

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

EVAN MOORE, *Applicant*

vs.

CLEVELAND BROWNS, permissibly self-insured; SEATTLE SEAHAWKS, permissibly self-insured c/o CCMSI; PHILADELPHIA EAGLES and GREEN BAY PACKERS, GREAT DIVIDE INSURANCE COMPANY c/o BERKLEY ENTERTAINMENT, *Defendants*

**Adjudication Number: ADJ9095473
Anaheim District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
ORDER TO OBTAIN
TRANSCRIPT**

Defendant Great Divide Insurance Company (GDIC) seeks reconsideration of the March 14, 2024 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from May 22, 2008 to April 29, 2013, claims to have sustained industrial injury to multiple body parts/systems, including but not limited to orthopedic, head, neck, spine, hips, upper and lower extremities, neurological, and internal systems. The WCJ found that applicant formed a contract of hire with the Green Bay Packers within California's territorial jurisdiction, thus conferring California subject matter jurisdiction over applicant's claimed injury.

Defendant contends that there is no substantial evidence to support the WCJ's finding that the contract for hire was made in California, and on the further grounds that the applicant's contract advisor did not have the legal authority to accept or commit the applicant to a written or oral contract of hire even if the applicant purportedly verbally authorized him to do so. Defendant further contends it was denied due process when its request for a trial transcript was denied.

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.

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 preliminary review of the record, and for the reasons discussed below, we will grant reconsideration to issue an order pursuant to WCAB Rule 10800 that the proceedings and testimony from the February 13, 2024 trial in this matter be transcribed and promptly filed in the Electronic Adjudication Management System (EAMS), with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners. Thereafter, the parties shall have twenty days from receipt of the trial transcript, plus any applicable days for mailing, in which to file supplemental pleadings in EAMS.

Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law, to include any supplemental pleadings filed by the parties following receipt of the trial transcript. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code¹ section 5950 et seq.

FACTS

Applicant claims injury to multiple parts of body including but not limited to orthopedic, head, neck, spine, hips, upper and lower extremities, neurological, and internal systems while employed as a professional athlete by defendant Green Bay Packers and Philadelphia Eagles from May 22, 2008 to April 29, 2013. Defendant contests California jurisdiction over the claimed injury and further denies injury arising out of and in the course of employment.

On February 13, 2024, the parties proceeded to trial on the issues of "jurisdiction" and "sanction[s]." ((Further) Minutes of Hearing and Summary of Evidence (Minutes), dated February 13, 2024, at p. 2:17.) The WCJ heard testimony from the applicant, and ordered the matter submitted for decision the same day.

¹ All further references are to the Labor Code unless otherwise noted.

On March 14, 2024, the WCJ issued her Findings of Fact that applicant and the Green Bay Packers formed a contract of hire within California's territorial jurisdiction, thus conferring California subject matter jurisdiction over the claim pursuant to sections 3600.5 and 5305. (Finding of Fact No. 2.) The WCJ further ordered the issue of sanctions deferred. (Finding of Fact No. 3.) The WCJ's Opinion on Decision stated:

The evidence establishes that Applicant was physically located in California at the time a contract of hire was communicated to him. Applicant accepted the offer, and instructed his agent, who was physically present in California, to communicate his acceptance to the Green Bay Packers, thus putting his acceptance in the course of transmission to the proposer. Therefore, the formation of an oral contract of hire within California is sufficient to confer subject matter jurisdiction and precludes the enforcement of forum selection provisions that would serve to obviate that jurisdiction.

(Opinion on Decision, at p. 5.)

On February 26, 2024, applicant filed a letter in the Electronic Adjudication Management System (EAMS) filenet requesting a complete transcript of the trial proceedings held on February 13, 2024.

On April 3, 2024, the Presiding Workers' Compensation Judge (PW CJ) of the Anaheim District Office issued a letter² to applicant's and defense counsel denying their request for a trial transcript. The letter observes that neither party asserted the WCJ's "summary of testimony contains material or significant inaccuracies and/or omissions that make it an inadequate representation of applicant's testimony."

