WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KEVIN KOUZMANOFF, *Applicant*

vs.

TEXAS RANGERS; MIAMI MARLINS; KANSAS CITY ROYALS; OAKLAND ATHLETICS; COLORADO ROCKIES; SAN DIEGO PADRES; ACE AMERICAN INSURANCE, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES; CLEVELAND INDIANS, self-insured; *Defendants*

Adjudication Numbers: ADJ10501182; ADJ10501198
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Applicant sought reconsideration of the October 26, 2018 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) concluded that applicant's cumulative trauma claim could not be brought in California due to the application of Labor Code section 3600.5[2] subdivisions (c) and (d), and that both the cumulative trauma claim and the specific injury claim were barred by the statute of limitations. Applicant contests these determinations, arguing that the claims are not time-barred, and asserting that the WCJ erred in determining that applicant was not hired in California by at least one of his employers, which, if true, would render subdivisions (c) and (d) of section 3600.5 inapplicable to his claim. Applicant also argues that his regular employment in California similarly exempts him from the reach of the same subdivisions.

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[1] Commissioner Sweeney, who was on the panel that granted reconsideration, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] Further references are to the Labor Code unless otherwise stated.

We received an Answer from defendants.[3] The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the Findings of Fact and return the matter to the WCJ for further development of the record on the issue of whether applicant was hired in California, because we conclude that regular employment in the state does not exempt him from the application of section 3600.5, subdivisions (c) and (d), and therefore that his claim will be barred by section 3600.5, subdivision (d) unless he can demonstrate he was hired in this state. We conclude that applicant's specific injury was not barred by the statute of limitations, and that further proceedings are required on the issue of the section 5412 date of injury for his cumulative trauma claim.

FACTS AND PROCEDURAL HISTORY

Applicant filed two Applications for Adjudication. In the first application, Applicant claims a specific injury to his back sustained on April 23, 2014 in Oakland, California while employed as a professional baseball player by the Texas Rangers ("Rangers").[4] In the second application, Applicant claims a cumulative trauma injury to multiple body parts sustained while employed as a professional baseball player from June 4, 2003 through October 17, 2014. According to the evidence submitted at trial, applicant's playing history during the cumulative trauma period was as follows:

Cleveland Indians	June 3, 2003 to November 8, 2006
San Diego Padres	November 8, 2006 to January 16, 2010
Oakland Athletics	January 16, 2010 to August 23, 2011
Colorado Rockies	August 23, 2011 to October 5, 2011
Kansas City Royals	January 18, 2012 to November 2, 2012
Miami Marlins	November 5, 2012 to October 4, 2013
Texas Rangers	December 13, 2023 to October 7, 2014

(Ex. 1, at pp. 1–3; Ex. A, at pp. 3–5.)

[3] Defendants are jointly represented; although the Cleveland Indians ("Indians") are self-insured while the other defendants are insured by Ace American, all are administered by Sedgwick Claims Management Services.

[4] Later testimony suggests the injury itself occurred on April 22, 2014. References to both dates correspond to the same specific injury.

The matter proceeded to trial on January 25, 2018. According to the stipulations of the parties, the issues for trial were: (1) whether applicant filed both his claims within the statute of limitations contained in section 5405; (2) whether applicant's cumulative trauma claim was barred by section 3600.5; and (3) whether the Miami Marlins ("Marlins") were exempt from liability pursuant to section 3600.5, subdivision (b). (Minutes of Hearing and Summary of Evidence (MOH/SOE), 1/25/2018, at pp. 2, 5; see also Transcript, 1/15/2018, at pp. 6, 10.) Exhibits were admitted without objection, and applicant was the only witness to testify. (*Id.* at pp. 6–11.)

Applicant testified that at the time he was drafted by the Indians in 2003, he was in Colorado, and was not utilizing an agent. (*Id.* at p. 13.) In 2006, after playing for a number of minor league affiliates, he was called up to the Indians. (*Ibid*.) Around that time, he hired an agent, Matt Sosnick, who was based in northern California. (*Id.* at pp. 13–14.) Applicant signed an agreement with Sosnick, and understood that his agent's job was to negotiate with various teams on his behalf. (*Id.* at p. 14–15.)

