WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JONATHAN PETTIBONE, *Applicant*

vs.

HARD HITTIN BASEBALL, LLC, doing business as THE NEW BRITAIN BEES, and THE CHICAGO CUBS, AND THE PHILADELPHIA PHILLIES, and ACE INSURANCE COMPANY BY SEDGWICK, and LIBERTY MUTUAL INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ11698784
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration in order to further study the factual and legal issues in this case.[1] This is our Opinion and Decision After Reconsideration.

Defendants the New Britain Bees and Liberty Mutual Insurance Corporation (LMIC) both seek reconsideration of the Findings and Order issued by a workers' compensation arbitrator (WCA) on February 3, 2022, wherein the WCA found that the Liberty Mutual Insurance Policy for the Hard Hitting Baseball Club, doing business as the New Britain Bees (NBB), covers the applicant's workers' compensation claim. The WCA further found that personal jurisdiction has been established over defendant NBB in California for applicant's pending workers compensation claim and ordered LMIC to provide a legal defense to NBB in the claim filed against them by applicant.

Defendant NBB contends that the WCA erred in finding that personal jurisdiction exists over the team to defend litigation in California.

Defendant LMIC contends that the plain terms of the insurance policy that LMIC issued to the NBB provides no coverage for the applicant's California claim.

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[1] Commissioner Sweeney and Deputy Commissioners Garcia and Schmitz were originally on the panel that granted reconsideration of this matter. Commissioner Sweeney no longer serves on the Appeals Board, and Deputy Commissioners Garcia and Schmitz were unavailable to participate. Other panelists have been substituted in their place.

We received an Answer from defendant the Chicago Cubs. We did not receive a Report and Recommendation on Petition for Reconsideration (Report) from the WCA.

We have considered the allegations of both Petitions for Reconsideration and the Answer. Based on our review of the record, and for the reasons stated in the Opinion on Decision, and for the reasons stated below, we will affirm the Findings and Order.

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Former Labor Code section 5909 provided that a petition was denied by operation of law if the Appeals Board did not "act on" the petition within 60 days of the petition's filing with the 'appeals board' and not within 60 days of its filing at a DWC district office. A petition for reconsideration of an arbitrator's decision or award made pursuant to the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275 shall be filed in EAMS or with the district office having venue in accordance with Labor Code section 5501.5 so that the WCA may review the petition in the first instance and determine whether their decision is legally correct and based on substantial evidence. Then the WCA determines whether to timely rescind their decision, or to prepare a report on the petition and transmit the case to the Appeals Board to act on the petition. (Cal. Code Regs., tit. 8 § 10995.)

Once the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then "act" on the petition.

If the case file is never sent to the Appeals Board, the Appeals Board does not receive the petition contained in the case file. On rare occasions, due to an administrative error by the district office, a case is not sent to the Appeals Board before the lapse of the 60-day period. On other rare occasions, the case file may be transmitted, but may not be received and processed by the Appeals Board within the 60-day period, due to an administrative error or other similar occurrence. When

the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner's control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co.* v. *Indus. Acc. Com*. (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers'Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok*, *supra* 2 Cal.App.5th at p. 402.)

The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.*, at p. 1108.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Ibid.*) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that

the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].)

With that goal in mind, all parties to a workers' compensation proceeding 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].) If a timely filed petition is never considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque, supra* 1 Cal.3d 627, 635.) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra,* 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control. This is doubly true when the Appeals Board's action in granting a petition for reconsideration has indicated to the parties that we will exercise jurisdiction and issue a final decision on the merits of the petition, and when, as a result of that representation, the petitioner has forgone any attempt to seek judicial review of the "deemed denial." Having induced a petitioner not to seek review by granting the petition, it would be the height of injustice to then leave the petitioner with no remedy.

In this case, the WCA issued the Findings and Order on February 3, 2022, and defendants timely filed their Petitions for Reconsideration on February 23, 2022 and February 25, 2022, respectively, at the Van Nuys district office. Thus, the Petitions were timely filed within 20 days of the decision.

However, according to EAMS, the case file was not transmitted to the Appeals Board until August 12, 2022.

Accordingly, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. The Appeals Board granted the petition on August 15, 2022, shortly after it became aware of it. In so doing so, we sent a clear signal to the parties of our intention to exercise jurisdiction and issue a final decision after reconsideration. Neither party expressed any opposition

to this course of action, and it appears clear from the fact that neither party sought judicial review of our grant of reconsideration that both parties have acted in reliance on our grant.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. Accordingly, our time to act on defendant's petition was equitably tolled until 60 days after August 12, 2022. Because we granted the petition on August 12, 2022, our grant of reconsideration was timely, and we may issue a decision after reconsideration addressing the merits of the petition.

