WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FREDDY KEIAHO, ***Applicant***

vs.

INDIANAPOLIS COLTS; GREAT DIVIDE INSURANCE COMPANY, care of BERKLEY ENTERTAINMENT; JACKSONVILLE JAGUARS; ACE AMERICAN INSURANCE COMPANY, care of QUAL-LYNX, INC., formerly SCIBAL ASSOCIATES, ***Defendants***

Adjudication Number: ADJ8124831
San Diego District Office

OPINION AND ORDER DENYING PETITIONS FOR RECONSIDERATION

Defendants Great Divide Insurance Company through Berkley Entertainment, on behalf of the Indianapolis Colts (Indianapolis Colts), and Ace American Insurance Company on behalf of the Jacksonville Jaguars (Jacksonville Jaguars) each seek reconsideration of the May 16, 2024 Opinion on Decision After Reconsideration (ODAR), wherein a panel of the Workers' Compensation Appeals Board (WCAB) found that applicant, while employed as a professional athlete from April 15, 2005 to December 1, 2010 by the Indianapolis Colts and the Jacksonville Jaguars claims to have sustained injury arising out of and in the course of employment to the head, brain, jaw, neck, teeth, back, psyche, bilateral shoulders, bilateral hips, bilateral legs, bilateral arms, bilateral knees, bilateral ankles, bilateral feet, bilateral wrists, bilateral elbows, bilateral hands, fingers, toes, and sleep disturbance. We found, in relevant part, that the WCAB has subject matter jurisdiction over the claimed injury because applicant was hired in California.

Defendant Indianapolis Colts contend that no California hiring took place because the applicant failed to meet his burden to prove his contract advisors were physically located in California at the time of applicant's communication with them or when his contract advisors communicated his acceptance of the contract with the Colts.

Defendant Jacksonville Jaguars contend that no contract of hire was formed until applicant signed a written contract in Florida, and that applicant has not met his burden of proving a California contract of hire.

We have received an Answer to both petitions from applicant.

We have considered both Petitions for Reconsideration and the Answer, and we have reviewed the record in this matter. For the reasons discussed below, we will deny both Petitions.

The Colts' Petition contends the applicant failed to meet his burden to prove his contract advisors were physically located in California at the time of applicant's communication with them or when his contract advisors communicated his acceptance of the contract with the Colts. (Colts' Petition, at p. 7:18.) The Colts contend that "the location where the contract is accepted, either by the applicant himself or by a contract adviser, controls whether California has subject matter jurisdiction over the claim." (*Id.* at p. 8:13.) Because the location of applicant's contract advisor has not been established in the evidentiary record, the Colts contend applicant has not met his burden of proving that his advisor accepted the offer of employment while physically located in California. Further, the Colts observe that even if applicant's contract advisor was in California at the time of contract acceptance, the contract advisor is precluded from binding applicant to any contract of hire. The Colts contend that because applicant has not established the whereabouts of his contract advisor at the time of acceptance of the contract, applicant is precluded from asserting a California contract of hire as the basis for a California hiring under section 5305. (*Id.* at p. 15:26.)

However, as we explained in the ODAR, our analysis of whether applicant was hired within California's territorial jurisdiction is not dependent on the location of his contract advisor. This is due in part to the fact that the contract advisor was precluded from binding applicant to any contract of hire. (ODAR, at pp. 6-7; Colts' Petition, at p. 12:17.) Our ODAR further explained that once the Colts conveyed the material terms of their two offers of employment to the applicant, the evidence established that the applicant, while physically located in California, accepted each offer and placed that acceptance in the course of transmission to the proposer. (*Id.* at p. 7.) Accordingly, applicant was physically in California when he accepted both of the Colts' offers and was therefore hired in California on both occasions. The physical location of applicant's contract advisor, who could not bind him to a contract in any event, is not dispositive of contract formation. We deny the Colts' Petition, accordingly.

The Jaguars' Petition asserts the integration clause contained in the written contract with applicant supersedes any prior agreement, pursuant to the holding in *Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556 [83 Cal.Comp.Cases 1175] (*Tripplett*). The Jaguars note that here, applicant traveled to Florida and signed a written agreement that contained an integration clause. Accordingly, the signed written agreement executed in Florida was the only operative agreement between applicant and the Jaguars. (Jaguars' Petition, at pp. 7-8.)

However, the evidentiary record establishes that applicant was hired while within California's territorial jurisdiction, thus conferring subject matter jurisdiction pursuant to section 3600.5(a). (Lab. Code, §§ 3600.5(a); 5305.) We are not persuaded that the existence of a subsequent written contract would serve to invalidate that conferral of subject matter jurisdiction. Indeed, it has been long recognized that the location where a written contract is signed is not determinative of the place of hiring or of the making of the contract of hire as described in sections 3600.5(a) and 5305. (*Travelers Ins. Co. v. Workmens' Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7, 14 [32 Cal.Comp.Cases 527] (*Coakley*); *Rohrbach v. Colo. Rockies* (April 8, 2022, ADJ10391741) [2022 Cal. Wrk. Comp. P.D. LEXIS 102]; *Tampa Bay Devil Rays v. Workers' Comp. Appeals Bd.* (*Luke*) (2008) 73 Cal.Comp.Cases 550 [2008 Cal. Wrk. Comp. LEXIS 85] (writ den.).) Rather, the finalizations of written employment contracts and documents following a hiring in California have been construed as conditions subsequent to the hiring. (*Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 21-22 [64 Cal.Comp.Cases 745] (*Bowen*); *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd.* (*Egan*) (1966) 65 Cal.2d 429 [31 Cal.Comp.Cases 415]; *Commercial Casualty Insurance Company of Newark, New Jersey v. Indus. Acc. Comm.* (*Porter*) (1952) 110 Cal.App.2d 83 [17 Cal.Comp.Cases 84].)