Sosnick represented applicant for "six to seven" years; applicant then hired another agent, Adam Katz, before ultimately rehiring Sosnick. (*Id.* at p. 15.)[5] Applicant hired Katz in 2010, and Katz negotiated "one or two" contracts for him. (*Id.* at p. 16.) Katz was also based in California, and applicant signed a similar agreement with Katz regarding representation to the one he signed with Sosnick. (*Ibid.*)

Applicant began his professional career playing for a number of minor-league affiliates of the Indians; none of those teams played any games in California. (*Id.* at pp. 31–35.)

In 2006, applicant was called up to the Indians, and as part of that, he had to sign a major league contract. (*Id.* at p. 35.) That contract was negotiated by Sosnick. (*Ibid.*) Applicant signed that contract in Texas, because the team was on the road playing the Texas Rangers ("Rangers") at the time. (*Id.* at p. 37.) Applicant didn't remember if there were negotiations back and forth, and he found out about the salary and the terms of the contract when he actually signed it. (*Id.* at pp. 37–38.)

Applicant was traded to the San Diego Padres ("Padres") in November 2006. (*Id.* at pp. 17, 40.) His major league contract was transferred to the Padres at that time. (*Id.* at p. 41.)

[5] It is somewhat unclear from the record whether Katz replaced Sosnick or whether applicant was represented by both. Given that applicant testified that both agents had identical powers to negotiate on his behalf and that both were California-based, we do not consider it particularly important which agent negotiated which contract.

Applicant later signed a new contract with the Padres, on March 7, 2007; this contract was also negotiated by Sosnick. (*Id* at p.19.) Sosnick negotiated the contract from his California office, at least as far as applicant knew. (*Id.* at p. 20, 41, 68.) At some point during the negotiations, Sosnick advised applicant that the Padres had made an offer. (*Ibid.*) Applicant told Sosnick he would accept the offer, and gave Sosnick authority to convey that acceptance, which Sosnick did. (*Id.* at pp. 20–21.) Applicant ultimately signed the written contract in Arizona, but he had "already agreed to the contract" at that point. (*Id.* at p. 21.)

Applicant testified that Sosnick would always confer with him when there was an offer from a major league team, and that Sosnick would never accept a deal on his behalf without first conferring with him. (*Id.* at p. 42.) Sosnick would pass the offer to applicant, who would then say "yes" or "no" – if applicant said no, Sosnick could not accept the deal. (*Ibid.*). Applicant was in Arizona at the time he told Sosnick to go forward with the March 2007 Padres contract. (*Id.* at p. 43.) When applicant testified that Sosnick had authority to accept contracts, he meant that Sosnick would "take [his] decision to the team." (*Id.* at p. 62–63.)

Applicant played for the Padres, who are based in California, from 2007 to 2009, signing further another contract in 2008. (*Id.* at p. 43.) Applicant was in Colorado, where he was a resident throughout his career, at the time he was presented with that contract offer. (*Id.* at p. 44.) The 2008 contract was also negotiated by Sosnick. (*Id.* at pp. 44–45.) Applicant signed a further contract with the Padres in 2009, also negotiated by Sosnick; he was in Arizona at that time. (*Id.* at p. 45.)

In January of 2010, applicant was traded to the Oakland Athletics ("Athletics"), with his contract transferred. (*Id.* at p. 46.) Applicant signed a new contract with the Athletics later in 2010; this was negotiated by his new agent, Katz. (*Ibid.*) Applicant's relationship to Katz was the same as with Sosnick and they negotiated contracts in a similar manner. (*Ibid.*) Applicant was in Colorado at the time the 2010 contract was negotiated. (*Ibid.*) Applicant was also in Colorado at the time his 2011 contract with the Athletics was negotiated, again by Katz. (*Id.* at pp. 47–48.)

Applicant was traded to the Colorado Rockies ("Rockies") during the 2011 season, with his 2011 contract transferring. (*Id.* at p. 48.) Applicant did not sign a contract with the Rockies, and became a free agent at the end of the 2011 season. (*Id.* at pp. 48–49.)

Applicant was employed by the Kansas City Royals ("Royals") in 2012, signing a contract with them negotiated by Sosnick. (*Id.* at p. 49.) Applicant was in Colorado at the time he signed

his 2012 contract. (*Ibid.*) Applicant played for minor league affiliates of the Royals in 2012; he played two series of games in California during that time, against the Fresno Grizzlies and the Sacramento River Cats ("River Cats"). (*Id.* at p. 50-52.)