II.

WCAB Rule 10995 provides that if the arbitrator does not rescind the order, decision or award within 15 days of receiving the petition for reconsideration, the arbitrator is required to forward an electronic copy of their report and the complete arbitration file within 15 days after receiving the petition for reconsideration pursuant to WCAB Rule 10995(c)(3). (Cal. Code Regs., tit. 8, § 10995(c)(1)-(3).) WCAB Rule 10914 requires the arbitrator to make and maintain the record of the arbitration proceeding, which must include the following:

> (1) Order Appointing Arbitrator;
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> (2) Notices of appearance of the parties involved in the arbitration;
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> (3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes or the identification of the party designated to serve the minutes;
>
> (4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;
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> (5) Exhibits filed by the parties;
>
> (6) Stipulations and issues entered into by the parties;
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> (7) Arbitrator's Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;
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> (8) Verbatim transcripts of witness testimony if witness testimony was taken under oath.
>
> (9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator; and

(10) Arbitrator's report on petition for reconsideration, removal or disqualification.

(Cal. Code Regs., tit. 8, § 10914(c).)

The WCA issued the Findings and Order on February 3, 2022, however, filing of the complete arbitration file in EAMS was not completed as required by WCAB Rule 10995, until June 27, 2022, and still does not contain an arbitrator's report on petition for reconsideration.

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].) "Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indem. Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers' Comp. Appeals Bd.* (*Von Ritzhoff*) (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board's constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] ["essence of due process is . . . notice and the opportunity to be heard"]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, "a denial of due process renders the appeals board's decision unreasonable..." and therefore vulnerable to a writ of review. (*Von Ritzhoff*, *supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

As with a workers' compensation administrative law judge (WCJ), an arbitrator's decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Meaningful review of an arbitrator's decision requires that the "decision be based on an

ascertainable and adequate record," including "an *orderly identification* in the record of the evidence submitted by a party; and *what evidence is admitted or denied admission*." (*Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original.) "An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal." (*Id.*; see also *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753 [a full and complete record allows for a meaningful right of reconsideration].)

Therefore, until the record of proceedings was complete, we were unable to complete our review.

III.

Applicant Jonathan Pettibone, a professional athlete, claims to have sustained industrial injuries arising out of and occurring in the course of his employment (AOE/COE) during the period August 11, 2008 through May 9, 2018 at various locations, including, the States of Connecticut, California, and Chicago, Illinois, by the new Britain Bees, from 2017 through 2018, the Chicago Cubs, from January 28, 2016 through April 8, 2016, and the Philadelphia Phillies, from August 11, 2008 through November 6, 2015.

An arbitration proceeding was held on December 9, 2021 by the WCA, who listed two specific issues for decision:

1. Does the Liberty Mutual insurance policy for the Hard Hittin Baseball Club doing business as the New Britain Bees cover the claim in California filed by the applicant; and,

2. Was personal jurisdiction established over the Hard Hittin Baseball Club doing business as the New Britain Bees in California for the claim of the applicant.

All other issues, including, but not limited to injury AOE/COE and potential entitlement to California workers' compensation benefits were deferred.

(Transcript of Proceedings (TOP), December 9, 2021, p. 7; 4-25.)

On February 3, 2022, the WCA issued his Findings and Order in which he found there was personal jurisdiction over defendant NBB in California for applicant's claim, and that the insurance policy issued to NBB by LMIC covered applicant. He ordered LMIC to provide an appropriate legal defense to NBB by LMIC in the claim filed by applicant in California with the Workers' Compensation Appeals Board.

Petitioner NBB disputes personal jurisdiction and contends that even though the applicant signed his employment contract with the New Britain Bees in California in March of 2018, he did not become a paid employee of their team until April 2018. NBB further alleges that as such, there is no reasonable basis to characterize applicant's pre-employment exercise regimen in California as temporary work for the NBB, as stated by the WCA in his Opinion. Although NBB acknowledges that applicant's pre-employment workout regimen may have benefitted the NBB, they assert there was no requirement or direction by NBB to do so.

Further, NBB contends that since they played no games in California during applicant's career with defendant, and as the applicant had always been a resident of California, he would have worked out as to the same routine in California even if he had never signed a contract with the NBB.