Nor are we persuaded that a written contract may, by its inclusion of an integration clause, divest the WCAB of subject matter jurisdiction previously conferred under section 3600.5(a) as the result of a California hiring. As we explained in our ODAR, once subject matter jurisdiction has been statutorily conferred on the WCAB, it is prescribed by law and cannot be increased or diminished by contract. (ODAR, at p. 16; see, e.g., *General Acceptance Corp. v. Robinson* (1929) 207 Cal. 285, 289 (277 P. 1039); *Beirut Universal Bank v. Superior Court* (1969) 268 Cal.App.2d 832, 843 (74 Cal.Rptr. 333).)

The Jaguars' Petition further directs our attention to the decision in *Moradi v. Northwest Colorado Transport* (December 3, 2018, ADJ9531454, ADJ9531455) [2018 Cal. Wrk. Comp.

P.D. LEXIS 576] (*Moradi*) wherein a panel of the WCAB determined that applicant's initial discussions while in California with a prospective North Dakota employer did not constitute a California hiring. However, we note that the panel decision in *Moradi* was premised on a highly contested factual dispute regarding the discussions between the putative employer and the applicant, as amplified in the trial testimony of the employer witness and the nature and title of the employment application completed by applicant while in California. (*Id.* at pp. 15-16.) The evidence in the present matter with respect to the nature of the conversation between the applicant and his contract advisor, wherein applicant accepted the offer of employment from the Jaguars, is not similarly in dispute. In addition, the panel's analysis in *Moradi, supra*, was expressly premised on the *dicta* in *Tripplett, supra*, 25 Cal.App.5th 556. However, while our ODAR acknowledged that the question of whether the dicta expressed in *Tripplett* should be followed warranted careful consideration in each case, our review of the Supreme Court's jurisprudence in this area, including *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*) and *Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771 [37 Cal.Comp.Cases 185] caused us to conclude that "common law principles of contract formation may *inform*, but should not *limit*, California's interests in extending its workers' compensation benefits for the protection of persons injured in the course of their employment." (ODAR, at p. 16; Lab. Code § 3202.) Thus, to the extent that *Moradi* followed the *dicta* in *Tripplett*, we find it unpersuasive. We also observe that panel decisions like *Moradi, supra,* are not binding precedent. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].)

We also note that the issue of subject matter jurisdiction in this matter concerns the injury claimed by applicant, that is, the cumulative injury between April 15, 2005 to December 1, 2010. During that interval, applicant was hired on two occasions by the Colts, and on a third occasion by the Jaguars. (See ODAR, at p. 6.) Thus, the subject matter jurisdiction of the WCAB over the claimed cumulative injury was established by three separate hirings in California. Pursuant to section 5305, any of these three hirings was sufficient to confer subject matter jurisdiction as to the controversies arising out of the claimed injury. (ODAR, at p. 9; see, e.g., *New York Knickerbockers v. Workers' Comp. Appeals Bd.* (*Macklin*) (2015) 240 Cal.App.4th 1229 [80 Cal.Comp.Cases 1141] [jurisdictional analysis extends to entire cumulative injury, rather than one teams' contacts with forum state].)

Finally, we note that to the extent that the Jaguars contend that federal law preempts our finding of an oral contract of hire (Jaguars' Petition, at p. 10), the issue was not framed for decision or decided at trial and is raised for the first time in the Jaguars' Petition. Although, the Appeals Board has the authority to address issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration (Lab. Code, §§ 5906, 5908; *Great Western Power Co. v. Industrial Acc. Com.* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]); *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229–230, fn. 7 (Appeals Board en banc)), we decline to address issues raised for the first time in the petition for reconsideration as such action would be inconsistent with due process. (Lab. Code, § 5904; *Los Angeles Unified Sch. Dist. v Workers' Comp. Appeals Bd.* (*Henry*) (2001) 66 Cal.Comp.Cases 1220 (writ denied); *Jobity v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Comp.Cases 978 (writ den.); *Hollingsworth v Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 715 (writ denied); *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151 [97 Cal. Rptr. 2d 852, 65 Cal.Comp.Cases 805].)

We deny the Jaguars' Petition, accordingly.

For the foregoing reasons,

IT IS ORDERED that the June 7, 2024 Petition for Reconsideration filed by Great Divide Insurance Company on behalf of the Indianapolis Colts is **DENIED**.

IT IS FURTHER ORDERED that the June 10, 2024 Petition for Reconsideration filed by ACE American Insurance Company on behalf of the Jacksonville Jaguars is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 6, 2024

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

FREDDY KEIAHO
LAW OFFICES OF MARK SLIPOCK
PEARLMAN, BROWN & WAX
GOLDBERG SEGALLA

SAR/abs

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