Applicant became a free agent again at the end of the 2012 season, ultimately signing a new minor league contract with the Miami Marlins during the off-season; applicant was in Colorado at the time, with the contract again negotiated by Sosnick. (*Id.* at p. 53.) Applicant was assigned to play for the New Orleans Zephyrs ("Zephyrs"). (*Id.* at p. 53–54.) He spent time on the disabled list three times during that season. (*Id.* at pp. 54–55.) The Zephyrs played a series in California against the River Cats in May 2013; applicant remembered joining the team there after he came off the disabled list, and being activated and present for all four games of that series. (*Id.* at pp. 54–57.)

Applicant became a free agent again at the end of the 2013 season, signing a contract with the Rangers during the off-season, negotiated by Sosnick, with Applicant present in Colorado. (*Id.* at pp. 57–58.) Applicant reported to spring training with the Rangers in Arizona, then started the 2014 season with the Round Rock Express, a minor league affiliate in Texas. (*Id.* at p. 58.) Applicant was then called up to the Rangers in April 2014, for a three- or four-game series against the Athletics in California. (*Id.* at p. 59.) Applicant was present for the games on April 21 and April 22, then went on the disabled list on April 23, 2014. (*Ibid.*) Applicant remained on the disabled list for the rest of the season, which he spent in Dallas, Texas, attempting to recover, but never resumed baseball activity. (*Id.* at pp. 59–61.)

Applicant did not remember ever being advised of his right to file a California workers' compensation claim. (*Id.* at p. 72.) Nor did he remember documents he had signed in 2011 and 2012 containing such notice of his rights. (*Id.* at pp. 72–76; D. Ex. S, 257–259.) He merely signed the documents that were put in front of him, without necessarily having read them. (*Id.* at p. 93.)

Applicant's lumbar spine symptoms started in 2004, when he fell down the steps while trying to catch a ball in the dugout during a game. (*Id.* at p. 78.) The symptoms never completely went away, and they got progressively worse during his career. (*Id*.at p. 78–79.) Applicant was aware during his career that his back symptomology was caused by wear and tear over the years. (*Id.* at p. 86–87.)

Applicant sustained three injuries while employed by the Padres, to his left elbow, right calf, and lower back. (*Id.* at pp. 80–81.) The left elbow injury was a specific incident; he couldn't

remember whether the calf injury was a specific injury or a cumulative issue. (*Id.* at p. 81.) The lower back injury was both a specific injury and a cumulative issue. (*Id.* at pp. 81–82.)

While employed by the Marlins, applicant sustained a thoracic spine injury on June 19, 2013. (*Id.* at pp. 83–84.) Applicant did not remember filing a Florida workers' compensation claim in relation to that injury, but did not contest documentation showing that he had reported the injury. (*Id* at pp. 84–85; D. Ex. T, p. 277.)

While employed by the Rangers, applicant sustained a lumbar spine injury on April 22, 2014. (*Id.* at p. 87.) Applicant underwent tests showing he had a herniated disc, for which he ultimately underwent two surgeries. (*Id.* at pp. 87–89; see also D. Ex. At pp. 27–37.) When applicant left his employment with the Rangers in September 2014, his major symptoms were low back pain and irritation in his legs. (*Id.* at p. 94.) At the time, he was aware that baseball is what caused his symptoms; he didn't need a doctor to tell him that, and he didn't remember any doctor telling him that. (*Id.* at p. 94–95.) The symptoms could not have been caused by anything besides baseball. (*Id.* at p. 96–97.)

Post-trial briefing was solicited and filed, and the matter was taken under submission as of the date of such filing. (*Id.* at pp. 99–100.) The WCJ's first Findings of Fact were issued on May 3, 2018, finding that (1) applicant was not hired in California on any of his contracts; (2) California lacked jurisdiction over applicant's cumulative trauma claim in Case No. ADJ1051182 based upon section 3600.5; and (3) both of applicant's claims were barred by the statute of limitations. (Findings of Fact, 5/02/2018, at p. 2.)

Applicant filed a Petition for Reconsideration, defendant filed an Answer, and the WCJ rescinded her Findings of Fact and reset the matter for further argument. (Order Vacating Opinion on Decision, at p. 1.) Such argument was heard, and the matter was resubmitted on August 30, 2018. (Minutes of Hearing, 8/30/2018, at p. 1.)