(Petition, p.6-7.)

Petitioner LMIC contends that the insurance policy issued by LMIC to NBB, which contained a "residual market limited other states insurance" endorsement, did not contemplate coverage for applicant, who did not play any games in California during his employment with NBB, and thus they have insufficient minimum contacts with California to be subject to this proceeding.

They further argue that even if there is jurisdiction over the NBB in this matter, the LMIC insurance policy for NBB provides no coverage for any California benefits that may be awarded, because the third condition of the Other States endorsement in part Three of the policy was not satisfied by applicant since he played no games for NBB, nor otherwise performed any temporary work for them, in California.

(Petition, pp. 6, 9.)

In their Answer, defendant the Chicago Cubs addressed the arguments of petitioners as follows, in relevant part:

> Applicant's last year of employment as a professional athlete was entirely during the period he was employed by the New Britain Bees, who were insured by LMIC. *(See, Transcript of Proceedings, page 7 lines 2 through 14; See also, New Britain / LMIC Joint Exhibit 6)*. LMIC has denied coverage for NEW BRITAIN and denies that their policy requires them to either defend or cover the employer in this case. *(See, New Britain / LMIC Joint Exhibit 8 & 9)*.
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> The applicant signed his contract to play with the NEW BRITAIN in California. *(See, Transcript of proceedings, page 26, line 22)*. That contract contained a provision which required he remain in first class physical condition and

report to an abbreviated spring training ready to play. *(See, Transcript of proceedings, page 18, lines 2-22)*. The Applicant testified that after signing and returning his contract to NEW BRITAIN, he performed work in California on behalf of NEW BRITAIN as required by his contract. *(See, Transcript of proceedings, page 45, line 7; See also, page 41 line 15 through page 45 line 7; See also, page 17 line 5 through page 23 line 1)*. This testimony was not rebutted at trial.

NEW BRITAIN had a valid insurance policy through LMIC. *(See, Joint Exhibit 1).* The policy provided coverage in Connecticut and additionally included a "Residual Market Limited Other States Insurance" endorsement. *(See, Joint Exhibit 1).* LMIC issued a denial of coverage for this claim on November 4, 2019 and later issued a second denial letter dated June 30, 2021 advising LMIC would provide a defense as to personal jurisdiction over NEW BRITAIN in California. *(See, LMIC / NEW BRITAIN joint exhibits 8 & 9)*.

While we did not receive a Report from the WCA, in his Opinion, he addressed the arguments raised by the parties, in pertinent part, as follows:

> The Arbitration came before me on the issue of whether or not a policy issued by Liberty Mutual Insurance for the Hard Hittin Baseball Club, doing business as the New Britain Bees covered Applicant's Workers' Compensation claim filed in California and also whether personal jurisdiction had been established over the New Britain Bees in California for Applicant Pettibone's claim.
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> Pettibone is a former minor-league baseball player from August 11, 2008 through May 9, 2018.
>
> ***
>
> In 2017 and 2018, the Applicant was employed by the New Britain Bees. (See page 7 of transcript, lines 2 through 14).
>
> Pettibone's last year of professional baseball was entirely during the years he was employed by the New Britain Bees, a team insured by Liberty Mutual. (See Liberty Mutual and New Britain's Joint Exhibit 6). In Joint Exhibits 8 and 9, Liberty Mutual denied insurance coverage for the New Britain Bees.
>
> ***
>
> Applicant lived his entire life in California. A key provision in Applicant's New Britain Contract was a Player Loyalty provision which required the athlete to remain "in first-class physical condition and required the athlete to report to New Britain in shape ready to play." (See transcript, page 18, at line 9). Relying upon that provision, Pettibone worked out regularly by pitching, running, doing weight lifting and fielding practicing with his Orange Coast College players. He felt he was performing work in California for New Britain as required by the terms of their contract. These activities were

incidental to his New Britain employment. (See transcript pages 41, line 15 through page 45, line 7, as well as page 17, line 5 through page 21, line 1). He did not play any games in California. (See page 31 of the Transcript). The contract with New Britain was signed in California in March 2018, though Pettibone did not report to Connecticut until early April 2018. In that month after the contract was signed, Pettibone's conditioning and his workloads continued in California creating sufficient contacts in California to establish jurisdiction.

