WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DAVID STALLWORTH (Dec'd), *Applicant*

vs.

WASHINGTON CAPITOLS, WASHINGTON BULLETS and WASHINGTON WIZARDS, CHESAPEAKE EMPLOYERS INSURANCE COMPANY, formerly known as INJURED WORKERS INSURANCE FUND (IWIF) MARYLAND; NEW YORK KNICKS, carrier unknown; PHOENIX SUNS, COPPERPOINT MUTUAL INSURANCE, formerly known as SCF ARIZONA INSURANCE, *Defendants*

Adjudication Numbers: ADJ9082985; ADJ10467720; ADJ10467734; ADJ10467683
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.

Applicant seeks reconsideration of the First Amended Findings and Order (F&O) issued on May 30, 2019, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from July 1, 1965 to July 1, 1975 claims to have sustained injury arising out of and in the course of his employment to his head, vision, jaw, neck, back, shoulders, elbows, wrist, hands, fingers, hips, knees, ankles, feet, toes, neuro/psyche, internal, cardiovascular, heart, hypertension, sleep, and injuries resulting in his death. The WCJ found that applicant's employment contracts were entered into outside the State of California, and that California does not have a legitimate and substantial interest in applicant's claim sufficient to compel defendant to adjudicate the claim under the laws of California.

Applicant contends the WCAB has subject matter jurisdiction over his claimed injuries because he entered into one or more contracts of hire in California. Applicant further contends that

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

the heart attacks he sustained in March, 1967 in back-to-back games in Fresno, California, justify the exercise of subject matter jurisdiction in accordance within the due process requirements set forth in *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 116 [78 Cal.Comp.Cases 1257].)

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will affirm the F&O.

FACTS

Applicant claimed injury to his head, vision, jaw, neck, back, shoulders, elbows, wrist, hands, fingers, hips, knees, ankles, feet, toes, neuro/psyche, internal, cardiovascular, heart, hypertension, sleep, and injuries resulting in his death, while employed as a professional athlete by the Phoenix Suns, the Washington Capitols/Bullets/Wizards, and the New York Knicks, from July 1, 1965 to July 1, 1975.

Applicant filed the instant Application for Adjudication of Claim on September 6, 2013. However, applicant passed away during the course of litigation on March 16, 2017. (F&O, Opinion on Decision, p. 4.)

The parties proceeded to trial on November 29, 2018, and framed for decision issues including personal and subject matter jurisdiction, injury arising out of and in the course of employment (AOE/COE), and the running of the statute of limitations under Labor Code[2] section 5405. (Transcript of Proceedings, November 29, 2018, at p. 9:5.) The WCJ heard the testimony of applicant's spouse, and ordered the matter submitted for decision as of December 20, 2018.

On February 22, 2019, the WCJ vacated the submission of the matter for decision and ordered the parties to submit "evidence indicating applicant's participation in games over his entire professional basketball career." (Order Vacating Submission for Development of the Record, February 22, 2019, p. 2.) On March 25, 2019, the WCJ ordered the matter resubmitted for decision.

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

On April 16, 2019, the WCJ issued his Findings and Orders, with an accompanying Opinion on Decision.

However, on April 24, 2019, the WCJ rescinded the Findings and Orders, noting that following the issuance of the decision, the court had become aware of a letter filed by applicant's counsel in the Electronic Adjudication Management System (EAMS) on December 4, 2018, which the WCJ was not apprised of. Because the letter was responsive to issues submitted for decision, the WCJ rescinded the April 16, 2019 Findings and Orders. (Order Rescinding Findings and Orders, dated April 24, 2019, at p. 2.)

On May 30, 2019, the WCJ issued the F&O. Therein, the WCJ found that "applicant's contracts were entered into outside of the State of California." (Finding of Fact No. 3.) The WCJ also found that "California does not have a legitimate and substantial interest in applicant's claim to compel defendant to adjudicate the claim under the laws of California." (Finding of Fact No. 4.)