On October 26, 2018, the WCJ issued her second Findings of Fact, finding again that (1) applicant was not hired in California; (2) California lacked jurisdiction over applicant's cumulative trauma claim in Case No. ADJ1051182 based upon section 3600.5; and (3) both of applicant's claims were barred by the statute of limitations. (Findings of Fact, 10/26/2018, at p. 2.) The Opinion on Decision makes clear that the WCJ's decision was predicated upon a judgement that section 3600.5, subdivisions (c) and (d) applied to the claim, and that applicant could not meet the

requirements of subdivision (d) because he played for more than seven seasons with non-California-based teams. (Opinion on Decision, at p. 4.)

The instant Petition for Reconsideration followed.

DISCUSSION

Under California's workers' compensation law, benefits are to be provided for industrial injuries when the statutory conditions of compensation are met. (Cal. Const., art. XIV, § 4; §§ 3600 et seq., 5300 and 5301.) The statutes establishing the scope of the WCAB's jurisdiction reflect a legislative determination regarding California's legitimate interest in protecting industrially-injured employees. (*King v. Pan American World Airways* (1959) 270 F.2d 355, 360 ["The [California Workmen's Compensation] Act applies to all injuries whether occurring within the State of California, or occurring outside the territorial boundaries if the contract of employment was entered into in California or if the employee was regularly employed in California."].)

In general, the WCAB may assert its subject matter jurisdiction in a given workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a significant connection or nexus to the state of California. (See §§ 5300, 5301; *King, supra,* 270 F.2d at 360; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116, 1128.) Whether there is a significant connection or nexus to the State of California is best described as an issue of due process, though it has also been referred to as a question of subject-matter jurisdiction. (*New York Knickerbockers v. Workers' Comp. Appeals Bd.* (*Macklin*) (2015) 240 Cal.App.4th 1229, 1238; *Johnson, supra,* 221 Cal.App.4th at 1128.)

In addition to injuries occurring in California, the WCAB can also assert subject matter jurisdiction over injuries occurring outside this state in certain circumstances. Section 3600.5, subdivision (a) states: "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." (§ 3600.5(a).) Similarly, section 5305 states: "The Division of Workers' Compensation, including the administrative director, and the appeals board have jurisdiction over all controversies arising out of injuries suffered outside the territorial

limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state." (§ 5305.)[6]

For nearly a century, it has been established law 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; *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] ["an employee who is a professional athlete residing in California, such as Bowen, who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract"]; *Johnson, supra,* 221 Cal.App.4th at p. 1126.)

Under certain circumstances, additional requirements apply to professional athletes filing workers' compensation claims involving occupational disease or cumulative trauma injuries. Section 3600.5(d) provides as follows:

> (1) With respect to an occupational disease or cumulative injury, a professional athlete and his or her employer shall be exempt from this division when all of the professional athlete's employers in his or her last year of work as a professional athlete are exempt from this division pursuant to subdivision (c) or any other law, unless both of the following conditions are satisfied:
>
> (A) The professional athlete has, over the course of his or her professional athletic career, worked for two or more seasons for a California-based team or teams, or the professional athlete has, over the course of his or her professional athletic career, worked 20 percent or more of his or her duty days either in California or for a California-based team. The percentage of a professional athletic career worked either within California or for a California-based team shall be determined solely by taking the number of duty days the professional athlete worked for a California-based team or teams, plus the number of duty days the professional athlete worked as a professional athlete in California for any team other than a California-based team, and dividing that number by the total number of duty days the professional athlete was employed anywhere as a professional athlete.

[6] The residency requirement of section 5305 has long been recognized as unconstitutional. (See *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 20, fn. 6 [64 Cal.Comp.Cases 745].)

(B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.

(2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5.

(§ 3600.5(d).)

As section 3600(d)(1) makes clear by reference, an important provision for determining the meaning of section 3600.5(d) is section 3600.5(c).

Section 3600.5(c) provides as follows:

(1) With respect to an occupational disease or cumulative injury, a professional athlete who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for his or her employer if both of the following are satisfied:

(A) The employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California.

(B) The employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this state.

(2) In any case in which paragraph (1) is satisfied, the benefits under the workers' compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any occupational disease or cumulative injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete's last day of work for the employer within the state, the professional athlete performs less than 20 percent of his or her duty days in California during that 365-day period in California.