On April 8, 2024, defendant filed its Petition for Reconsideration (Petition), contending no substantial evidence supports the determination of the WCJ that the contract for hire was made in California, and that applicant's agent did not have the legal authority to accept or commit the applicant to a written or oral contract of hire even if the applicant purportedly verbally authorized him to do so. (Petition, at p. 7:8.) The Petition further asserts defendant was denied due process because the WCJ denied its request for a witness to appear telephonically, and because the PW CJ denied their request for a trial transcript. (*Id.* at p. 15:19.)

² The letter notes receipt of a trial transcript request filed by defendant on February 21, 2024 and again on March 4, 2024, as well as a transcript request by applicant dated February 26, 2024. Only applicant's February 26, 2024 request appears in the Electronic Adjudication Management System (EAMS) filenet.

On April 17, 2024, applicant filed his Answer, averring applicant was hired in California, and that while “the WCAB may consider common law notions of employment, it should not use the technical common law of contracts when determining if there was a contract of hire under LC §§ 5305 and 3600.5, especially when doing so will limit the extension of workers’ compensation benefits.” (Answer, at p. 5:11.)

The WCJ’s Report observes that trial testimony and evidentiary record support the determination that the parties reached an employment accord while applicant was physically within California, and that applicant’s physical/workout and contract signing were conditions subsequent to the establishment of an oral contract of hire. (Report, at p. 5.)

DISCUSSION

It is a longstanding principle that all parties to workers’ compensation proceedings retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157–158 [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158.)

Section 5313 provides:

The appeals board or the workers’ compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Lab. Code, § 5313.)

Thus, the statutory framework provided by the legislature for adjudicating workers’ compensation claims utilizes a summary of the proceedings, rather than a transcript.

Workers' Compensation Appeals Board (WCAB) Rule 10800 (Cal. Code Regs., tit. 8, § 10800) further provides:

Testimony taken at hearings will not be transcribed except upon the written request of a party accompanied by the fee prescribed in the Rules of the Administrative Director, or unless ordered by a commissioner, a deputy commissioner or presiding workers' compensation judge. Any written request shall be served on all parties.

Under specified circumstances as described in Rule 10800, a party *may* request a transcript of proceedings before the WCAB. However, as the WCJ's Report correctly notes, a party's right to a transcript is not unlimited. Our Supreme Court discussed the criteria used in evaluating a request for a transcript in *Allied Compensation Ins. Co. v. Industrial Acci. Com. (Lintz)* (1961) 57 Cal.2d 115 [26 Cal.Comp.Cases 241, 244]. Therein, defendant Allied Compensation alleged a denial of due process when the Industrial Accident Commissioner (predecessor to the WCAB) based their decision in part on the WCJ's summary of evidence, rather than on a trial transcript. The *Lintz* court observed:

Allied ... contends that the panel members were obligated to read the entire record, including the transcript. So rigid a requirement cannot be extracted from the decided cases. It is plain that the members of [the IAC panel] "considered and appraised" the evidence in the record. The written evidence together with the referee's summary of Mrs. Lintz's testimony was ample to provide a complete and full understanding of the record. Allied contends that the referee's summary is not adequate. It is not suggested, however, in what particulars it is defective. Indeed, the summary emphasizes the parts of Mrs. Lintz's testimony most favorable to Allied. Allied at no time urged upon the commission the inadequacy of the summary. Had it done so, pointing to specific, material defects in the summary, the commission would have been obliged to order a transcript prepared to test the accuracy and completeness of the summary against it.

(*Id.* at p. 120-121.)

Thus, a party wishing to obtain and rely on a trial transcript must identify "specific, material defects in the summary," as a basis for the request. (*Id.* at p. 120.)

Here, both parties have requested a transcript of the February 13, 2024 trial proceedings. The PW CJ has denied both requests for a failure to articulate "material or significant inaccuracies and/or omissions that make it an inadequate representation of applicant's testimony." (Letter to the Parties Denying Transcript Request, dated April 3, 2024.) Moreover, as the WCJ's Report

correctly points out, “a party is not entitled to a trial transcript as a matter of right without the need for showing good cause.” (Report, at p. 7.)

We agree with both the PWCJ’s analysis as set forth in his April 3, 2024 letter to the parties, as well as with the WCJ’s discussion of the issue at pp. 7-8 of her Report.