The WCJ's Opinion on Decision first addressed the issue of admissibility of Exhibits 14, 15 and 20-24, to which defendants had jointly objected at the time of trial for failure of service. (Opinion on Decision, at p. 4.) The WCJ explained that shortly after issuing his April 16, 2019 Findings and Orders, he had rescinded the decision upon learning that applicant's counsel had filed purported proofs of service of the contested exhibits on the defendants prior to the Mandatory Settlement Conference. The WCJ explained, however, that the proofs of service failed to identify the documents being served with sufficient specificity. Accordingly, Exhibits 14, 15, and 20-24 were excluded from evidence. (*Id.* at pp. 4-6.)

The Opinion on Decision then addressed the issue of personal jurisdiction over the defendants by explaining that "all teams involved have purposefully appeared in California by traveling to the state to participate in league games as well as scheduling future games in California." The WCJ thus found personal jurisdiction over the party defendants.

Turning to the issue of subject matter jurisdiction, the Opinion on Decision observed that applicant's spouse testified at trial that the applicant told her in 1995 that he had signed a contract in 1965 at his mother's house in California. (Opinion on Decision, p. 7.) Applicant's spouse further testified that applicant was in California to appear on the Glen Campbell show, and that he related to her that he signed the contract before making his appearance. However, applicant's deposition testimony, taken prior to his passing, was that he had signed only two contracts over the course of

his career, and that his contracts were signed in New York or Maryland. (*Ibid*.) The WCJ explained:

> Here, there are two drastically different accounts of where applicant signed his contracts. One from applicant's deposition, the other as hearsay testimony from his wife. The Court gives greater weight to those statements given at his deposition testimony by the applicant himself, and finds that the contract formation occurred outside of California. Applicant was unable to show that his contract for employment was entered into in the State California, and therefore California cannot maintain subject matter jurisdiction over applicant's claim in this manner.
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> (Opinion On Decision, at p. 7.)

Absent a California contract of hire, the WCJ then discussed the merits of applicant's claim of subject matter jurisdiction based on the contacts between applicant's claimed injury and the forum state of California. The WCJ cited to *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 116 [78 Cal.Comp.Cases 1257], wherein "the Court addressed the threshold question of whether California's interest in adjudicating applicant's claim for workers' compensation 'is legitimate and substantial in itself,'" and that as a result, the court was required to "consider the length of applicant's exposure in California in relation to applicant's overall employment and the extent to which the micro trauma sustained in California contributed to applicant's cumulative injury." (Opinion on Decision, at p. 8, quoting *Johnson, supra*, 221 Cal.App.4th at p. 1124). The WCJ observed that applicant's games played in California amounted to approximately 7 percent of the games played in his career, and that the medical reports "do not substantiate that applicant's injurious exposure in California was any greater than that contributed to in other jurisdictions." (*Ibid*.) Accordingly, the WCJ concluded that "California does not have a legitimate and substantial interest in the applicant's pled injury to compel defendants to adjudicate applicant's claim under the laws of California." (Opinion on Decision, at p. 8.)

Applicant's Petition for Reconsideration (Petition) first contends that the WCJ erred in excluding from evidence the documentary exhibits because they could not have been, with reasonable diligence, identified prior to the close of discovery. (Petition, at p. 19:4.) Applicant also contends that the WCJ erred in relying on the deposition testimony of the applicant because applicant was incompetent at the time he testified. (*Id.* at p. 23:10.) Applicant asserts that the testimony of applicant's spouse is the more credible and supports a finding of contract formation

in California in 1969 or 1970. (*Id.* at p. 24:5.) Applicant also contends that irrespective of contract formation, subject matter jurisdiction is established by the fact that applicant sustained two heart attacks while playing in California, resulting in his hospitalization and missing the following two seasons. (*Id.* at p. 24:17.)

DISCUSSION

We note at the outset that applicant's Petition was filed on June 24, 2019, and that the petition avers it is filed in response to the WCJ's decision of April 16, 2019. (Petition, at p. 1:16.) However, on April 24, 2019, the WCJ rescinded the April 16, 2019 decision. Thereafter, the WCJ issued his First Amended Findings and Order on May 30, 2019.