(§ 3600.5(c).) This statutory provision applies to a cumulative trauma claim asserted by a professional athlete who is hired in a state other than California, when that athlete is temporarily doing work in California. (See, e.g., *Carroll v. Cincinnati Bengals* (2013) 78 Cal.Comp.Cases

655, 660 (Appeals Board en banc); *Dailey v. Dallas Carriers Corp.* (1996) 43 Cal.App.4th 720, 727.)

Section 3600.5 also defines some of the terms used in the above subdivisions. Subdivision (g)(1) states: "The term 'professional athlete' means an athlete who is employed at either a minor or major league level in the sport of baseball, basketball, football, ice hockey, or soccer." (§ 3600.5(g)(1).) "California-based team" means "a team that plays a majority of its home games in California." (§ 3600.5(g)(2).) "Duty day" means "a day in which any services are performed by a professional athlete under the direction and control of his or her employer pursuant to a player contract." (§ 3600.5(g)(3).) The term "season" means "the period from the date of the first preseason team activity for that contract year, through the date of the last game the professional athlete's team played during the same contract year." (§ 3600.5(g)(4).)

The Legislature also included a note of intent, stating that the 2013 amendments to section 3600.5 should "have no impact or alter in any way the decision of the court in [*Bowen]*." (Stats. 2013 ch. 653 (AB 1309) § 3.). Because *Bowen* affirmed the exercise of jurisdiction based upon a hire in California, we have previously held that subdivisions (c) and (d) of section 3600.5 apply only where an applicant cannot establish hire in California on at least one contract during the relevant cumulative trauma injury period. (See *Hansell v. Arizona Diamondbacks* (2022) 87 Cal. Comp. Cases 602, 611–618.)

Here, applicant appears to concede that if subdivisions (c) and (d) apply to his claim, he cannot meet the requirements of the exemption because he worked for more than 7 seasons for non-California-based teams, and therefore his claim would be barred.[7] Accordingly, the parties' dispute in relation to section 3600.5 centers on the applicability of those subdivisions; if they apply, applicant's claim will be barred, while if they do not, it will not be. Applicant asserts two bases for why the subdivisions should not apply to his claim: (1) that he was hired in California on at least one of his contracts, and (2) that he was regularly employed in California during the relevant injury period. Defendant disputes California hire, and, while acknowledging that applicant was regularly employed in California during a portion of his career, contends that regular employment does not exempt applicant from subdivisions (c) and (d).

[7] The record shows that applicant worked for non-California teams for seven whole seasons and one partial season: four seasons from 2003 to 2006 for the Indians, a portion of the 2011 season for the Rockies, the 2012 season for the Royals, the 2013 season for the Marlins, and the 2014 season for the Rangers. (See Ex. 1, at pp. 1–3; Ex. A, at pp. 3–5.)

REGULAR EMPLOYMENT IN CALIFORNIA

We consider the question of regular employment first, because the parties do not dispute the fact that applicant was regularly employed in California during a portion of his career, and therefore the question is a pure question of law. Applicant asserts that just as subdivisions (c) and (d) do not apply when there is a California hire during the relevant injury period, they also do not apply where there is regular employment during the relevant injury period. If applicant is correct, we need not consider whether he was hired in California, because his undisputed regular employment would be sufficient to exempt him from the application of these subdivisions.

The fundamental purpose of statutory interpretation is to ascertain the Legislature's intent in order to effectuate the law's purpose. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Interpretation begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) If, however, the language is susceptible to more than one interpretation, consideration must be given to other factors, such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

We are directed to interpret statutory language "consistently with its intended purpose, and harmonized within the statutory framework as a whole." (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 585 [75 Cal.Comp.Cases 817].) "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.)

Historically, a California contract of hire and regular California employment have been treated as two largely interchangeable roads leading to the same destination, each providing an equally viable path to subject-matter jurisdiction. This default position is reflected in section 3600.5, subdivision (a)'s grant of subject-matter jurisdiction over the out-of-state injuries of any "employee who has been hired or is regularly working in the state." (§ 3600.5(a).)

By contrast, the provisions of section 3600.5 which follow denote exceptions to this general rule. Subdivision (b), for example, is a carveout applicable to all employees working temporarily within the state when there is reciprocity with the state where they are normally based, subject to certain conditions. (§ 3600.5(b).)