There is no question but that New Britain had a valid Workers' Compensation insurance policy with Liberty Mutual. The Liberty Mutual policy covered the entire period in which Pettibone was employed by the New Britain baseball team. (See Joint Exhibit No. 1). The Liberty Mutual policy provided coverage in Connecticut, the home base of New Britain and, additionally, included a "residual market limited other states insurance" endorsement, also reflected in Joint Exhibit 1. In correspondence wherein Liberty Mutual denied coverage for Pettibone's claim, Liberty Mutual issued correspondence to the Court, the Applicant and to the employer, the Bees, indicating that Liberty Mutual would provide a defense to New Britain as to personal jurisdiction only over the ball club in California. (See Liberty Mutual and New Britain Joint defense Exhibit No. 8 and 9).
(Opinion, p. 5-6.)

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Labor Code §5305 reflects the fact that the WCAB has jurisdiction over all injuries arising outside of California territorial limits in situations where the contract of hire was made in California. It is without dispute that the Applicant was hired in California by the New Britain Bees and that Pettibone executed his contract of hire in California. (See Transcript of Proceedings page 16, line 8).

Liberty Mutual's policy, which it issued to New Britain, indicates under Part 1 of the policy, Section (H) (4), that, ".jurisdiction over you is jurisdiction over us for purposes of the workers' compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law." (See the Joint Exhibit 1) This language creates both personal and subject matter jurisdiction over New Britain.

Labor Code §5305 imposes jurisdiction over injuries which occur outside of California but where the contract of hire is formed in California. Indisputably, the contract in this case was formed in California. New Britain's General Manager forwarded to Applicant the contract both in 2017 and in 2018. On both occasions, Applicant, residing in Orange County, California, signed the contract. He then engaged in work activities in California so as to make certain that he was in good shape and in baseball playing condition. Unlike Major League Spring Training Camps, New Britain's Preparation Camp was

> only 10-days long before the season began. Pettibone, a pitcher, had to show up in New Britain ready to work.
>
> Pettibone filed his claim before the WCAB in California to recover benefits for an alleged injury which he claims was due, at least partially, from work activities in California as well as in Connecticut. As there is jurisdiction over New Britain before the WCAB for injury suffered in Connecticut, there is a corresponding affirmative duty and jurisdiction over Liberty Mutual before the Workers' Compensation Appeals Board in California pursuant to the terms of their policy.
> (Opinion, p. 6-7.)

The legislature has provided that a hiring in California within the meaning of Labor Code sections 3600.5(a) and 5305 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 1116, 1126 ["the creation of the employment relationship in California, which came about when [Mr. Palma] signed the contract in San Francisco, was a sufficient contact with California to warrant the application of California workers' compensation law"].)

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.

Sections 3600.5 and 5305 represent the exercise of the legislature's plenary power to create and enforce a complete system of workers' compensation in California. (Cal. Const., art. XIV, § 4.) These statutory provisions, in turn, 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, 12-13 [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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> (*Coakley, supra,* 62 Cal.2d 7, citing *Reynolds Electrical etc. Co. v. Workmen's Comp. Appeals Board* (1966) 65 Cal.2d 429, 437-438 [31 Cal.Comp.Cases 415].)

Thus, the California legislature has enacted sections 3600.5 and 5305 as a reflection of public policy:

> If this were not so there could be no compensation for an injury arising out of and in course of the employment but occurring before the jurisdiction in which the services were to be performed had been entered, or where that jurisdiction had no compensation statute. This would seriously interfere with the policy of the act*, which is to charge to the industry those losses which it should rightfully bear, and to provide for the employee injured in the advancement of the interests of that industry, a certain and prompt recovery commensurate with his loss and, in so doing, lessen the burden of society to care for those whom industry has deprived, either temporarily or permanently, of the ability to care for themselves*. Having a social interest in the existence within its borders of the employer-employee relationship, the state may, under its police power, impose reasonable regulations upon its creation in the state. That the imposition of such conditions is in line with the present-day policy in compensation legislation cannot be doubted.
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> (*Palma, supra,* 1 Cal.2d 250, 256, italics added.)

Accordingly, a hiring in California, 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].)

In this case, the parties do not contest applicant's unrebutted testimony that he signed his contract with defendant NBB within the borders of the State of California.

Based on these undisputed facts, California Labor Code § 5305 and California § 3600.5(a) are applicable and provide subject matter jurisdiction to the WCAB over this case.