Labor Code section 5903 allows twenty (20) days after service of a final order, decision, or award to file a petition for reconsideration, and the time for filing may be extended five (5) days for mailing (Code of Civ. Proc., §1013; Cal. Code Regs., tit. 8, § 10605(a)).

Given that applicant's Petition was filed on June 24, 2019, the first business day after the 25th day following the issuance of the First Amended Findings and Order, it appears that the date of the decision from which applicant seeks reconsideration was listed in error. Accordingly, we will treat the Petition as seeking reconsideration from the May 30, 2019 First Amended Findings and Order.

Applicant first contends that the Workers' Compensation Appeals Board (WCAB) is vested with subject matter jurisdiction over the claimed injury because applicant entered into a contract of hire while within California's territorial boundaries.

Subject matter jurisdiction has been described as "the power of the court over a cause of action or to act in a particular way." (*Greener v. Workers Comp. Appeals Bd.* (1993) 6 Cal.4th 1028 [58 Cal.Comp.Cases 793, 795].) Pursuant to Labor Code sections 3600.5(a) and 5305, a hiring in California 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 (*Palma*); *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].)

Labor Code section 3600.5, subd. (a), provides:

> 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.

Labor Code section 5305 provides:

> 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. Any employee described by this section, or his or her dependents, shall be entitled to the compensation or death benefits provided by this division.

These statutory provisions reflect California's strong interest in applying a "protective legislative scheme that imposes obligations on the basis of a statutorily defined status." (*Travelers Ins. Co. v. Workers' Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7 [32 Cal.Comp.Cases 527] *(Coakley)*.)

> [California's] interest devolves both from the possibility of economic burden upon the state resulting from non-coverage of the workman during the period of incapacitation, as well as from the contingency that the family of the workman might require relief in the absence of compensation. The California statute, fashioned by the Legislature in its knowledge of the needs of its constituency, structures the appropriate measures to avoid these possibilities. Even if the employee may be able to obtain benefits under another state's compensation laws, California retains its interest in insuring the maximum application of this protection afforded by the California Legislature.
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> (*Id.* at pp. 12-13, citing *Reynolds Electrical etc. Co. v. Workmen's Comp. Appeals Board* (1966) 65 Cal.2d 429, 437-438 [31 Cal.Comp.Cases 415].)

Accordingly, the formation of a contract for 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." (*Palma, supra*, 1 Cal.2d 250; *Benguet Consol. Mining Co. v. Industrial Acci. Com.* (1939) 36 Cal.App.2d 158, 159 [1939 Cal. App. LEXIS 28]; *McKinley, supra,* 78 Cal.Comp.Cases 23; *Jackson v. Cleveland Browns* (December 26, 2014, ADJ6696775) [2014 Cal. Wrk. Comp. P.D. LEXIS 682].)

Here, the WCJ has identified two competing inferences regarding contract formation that may be drawn from the evidentiary record:

> Applicant's deposition was taken on November 16, 2016, where he testified that he signed two contracts during the course of his career; both times these were signed in New York for the Knicks. (Defendant Chesapeake/Washington Exhibit V, page 33 line 6 through 19). He testified that his agent at the time was Norm Blass who operated from New York City and that was where he physically signed his first contract with the Knicks. (Defendant Chesapeake/Washington Exhibit V, page 12, line 1). He later testified that when he went on to play for the Baltimore Bullets he signed a third contract in Maryland. (Defendant Chesapeake/Washington Exhibit V, page 33 line 16 though page 34 line 1).
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> At trial, applicant's widow testified that applicant signed some of his playing contracts in California. Testimony was taken that at some time in 1995, applicant and his widow had a conversation where he discussed where he signed his player contracts. (MOH/SOE, page 17, line 8). She testified that applicant told her he had signed five or six contracts with the Knicks. She states that he signed his first contract at his mother's home and had a party" (MOH/SOE page 16, lines 12-18). A second contract is alleged to have been signed in California on or around July 7, 1970 while applicant was in California for an appearance on the Glen Campbell show. (MOH/SOE page 17, line 8). In support of this, applicant offered newspaper articles that he alleges corroborates the testimony of applicant's widow that applicant was in California. The articles in evidence, however, do not confirm when or where applicant was when he accepted any of his player contracts. (Exhibit 20).
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> Applicant's testimony is directly contradictory to that of his widow. In that the testimony of applicant and his widow were the only evidence on the issue of contract formation, the Court was forced to decide between the two accounts. This WCJ gave lesser weight to applicant's widow's statements than that of the applicant as her testimony was based on hearsay that occurred almost twenty-five years ago.
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> (Report, at pp. 3-4.)

