WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DONTE FORD, *Applicant*

vs.

MC CARRIER, L.L.C.;
ASSOCIATED RISK MANAGEMENT, INCORPORATED, *Defendants*

Adjudication Number: ADJ16982310
Long Beach District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> > (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
> >
> > (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in

Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on July 15, 2024, and 60 days from the date of transmission is September 13, 2024. This decision is issued by or on September 13, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on July 15, 2024, and the case was transmitted to the Appeals Board on July 15, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 15, 2024.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 13, 2024

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

DONTE FORD
PERONA LANGER
GILSON DAUB

JMR/mc/abs

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

MC Carrier, LLC (hereafter defendant or employer) a self-insured employer under the laws of the state of Nevada, has filed a timely, verified Petition for Reconsideration dated July 1, 2024, challenging the Findings and Order dated June 13, 2024, determining that California has jurisdiction over the work injury sustained by Donte Ford (hereafter Applicant) on September 30, 2022, and that California law should apply. Defendant contends that the court erroneously exceeded its jurisdiction by finding the following:

a.) The contract of hire was formed in California;

b.) Jurisdiction is appropriate in California;

c.) California has personal jurisdiction over defendant;

d.) California need not enforce the forum selection agreement;

e.) California law is applicable.

The sole issues submitted to the court were Workers' Compensation Appeals Board (hereafter Appeals Board) jurisdiction and whether or not California law should apply.

II.

FACTS

Donte Ford (hereafter Applicant) signed an employment contract July 26, 2022 (Exhibit E) with MC Carrier LLC (hereafter defendant, employer or MC Carrier). He signed it from his home in Victorville, California on that date, but it did not include the Pay Rate Agreement (Exhibit F) or the Election for Nevada Compensation (hereafter Election, Election Agreement or Forum Election) (Exhibit B) (MOH September 13, 2023, Page 5, lines 9.5 to 10.5). Defendant contends that the contract of employment was accepted in Nevada rather than California.

The Pay Rate Agreement and the election were not signed until July 29, 2022, when applicant was in Las Vegas at the employer's office (MOH September 13, 2023, Page 5, lines

13.5- 14.5). Applicant had at least one telephone conversation from California with a "higher up" named Igor at the company concerning the pay rate and believed that they had reached an agreement before he left for Nevada (MOH September 13, 2023, Page 5, lines 14.5-15.5). Applicant was brought to Las Vegas from California, on July 29, 2022, in a truck operated by the employer that was near the applicant's home (MOH September 13, 2023, Page 4, lines 16.5-18.5).

The parties have agreed that at all times pertinent to this claim that applicant is a California resident, the injury occurred in California, and he worked for defendant as a truck driver licensed in California.

DISCUSSION

III.
SUBJECT MATTER and PERSONAL JURISDICTION

MC Carrier, LLC is challenging the jurisdiction of the Appeals Board to adjudicate issues related to the payment of workers' compensation benefits for the injury sustained by applicant. In order to address the issues, it needs to be established that the appeals board has personal jurisdiction over the parties, and subject matter jurisdiction over the issues.

Applicant submitted to personal jurisdiction of the appeals board by filing the application dated November 23, 2022 (EAMS ID 44027599). He is, at all times in this case, a resident of the state of California (MOH Stipulation 7, Page 2, Lines 14-14.5). The injury claimed was a specific event which occurred in California (MOH September 13, 2023, Stipulation 9, Page 2, line 17).

An out of state employer submits to the personal jurisdiction of the appeals board by engaging in "minimum contacts" with the state of California. The test may be met by a wide range of activities within the state or where the activities that it does engage in, specifically relate to the subject matter of the litigation (*Buckner v. IAC* (1964) 29 CCC 77; *Safety Lab, Inc. v Weinberger* (1987) 193 Cal. App. 3d. 1050). The employer conducts approximately ten (10%) of their total business in the state of California (MOH April 10, 2024, Page 3, Lines 16-16.5). An employer owned truck was used to pick up applicant in California to bring him to Las Vegas, Nevada to sign some employment documents and to get his company truck on July 29, 2022. (MOH April 10, 2024, Page 3, Lines 12-14.) The company truck driven by applicant was stored in California at applicant's residence and all trips started and ended there (MOH September 13, 2023, Page 4, Lines 3.5-6).

California can establish jurisdiction over the employer who offered testimony at trial that ten (10) percent of their business is in the state. Defendant contends that this court lacks jurisdiction over defendant because it must show that defendant:

a.) Purposefully availed itself to the privilege of conducting activities within California, and,

b.) MC Carrier, LLC's contacts with California give rise to, or are related to Applicant's claims.