Subdivisions (c) and (d) are limitations to the general rule of jurisdiction, but of a different sort: they are limited solely to professional athletes bringing occupational disease or cumulative injury claims. As such, they clearly represent a legislative intent to limit access to the California workers' compensation system to certain athletes who would otherwise be eligible.

In *Hansell*, we determined that subdivisions (c) and (d) were not intended to apply to injured workers who could show a California contract of hire. (*Hansell, supra,* 87 Cal. Comp. Cases at 611–618.) In so deciding, we relied heavily upon the Legislature's explicit statement of intent included with the enactment of the subdivisions: "It is the intent of the Legislature that the changes made to law by this act shall have no impact or alter in any way the decision of the court in [*Bowen v. Workers' Comp. Appeals Bd.*] (1999) 73 Cal.App.4th 15." (Stats. 2013 ch. 653 (AB 1309) § 3.)

The central holding of *Bowen*, respectively, is that a contract of hire in this state will support the exercise of California jurisdiction even over a claim based purely on out-of-state injury, and that acceptance of a contract while in this state constitutes hire in this state for that purpose. (*Bowen, supra,* 73 Cal.App.4th at 27.) Because we saw no possible way to square this expression of intent with a holding that subdivisions (c) and (d) were intended to apply to injured workers who had a California contract of hire, we instead ruled that the subdivisions were meant to apply only to athletes who could *not* demonstrate they were hired in California during the relevant cumulative trauma injury period. (*Hansell, supra,* 87 Cal. Comp. Cases at 617.)[8]

On the question of regular employment, as opposed to California hire, we are bereft of any such explicit declaration of legislative intent. This necessarily complicates our task, and requires us resort to other methods to discern the Legislature's intent.

The fact that hire in California and regular employment in California have historically been equally viable as paths to jurisdiction makes it initially tempting to conclude that the Legislature

[8] In so ruling, *Hansell* somewhat unfortunately conflated hire in California and regular employment in this state, suggesting that either would be sufficient to take a case outside the ambit of subdivisions (c) and (d). (See, e.g., *Hansell, supra,* 87 Cal. Comp. Cases at 617.) *Hansell* itself involved only the issue of hire in California, however, and therefore any statements in that case regarding regular employment are necessarily dicta.

would not have intended to create a distinction between the two by applying subdivisions (c) and (d) to athletes who were regularly employed in California, while sparing those who were hired here. However, the very fact that the Legislature acted specifically to limit the ability of at least some professional athletes to file claims and obtain awards in the California workers' compensation system shows an indication to depart from the historical status quo. After all, just as hire in California and regular employment in California were historically interchangeable for purposes of subject-matter jurisdiction, whether an injured worker was a professional athlete had no legal relevance to their ability to file a California workers' compensation claim prior to the addition of subdivisions (c) and (d). We must therefore carefully consider the subdivisions to discern whether they show an intent to distinguish between hire in California and regular employment in the state, just as they clearly show an intent to distinguish between professional athletes and other injured workers.

The major stumbling block to holding that subdivisions (c) and (d) do not apply to athletes who can establish regular employment in California comes from subdivision (d)(1)(A)&(B), which provides a limited failsafe mechanism for athletes whom subdivision (d) would otherwise bar from filing California workers' compensation claims. This exception to the exemption applies to athletes who can demonstrate that they (1) either worked two or more seasons for a California-based team or more than 20% of their career in California or for California-based teams, and (2) worked fewer than seven seasons for non-California-based teams. (§ 3600.5(d)(1)(A)&(B).)

The text of subdivision (d) is silent as to whether it is intended to apply to athletes with regular employment in California. However, the very structure of the exemption certainly appears designed to apply to such athletes. This is because the vast majority of athletes who can demonstrate eligibility under the first condition – two or more seasons played for a California-based team or 20% or more of their career duty days either played for California-based teams or in California – will in fact be athletes who have at least some period of regular employment in California. In other words, because California-based teams are necessarily based in California, in the ordinary course of events athletes employed by California-based teams will be regularly employed in California.

Accordingly, if we were to rule that subdivisions (c) and (d) are not intended to apply to athletes with regular employment in California, it would leave subdivision (d)'s failsafe mechanism applicable to only an extremely narrow category of athletes: practically speaking, the

only way an athlete without regular California employment could meet the first condition would be through employment for a California-based team, but with that employment based out-of-state.[9]

Admittedly, cases of athletes hired by California teams but employed out-of-state do exist – particularly in baseball, where athletes are not infrequently hired by California-based teams and then dispatched to out-of-state minor league affiliates. Such athletes occasionally do complete their entire contract with a California-based team without ever having a period of regular California employment.