With respect to coverage, Section (H) and (4) of Part I of the Liberty Mutual Insurance policy number WC5-31S-61656-017 issued to Hard Hittin Baseball LLC DBA New Britain Bees reads, "jurisdiction over you is jurisdiction over us [Liberty Mutual] for the purpose of the workers' compensation law. We are bound by decisions against you under the law, subject to the provisions of this policy that are not in conflict with that law."
(Joint Exhibit 1, p. 32.)

NBB had a valid insurance policy for workers compensation through LMIC. The policy covered the time involved in the applicant's cause of action. The policy provided coverage in the State of Connecticut and additionally included a "Residual Market Limited Other States Insurance" endorsement, listed as Part Three of the policy. That endorsement states, in relevant part:

PART THREE OTHER STATES INSURANCE

A. **How This Insurance Applies**

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:

    a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and

    b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and

c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.

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(Jt. Ex. 1, p. 38.)

Item 3.A. under Coverage lists Connecticut as the only state on the Information Page. (Joint Ex. 1, p.7.)

At the time of applicant's injury, he was principally employed in the state of Connecticut. Further, his claim for workers' compensation benefits is in California, which is a state where NBB does not have workers compensation insurance coverage, and, the duration of the work being performed by the employee was temporary.

In defining "work" we look to the nature of the activities performed by applicant in California on behalf the employer.

Applicant's unrebutted testimony was that he played professional baseball for the New Britain Bees. He played all of the 2017 season and part of the 2018 season. (TOP, p. 14; 13-21.)

In March of 2018 he was contacted by the New Britain Bees to play the 2018 season. They e-mailed him a contract, which he signed the first week in March 2018. When he signed the contract, he was in Newport Beach, Orange County, California.

He returned the contract to the club by email. There was a ten-day spring training period, which occurred in April of 2018, and between the first week of March 2018 and reporting for spring training, he was staying in shape and getting ready for the season.

This included playing catch, running, lifting weights, and working out at a local community college. It was his understanding that in order to play for New Britain, he had to report in shape, and be ready to pitch in competitive games, pursuant to the terms of a standard player contract which included a "loyalty" clause to that effect.

(TOP, pp. 15-18.)

In 2018, between March and April, he worked out six days a week for four to six hours, and complied with the provision in his contract that stated he was prohibited from playing basketball and ride motorcycles.

(*Id*., p. 20-21;16-25,1.)

Applicant's activities, in keeping himself in good shape and working out constitute "a reasonable expectance of or were expressly or impliedly required by a contract of employment." (*IBM Corporation vs. WCAB (Korpela)* (1978) 43 Cal.Comp.Cases 161.)

Where at the time of an injury, the employee is combining his employer's business with that of his own, or attending to both at substantially the same time, no nice inquiry will be made as to which business he was actually engaged in at the time of injury, unless it clearly appears that neither directly or indirectly could have been serving the employer. (*Lockheed Aircraft Corporation vs. IAC (Janda)* (1946)11 Cal.Comp.Cases 209.)

Applicant admits that he was engaging in these activities which were the same type of activities he performed in the off seasons, but he believes he "ramped things up" a little more getting ready for the season. (TOP, p. 19-23.).

It would not inure to the benefit of the NBB if applicant showed up for their baseball season overweight, out of shape, and not in baseball-playing condition. The endorsement to the Liberty Mutual policy for Britain Bees establishes that there is Liberty Mutual coverage for the New Britain Bees outside of Connecticut.

Thus, all of the necessary conditions for coverage are met. Applicant was principally employed in Connecticut, where NBB played their home games, as identified in Item 3A of the Information Page of the Policy. Applicant was claiming benefits in a state where, at the time, the employer did not have other insurance coverage in place. And, applicant was performing work in the State of California where he was temporarily employed by NBB. Because there is statutory jurisdiction over NBB, the terms of the Liberty Mutual policy issued to the NBB provide subject matter jurisdiction over Liberty Mutual in California, and Liberty Mutual is bound by the contractual agreement in the policy that issued to cover injuries if applicant suffered those injuries while working within the State of Connecticut and those states outside of Connecticut under the terms of their policy.

Accordingly, we affirm the Findings and Order.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCA on February 3, 2022 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 8, 2024

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

JONATHAN PETTIBONE
MADANS LAW
BOBER, PETERSON & KOBY
MICHAEL SULLIVAN & ASSOCIATES
LAW OFFICES OF KIRK & MYERS
CLYDE & COMPANY
G. RONALD FEENBERG, ARBITRATOR

LAS/abs

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