Defendant argues that California fails to meet the following requirements to establish personal jurisdiction over MC Carrier, LLC citing World-Wide Volkswagen v. Woodson 444 U.S. (1980) 444 U.S. 286. They assert that:

"Even though it may be foreseeable that one of MC Carrier LLC's truck drivers would drive in California, it is not a sufficient benchmark for personal jurisdiction under the Due Process Clause." (Emphasis Added).

The employer mistakenly relies on World Wide Volkswagen to support their position. In that case plaintiff and family members, residents of New York, were injured in the state of Oklahoma, while passing through on their way to their new home in Arizona. They brought an action in state court in Oklahoma for products liability, claiming, among other things, that the design of the car was defective. They had purchased the car from Seaway, a dealer in New Jersey, who in turn had obtained the car from the distributer World Wide Volkswagen, also in New Jersey.

World Wide Volkswagen sold vehicles to dealers in New Jersey and Connecticut under a contract with Volkswagen. The evidence showed that neither of these defendants did business in Oklahoma or shipped cars to Oklahoma, in fact, the attorneys conceded that there was no evidence that a car distributed or sold by either of these defendants had ever been driven in Oklahoma, with the exception of the plaintiff's vehicle. On an appeal from an order of the Oklahoma Supreme Court, the U.S. Supreme Court found that under these circumstances to require these defendants submit to jurisdiction of Oklahoma would violate the due process provisions of the constitution.

The employer admits that ten (10) percent of their business is conducted in California. It is undisputed that applicant was brought to Nevada from California in a company vehicle that was in the area. It has been conceded applicant signed the contract of employment in California. Further, the company truck was stored in California. Also, applicant was licensed to do the work that he performed for the defendant in California. Finally, the employer allows that five (5) percent of applicant's driving was in California. To make the argument that defendant has insufficient

contacts to allow for personal jurisdiction over MC Carrier LLC is curious. The assertion that it is "possible that one of their drivers may happen to be on the roads of this state" is disingenuous, at best, as is the citation of this case to support their contention. Therefore, the evidence establishes sufficient contacts with California to establish personal jurisdiction over both applicant and employer.

The Appeals Board has subject matter jurisdiction where an injury occurs within the state of California (Labor Code Section 5300 and 5301). Labor Code Section 5300 provides insofar as is pertinent:

> All the following proceedings shall be instituted before the appeals board and not elsewhere, except as otherwise provided in division 4;
>
> a. For the recovery of compensation or concerning any right or liability arising out of or incidental thereto…

Labor Code Section 5301 provides, "that the appeals board is vested with full power to try and determine all matters specified in Section 5300 subject only to review by the courts as specified in this division."

Once it has been established that there is personal jurisdiction over the parties and the subject matter of the case, the appeals board may address and determine any other issues raised by the parties (Labor Code Section 133).

IV.

CONTRACT OF HIRE

Defendant disputes that a contract of employment was formed when applicant signed Exhibit E from his home in Victorville, California, on July 26, 2022, without the pay rate addendum or the forum election agreement. They assert that the contract was formed in Nevada where the two additional documents were signed on July 29, 2022, at the employer's place of business in Las Vegas. Citing Reynolds Electrical and Engineering v. WCAB (Egan) (1966) 31 CCC 415 in support of their position, they claim that the employment contract was not accepted in California but Nevada. In Reynolds, Egan the injured worker, a California resident, who was referred through his union to a job site in Nevada, was provided with a referral slip setting forth his name, address, the type of work he was to perform and some personal data. When he arrived in Nevada, he spent six (6) hours filling out a variety of forms ranging from national security issues to IRS and other related forms required for the employment. The California Supreme Court addressed the issue of contract formation as follows:

> …Also of significance is the command of section 3202 of the Labor Code that the workman's (Sic) compensation laws are to be liberally construed in order to extend their benefits to injured employees. In the instant case the Commission was justified in concluding that the contract of hire between Egan and Reynolds was made in California, on the theory that the union was the agent of Reynolds for the purpose of transmitting offers of employment to its members and, that Egan accepted Reynolds offer when he received his dispatch referral slip and departed for the job site. (Reynolds Electrical and Engineering, supra. at page 417).

