* (April 7, 2022, ADJ10418232) [2022 Cal. Wrk. Comp. P.D. LEXIS 83.)

The burden of establishing that a contract of hire was made in California rests with applicant, who has the affirmative of the issue. (Cal. Lab. Code §§ 5705, 3202.5.) A contract of employment is governed by the same rules applicable to other types of contracts, including the requirements of offer and acceptance. (*Reynolds Electrical & Engineering Co. v. Workmen's Comp. Appeals Bd. (Egan)* (1966) 65 Cal.2d 429 [31 Cal.Comp.Cases 415].) The salient question in determining whether Labor Code section 5305 applies to a contract of hire is whether the acceptance took place in California. (*Aetna Casualty and Surety Co. v. Workers' Comp. Appeals Bd. (Salvaggio)* (1984) 156 Cal.App.3d 1097, 1103 [49 Cal.Comp.Cases 447]. Where parties have agreed in writing upon the essential terms of a contract, there is a binding contract even though a formal one is to be prepared and signed later. (*Commercial Casualty Insurance Company of Newark, New Jersey v. Indus. Acc. Comm. (Porter)* (1952) 110 Cal.App.2d 83 [17 Cal.Comp.Cases 84].)

The formation of a contract of hire, standing alone, is sufficient to confer California jurisdiction over an industrial injury that occurs outside the state. "[T]he creation of the [employer-employee] status under the laws of this state is a sufficient jurisdictional basis for the regulation of that relationship within this state and the creation of incidents thereto which will be recognized within this state, even though the relation was entered into for purposes connected solely with the rendition of services in another state." (*Alaska Packers Asso. v. Industrial Acci. Com. (Palma)* (1934) 1 Cal.2d 250, 256 [1934 Cal. LEXIS 358], affd. (1935) 294 U.S. 532 [55 S. Ct. 518, 79 L. Ed. 1044, 20 I.A.C. 326] *(Palma)*; *Benguet Consol. Mining Co. v. Industrial Acci. Com.* (1939) 36 Cal.App.2d 158, 159 [1939 Cal.App. LEXIS 28]; *McKinley v. Arizona Cardinals (*2013) 78 Cal.Comp.Cases 23, 32-33 [2013 Cal. Wrk. Comp. LEXIS 2]; *Jackson v. Cleveland Browns* (December 26, 2014, ADJ6696775) [2014 Cal. Wrk. Comp. P.D. LEXIS 682].)

California courts have also held that the formation of an oral contract in California is sufficient to confer jurisdiction under section 5305. Under California law, "an oral contract consummated over the telephone is deemed made where the offeree utters the words of acceptance." (*Janzen v. Workers' Comp. Appeals Bd.* (1997) 61 Cal.App.4th 109, 114 [71 Cal.Rptr.2d 260] (*Janzen*), citing *Travelers Ins. Co. v. Workmens' Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7, 14 [32 Cal.Comp.Cases 527] (*Coakley*).) Pursuant to Civil Code section 1583, "[c]onsent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to

the last section." (Civ. Code, § 1583.) Thus, in *Paula Insurance Co. v. Workers' Comp. Appeals Bd.* (2000) 65 Cal.Comp.Cases 426 [2000 Cal. Wrk. Comp. LEXIS 6264] (writ denied), the telephonic offer of employment by an Oregon employer, as accepted by the father of a California farm laborer, was sufficient to form a contract of hire.

Turning to defendant's petition for reconsideration, defendant argues that section 3600.5(d) overrides section 3600.5(a). It does not. Section 3600.5(d) applies only in cases where no contract of hire was made in California.

Section 3600.5(d) expressly refers back to subsection (c) within the text of the statute.

> 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 . . .

(§ 3600.5(d), (emphasis added).)

Subdivision (c) clearly refers to "a professional athlete **who has been hired outside of this state**". (§ 3600.5(c), (emphasis added).) These two sections are read together. They refer to applicants who were hired outside California and how such applicants may establish subject matter jurisdiction over a claimed cumulative injury in California. When the contract for hire is made in California, subject matter jurisdiction exists for the Appeals Board to hear the issue. (§ 3600.5(a); 5305; *Hansell v. Arizona Diamondbacks*, 2022 Cal. Wrk. Comp. P.D. LEXIS 83, 87 Cal.Comp.Cases 602; *Carper v. New York Yankees*, 2024 Cal. Wrk. Comp. P.D. LEXIS 328; *Slavin v. St. Louis Rams/ Los Angeles Rams*, 2024 Cal. Wrk. Comp. P.D. LEXIS 75.)

Defendant has not contested personal jurisdiction and the issue of injury has been deferred. Thus, the sole issue on reconsideration is subject matter jurisdiction. The WCJ correctly found that subject matter jurisdiction exists in this case. Accordingly, as our Decision After Reconsideration we will affirm the July 30, 2019 F&O.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on July 30, 2019, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 25, 2024

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

DAVID ROHM
LEVITON, DIAZ & GINOCCHIO
BOBER, PETERSON & KOBY, LLP

EDL/mc

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