Applicant's Petition asserts the WCJ erred in weighing the evidence because applicant was not competent to testify at deposition. (Petition, at p. 23:10.) However, the WCJ's Report identifies and addresses each of applicant's contentions, offering specific excerpts of the transcript to provide

context to the assertions contained in applicant's Petition. The WCJ concludes that a careful review of the deposition testimony establishes that applicant was able to testify competently and respond to the questions posed. (Report, at pp. 4-6.) The Report also notes that applicant offered no objection to moving ahead with testimony on the grounds of competency at the time the deposition was taken, and that applicant was represented by present counsel during the entirety of the deposition. (Report, at p. 4; Ex. V, Transcript of the Deposition of David Allen Stallworth, November 16, 2015.) In fact, applicant's counsel interposed his own examination questions during the deposition. (*Id.* at pp. 65, 69.) Nor was any objection to the admissibility or the veracity of the deposition testimony offered at the time the transcript was offered into evidence at trial. (*Ibid*.) The WCJ's Report concludes:

> Considering applicant's testimony to be competent, when weighing applicant's own statements that he did not sign nor accept any of his contracts in California with the hearsay testimony of his widow, this WCJ gave greater weight to applicant's statements in finding that applicant could not assert subject matter jurisdiction by means of having accepted a contract for employment within the State of California.
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> (Report, at p. 15.)

In addition to the WCJ's reasoning, we also note that the record is silent as to the actual contracts in question. Nor does the record establish the nature, number, or character of the contracts entered into, the parties thereto, or other evidence that would speak to the formation of a California contract of hire.

Following our independent review of the record, including the trial testimony of applicant's spouse, and the deposition of the applicant taken on November 16, 2015, we discern no evidence of considerable substantiality that would warrant disturbing the WCJ's determinations as to the credibility of the witnesses or the relative weight of the evidence. Accordingly, we decline to disturb the WCJ's determination that "applicant's contracts were entered into outside of the State of California." (Finding of Fact No. 3.)

Applicant also contends there is sufficient connection between the claimed industrial injury and this state to provide California with a legitimate interest in applying this state's workers' compensation laws against defendant as a matter of constitutional due process, in accordance with the holding in *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1126 [78 Cal.Comp.Cases 1257] (*Johnson*). In *Johnson*, defendant maintained that

the contacts between the claimed injury and California were so minimal as to offend principles of due process to the extent that "the courts of this state do not have authority to act." (*Id.* at p. 1128.) The *Johnson* court observed that the issue "might be referred to as a lack of subject matter jurisdiction." (*Ibid*.) The court noted that Johnson played but one game in California out of 34 games played during the 2003 season, and that "a single basketball game played by a professional player does not create a legitimate interest in injury that cannot be traced factually to one game." (*Id.* at p. 1130.) The *Johnson* court wrote:

> The situs of the employment relationship is often the most realistic basis for the invocation of a state's workers' compensation law. (9 Larson, supra, § 143.04, p. 143-23.) The making of an employment contract within the state is usually deemed to create an employment relationship within that state. (Id., § 143.04[2][b], p. 143-23.) The situs of the Johnson employment relationship is Connecticut or New Jersey, not California. Johnson received a Connecticut workers' compensation award, at least in part, for her injury as suggested by the Board in this case when the Board called for an apportionment of the award. The places of Johnson's injuries, employment relationship, employment contract, and residence, all possible connections for the application of a state's workers' compensation law, do not have any relationship to California.
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> (*Id.* at p. 1130.)