The fact that there are further terms to be finalized are treated as conditions subsequent where a general agreement appears to have been reached (Bowen v WCAB (1999) 64 CCC 745). In this instance the employment contract constituted an offer of employment by the defendant. The appeals board applies liberal interpretation to contract formation as a matter of policy to extend jurisdiction under California workers' compensation law (Travelers Insurance Company v. WCAB (Coakley) (1967) 32 CCC 527, 530 (Sup. Court En Banc) (Also see Labor Code Section 3202 and Dick Simon Trucking Company v. WCAB (1998) 63 CCC 1527) (Writ Denied). Applicant's signing the written contract is deemed his acceptance. In Bowen, the court addressed the issue of contract formation as follows:

> The fact that there are formalities which must be subsequently attended to with respect to such extraterritorial employment does not abrogate the contract of hire or California jurisdiction. Such things as filling out formal papers regarding the specific terms of the employment or obtaining a security clearance from the federal government are deemed conditions subsequent to the contract, not preventing it from initially coming into existence.

Again, the authority offered by defendant does not support defendant's contention. In this case, applicant actually signed a contract of employment in California, unlike Mr. Egan who filled out substantially all of his hiring documents in Nevada. The pay rate addendum and the forum selection agreement are documents which "would have precluded a worker from assuming his duties or from retaining his employment and, as such, were conditions subsequent to employment rather than conditions precedent" (see *Reynolds Electrical and Engineering,* supra. at page 417). Therefore, the offer of employment extended by the employer from Nevada and accepted by applicant who was in California on July 26, 2022, created a contract of employment because it was accepted in California. The pay rate addendum and forum election forms were conditions

subsequent to the contract formation. Therefore, the contract of employment was entered in California.

Even if the contract was not completed when applicant signed the document, once the employer sent a truck to pick him up at his home to take him to Las Vegas to fill out the rest of the documents the parties had shown their intention to perform the contract, while applicant was still in California (Reynolds, supra. at 419).

V.
CONFLICT OF LAW

Conflicts of law concerning whether to apply the law of a state other than the forum, generally arise in situations where the injury, contract of hire, or residence are outside the forum state, or where there is an agreement to a state other than the forum (See Workers' Compensation Index, 13th Ed. 2017, page J-8). Since applicant is a resident of California, the contract of employment was entered into in California and the situs of the injury was in California, we need only address the forum selection agreement of the contract of employment to determine whether California or Nevada workers' compensation law should control. The employer contends that even if the contract of hire was entered in California, the forum selection provision of the agreement should compel the appeals board to apply Nevada law. They assert that there is a presumption that requires California to do so (McKinley v. Arizona Cardinals et. al. (2013) 78 CCC 23).

VI.
FORUM SELECTION

Forum selection agreements in employment contracts are disfavored in California (Labor Code Section 925). The section addresses the issue as follows:

(a) Provisions that require an employee that primarily resides and works in California, as condition of employment to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

Applicant filed his case in California. By that action the court will draw an inference that he seeks to void the forum selection provision of the contract of employment. The Court may draw inferences from the evidence (Coborn v. IAC (1948) 13 CCC 89; Phoenix Indemnity v. IAC (Hamilton) (1948) 13 CCC 118). In order for an inference to be substantial evidence it must be fairly drawn from the evidence and cannot be based on evidence lacking probative force or based on purely fanciful conclusion (Bracken v. WCAB (1989) 54 CCC 349).

Notwithstanding the statutory grounds for not compelling the forum selection agreement or provisions requiring the application of Nevada law, we will nevertheless address defendant's arguments for their enforcement.

McKinley is distinguishable from the case at bar, on its facts, which would compel a different outcome, if applied to the facts herein. In McKinley, the applicant, a professional athlete, who signed contracts paying him over $500,000.00 per year in a state other than California, who was not a California resident, while represented by an agent. He filed a cumulative trauma rather than a specific claim and his contacts with California consisted of five (5) days of training and seven (7) games over a four (4) year period. His claim would not apply to the exception provided by the Labor Code (see Labor Code Section 925 (e)).

Mr. Ford, in contrast, is a California resident, who was injured as the result of a specific incident in California. Further, he is a truck driver holding a Class A license issued by the state of California. It is undisputed that his long haul trips began and ended in California, where the truck belonging to the employer was kept. He believed that signing the documents he was provided by the employer was a condition of employment (MOH September 13, 2023, page 6, lines 10.5-11.5).

Under these facts the general jurisdiction provisions of Labor Code Sections 5300 and 5301 should apply since neither the injury nor residence of the applicant were outside of California.

Likewise, no evidence has been offered showing whether or not Nevada would assume jurisdiction over a case where the injury occurred in California, the injured was a California resident, licensed to perform the work for the employer in California and the employer does a substantial fraction of their business in California.

Therefore, California has workers' compensation jurisdiction because the employer does conduct activities in California and applicant's injury arose out of those activities.