However, we also note that we have issued two prior opinions in this matter. In our December 30, 2022 Opinion and Decision After Reconsideration, we addressed the issue of contract formation, noting that the evidence established that “applicant was physically located in California at the time a contract of hire was communicated to him,” at which time applicant accepted the offer and instructed his agent to communicate his acceptance to the Browns, “thus putting his acceptance in the course of transmission to the proposer.” (Opinion and Decision After Reconsideration, dated December 30, 2022, at p. 7.) Our opinion was specifically premised on the transcript of applicant’s May 15, 2019 trial testimony. (*Id.* at p. 3, citing the Partial Transcript of Proceedings, dated May 15, 2019, at 10:10.)

Defendant sought reconsideration of our December 30, 2022 decision, averring “applicant’s trial testimony does not establish his physical location at the specific time he accepted the offer of a contract of hire.” (Opinion and Order Granting Petition for Reconsideration, dated March 24, 2023, at p. 3.) We once again reviewed the applicant’s testimony and compared that testimony with the documentary evidence in the record regarding the time and location of applicant’s various team tryouts. Our review of the record caused us to conclude that while “the *admitted* evidence demonstrates that applicant was actively trying out for various NFL terms in October and November, 2009 ... [t]he record does not substantively address the specifics of these tryouts, their location or circumstance, and whether applicant was outside of California in the weeks just before he accepted an offer to play with the Browns’ practice squad.” (*Id.* at p. 4, italics original.) Observing that the time and place of contract formation was pivotal to the issue of subject matter jurisdiction under section 5305, we ordered that the record be developed to specifically address the time and place of applicant’s acceptance of a contract of hire. (*Id.* at p. 6.)

Accordingly, our inquiry herein rests in part on a specific and factually driven examination of the time and place of applicant’s acceptance of a contract of hire, as relevant to the larger issues of contract formation and subject matter jurisdiction. In addition, the parties have previously relied upon a partial transcript of proceedings with respect to applicant’s 2019 trial testimony and have cited that transcript extensively in pleadings before the Appeals Board. Moreover, both parties

have lodged transcript requests following the most recent trial proceedings held on February 13, 2024.

Thus, while we agree with the WCJ that neither party is entitled to a transcript of the trial proceedings as a matter of right, we are persuaded that in light of the importance of applicant's testimony to these proceedings, and in light of both of our discussions of the evidence as set forth in our previous decisions after reconsideration, a transcript of the February 13, 2024 trial proceedings is appropriate and warranted. We believe that allowing the parties to review the trial transcript with the option to file supplemental pleadings responsive to the transcript will afford the parties additional due process and provide for a just and reasoned decision based on the entire evidentiary record. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310] *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

Pursuant to WCAB Rule 10800 (Cal. Code Regs., tit. 8, § 10800), we are authorized to issue an order that the transcript from the February 13, 2024 trial in this case be transcribed. Given the complexity of the factual disputes in this case, and for the reasons described above, an accurate transcription of the trial is necessary for a full and fair adjudication of applicant's Petition for Reconsideration.

Accordingly, reconsideration is granted to issue an order pursuant to WCAB Rule 10800 that the proceedings and testimony from the February 13, 2024 trial in this matter be transcribed and promptly filed in the Electronic Adjudication Management System (EAMS), with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

Thereafter, all parties shall have twenty days from receipt of the transcript plus additional days for mailing as set forth in WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605) in which to file supplemental petitions, at the parties' discretion. Should a party choose to file a supplemental petition, said petition shall comply with WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964.)

We emphasize that this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact issued by a workers' compensation administrative law judge on March 14, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that the proceedings and testimony from the February 13, 2024 trial in this matter be transcribed pursuant to WCAB Rule 10800 and promptly filed in the Electronic Adjudication Management System, with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

IT IS FURTHER ORDERED that all parties shall have twenty days from receipt of the transcript plus additional days for mailing as set forth in WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605) in which to file supplemental petitions, at the parties' discretion. Should a party choose to file a supplemental petition, said petition shall comply with WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964.)

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 31, 2024

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

**EVAN MOORE
LEVITON, DIAZ & GINNOCHIO
PEARLMAN, BROWN & WAX**

SAR/abs

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