Accordingly, *Johnson* concluded that the paucity of connections between the claimed injury and California would not support the Appeals Board's exercise of subject matter jurisdiction, under principles of due process. (*Id.* at p. 1131.)

Here, applicant avers that he played two games in California during which he sustained a cardiac infarction, and that the quality and severity of those instances were sufficient to warrant the Appeals Board's exercise of subject matter jurisdiction over the claimed injury. (Petition, at p. 25:16.)

However, as the WCJ explains in his report, "*Johnson* involves a two-part test in determining if California has a legitimate interest in adjudicating an applicant's claim of cumulative trauma where the cumulative trauma injury is the only connection with the State. This test considered the qualitative as well as quantitative nature of applicant's exposure." The Report continues:

> Quantitative exposure contemplates the length of the exposure that applicant would have suffered in the State as compared with that of other jurisdictions. Here, applicant's exposure was found to be 39 of 522 games that equates to

7.47% of applicant's entire basketball career having been in this State. This WCJ did not find that applicant would satisfy the quantitative analysis from Johnson due to the limited exposure he had in the state.

The qualitative aspect of the *Johnson* test measures the injurious nature of applicants' cumulative trauma injury and whether or not the exposure sustained in California was greater than that in other jurisdictions. This WCJ considered the submitted medical reports and found that the more credible medical reporting indicated that applicant did not sustain a cumulative injury as the result of his professional basketball career. Of those medical reports that do find industrial injury, none indicate that the California exposure was of a greater nature than that experienced elsewhere.

Applicant's counsel argues that applicant sustained two heart attacks while he was in California. However, the medical record contains no substantial medical evidence that such events occurred. Applicant's entire evidentiary support for applicant having sustained two heart attacks while in California are based on applicant's testimony, newspaper articles dating from the 1960s, and an autobiographical book by applicant. Applicant testified at his deposition that he sustained a heart attack and repeated the same in his autobiography. The articles submitted by applicant's counsel also reference an uncredited report of applicant having suffered a heart attack.

In regards to the medical record, applicant argues that this WCJ did not count the alleged heart attacks as part of the cumulative trauma but considered them specific injuries despite no medical evidence of such. Applicant here is incorrect. This case was consolidated at trial with applicant's two claims of specific injury that were plead for applicant's two alleged heart attacks. In those cases, it was found that while applicant had some type of heart related incident, the case was barred by the Statute of Limitations under Labor Code section 5405 for the untimely filing of the claims.

In reviewing the evidence presented at trial, this WCJ found that the medical reporting proffered by defendant was the only substantial medical evidence that the court could rely on in basing his decision. This WCJ based his findings on the reporting of internist Dr. Jonathan Green who found that applicant did not sustain any cumulative injury on an internal basis, and that there was no medical evidence to support applicant had suffered any heart attacks as alleged.

(Report, at pp. 7-8.)

The WCJ's Report thus addresses both the quantitative and qualitative aspects of the connection between applicant's claimed injury and California. We agree with the WCJ's analysis and conclusion that the evidentiary record does not establish, to a preponderance of the evidence, that the games applicant played in California were sufficient, under either a quantitative or

qualitative analysis, to support the exercise of California's subject matter jurisdiction over the claimed injury. (*Johnson, supra*, 221 Cal.App.4th at p. 1129.)

In summary, we concur with the WCJ's conclusions that the record does not establish a California contract of hire. We further concur that the evidentiary record does not establish sufficient contacts between California and the claimed injury to justify the exercise of subject matter jurisdiction over the claimed injury. Consequently, we are persuaded that the WCJ's factual determinations are supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) We decline to disturb the WCJ's decision, accordingly.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 16, 2024

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

GLORIA STALLWORTH
GLENN, STUCKEY & PARTNERS
ALL SPORTS LAW
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
MISA, STEFEN, KOLLER & WARD
MURPHY & BEANE
PETERSON/HARDJADINATA & ASSOCIATES

SAR/abs

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