Nevertheless, we are required to address the forum selection arguments asserted by defendant. They rely on the test in McKinley. supra, that to rebut the forum selection provisions

that applicant must overcome the presumption in favor of the provision by showing that one or more of the exceptions apply:

1. The forum selection clause was not the product of fraud or overreaching;
2. The parties reasonably selected Nevada as their workers' compensation forum;
3. Nevada is a convenient forum for Applicant;
4. The forum selection provision is not contrary to a fundamental public policy or interest of California.

The forum selection agreement is part of a contract in which the employer set the terms, which the applicant believed were a condition of employment. The vacation and sick leave policies as well the language in the sections regarding workers' compensation would appear to be so strongly favor the employer that they would only be agreed to on a "take it or leave it" basis. Although the discussion of the pay rate at the time of execution appears to be negotiated, it is actually based on industry norms (MOH April 10, 2024, page 3, lines 8-10). Therefore, the relative bargaining position of the injured worker is unfairly slanted in favor of the employer who took full advantage of it by the terms of the contract including the forum selection provision. The employer testified at the time of trial that signing the documents was a condition of employment, and as noted previously the applicant believed that as well (MOH April 10, 2024, page 3, lines 4.5-5.5).

The defendant represents that the selection of Nevada is reasonable. The contract of employment was entered into in California. Applicant is a California resident. The injury occurred in California. Applicant is licensed to do the work the employer hired him to do in California. There is no evidence in the record to show applicant has significant contacts to Nevada, other than it is the principal place of business of his employer. Under these facts Nevada controlling the workers' compensation benefits of this individual is not reasonable.

Neither party offered sufficient evidence on this record to address whether Nevada would be a convenient venue for applicant.

California courts have repeatedly expressed a strong governmental interest in applying its workers' compensation laws to persons injured under circumstances where it is disputed that the state has workers' compensation jurisdiction (Travelers Insurance Company v. WCAB (Coakley), at 530, supra.; Rocor Transportation v. WCAB (Hogan) (1999) 64 CCC 1117) (Writ Denied). In Coakley, the court explained California's interests in applying its workers' compensation law as follows:

> …California maintains a stronger interest in applying its own law to an issue involving the right of an injured Californian to benefits under California's workers' compensation act than to an issue involving torts or contracts in which the parties rights and liabilities are not governed by a protective legislative scheme that imposes obligations on the basis of a statutorily defined status.

California has jurisdiction in this matter because applicant is a California resident, injured in California. Defendant have not established that Nevada would apply its law to an out of state resident injured in California with possibly insufficient contacts with Nevada. This case falls within the general workers' compensation jurisdiction outlined in Labor Codes 5300 and 5301.

The contract of employment was accepted in California, where applicant lived and was injured. California need not defer to another state's law or cede jurisdiction, since it has repeatedly stated its fundamental policy or governmental interest through statutes and legal principles directed at extending its workers' compensation protections to its citizens who suffer work injuries. California has a materially greater interest than Nevada in protecting its citizens who are injured in California. As a matter of policy California has extended its jurisdiction through liberal interpretation of laws of contract formation and employment to protect the interests of its citizens injured outside of California, as well as foreign citizens injured within California (Coakley, supra.; Rocor Transportation, supra.; Bowen, supra.; Labor Code Section 3202; Labor Code Section 5300 and 5301).

Could California state a fundamental governmental interest or policy more clearly than by making a statutory statement such as that set forth in Labor Code Section 925? California extends its workers' compensation laws for the benefit of California residents injured in and outside of California (Alaska Packers v. IAC (1935) 294 U.S. 532). Common law rules for creation of employment contracts have been rejected in favor of liberal interpretation to extend the benefits of California's workers compensation laws (Laeng v WCAB (1972) 37 CCC 185). This is precisely within the limitations on the application of the rule in McKinley for a state policy or governmental interest which overcomes the presumption.

Ordering applicant to litigate his case anywhere other than California or to apply the law of any other jurisdiction, would result in the avalanche of litigation (McKinley supra. at page 37).

If defendant's argument prevails out of state employers would seek to force California citizens, injured in California, to litigate their cases in foreign venues and apply the laws of those states. Simply stated, there is no legitimate authority or purpose that can justify a claim that

California should cede jurisdiction or application of its law to any other venue, and none is stated by defendant. The forum selection provision of the contract of employment should not be enforced.

VII.

RECOMMENDATION

For the reasons stated it is recommended that reconsideration be denied.

DATE: July 15, 2024

Daniel Nachison
WORKERS' COMPENSATION JUDGE