However, the question we must therefore ask ourselves is whether it is reasonable to believe that the Legislature would have intended to create a failsafe mechanism that in practice applied to such a limited category of athletes, essentially only baseball players who play for out-of-state minor league affiliates of California-teams without ever being called up to the major league team for any regular period of employment. In the absence of any statutory language or legislative history suggesting such an intent, it seems unlikely to us that the Legislature would have created such a detailed framework designed to apply to such a small sliver of athletes.

Conversely, if we read subdivision (d) as being intended to apply to athletes with regular California employment, the structure of subdivision (d)'s safe harbor provisions would be more comprehensible, because it would be applicable to a much wider range of athletes. In contrast to the very small number of athletes who could show multiple seasons of employment with a California-based team without regular California employment, a comparatively large number of professional athletes who have played multiple seasons for California-based teams were not hired in California. These athletes would be unable to have their claims heard in the California workers' compensation system without some kind of failsafe mechanism designed to catch those workers who, despite the lack of a California hire, the Legislature believed should still be able to file for California workers' compensation benefits based upon a combination of the strength of their ties to this state, and the absence of a long period of employment in other states.

Moreover, the limited legislative history we do have in relation to subdivisions (c) and (d) reinforces the conclusion that the provisions were intended to apply to those with regular California employment. As explained in *Hansell,* the bill as originally introduced and amended in

[9] Theoretically, an athlete could also qualify by having spent 20% or more of their duty days in California, despite never having been regularly employed in California. In practice, however, this is exceedingly unlikely, as it would be virtually impossible for an athlete in any of the covered sports to have spent 20% or more of their duty days in California without at least one period of regular California employment.

the Assembly went much further in restricting the ability of professional athletes to file claims in California than the final statute. (See *Hansell, supra,* 87 Cal. Comp. Cases at pp. 615–18.) As particularly relevant here, it did not contain any statement of legislative intent to retain the holding of *Bowen*. (See Assem. Amend. To Assem. Bill 1309 (2013-2014 Reg. Sess.) April 25, 2013.) Moreover, what became subdivision (d) was a part of subdivision (c), and read:

> (4) (A) An employer of a professional athlete that is subject to this division is not liable for occupational disease or cumulative injury pursuant to Section 5500.5 if at the time application for benefits is made the professional athlete performed his or her last year of work in an occupation that exposed him or her to the occupational disease or cumulative injury as an employee of one or more other employers that are exempt from this division pursuant to paragraph (1) or any other law.
> (B) This paragraph shall apply to all occupational disease and cumulative injury claims filed against an employer of professional athletes if the employer is subject to this division, unless the professional athlete was employed for eight or more consecutive years by the same California-based employer pursuant to a contract of hire entered into in California, and 80 percent or more of the professional athlete's employment as a professional athlete occurred while employed by that California-based employer against whom the claim is filed.

(*Ibid.*)

The original text of the bill, therefore, made it abundantly clear that it would have applied to all professional athletes, regardless of whether they were hired in this state or had regular California employment, unless they met extremely stringent requirements. In response to concerns raised in the Senate about the wide-ranging impact of the Assembly bill, the bill was altered to become what is now subdivisions (c) and (d), including adding the explicit statement of legislative intent to retain *Bowen*.

It is relevant that the Senate did not also include any statement of legislative intent to affirm regular employment in California as an alternative basis for jurisdiction that would also take an injured worker's claim outside of the ambit of the new amendments. Instead, they modified what became subdivision (d) to make it less restrictive, by removing the necessity of hire in California, lowering the threshold of employment in California or for a California-based team to two seasons from eight, and replacing the 80% requirement with the requirement of less than seven seasons played for non-California-based teams. In other words, the Senate chose to widen the applicability of the exception to make it easier for those with California employment to meet its requirements,

rather than to carve out regular California employment entirely, as it chose to do with California hire.

Admittedly, as a consequence of these choices, the statutory scheme allows some athletes who never played a day in California to recover California workers' compensation benefits (because they were hired here), while disallowing the claims of other athletes who played in California for years (because they were not hired here, did not finish their careers here, and played somewhere else for a long enough period of time).

We are cognizant that this result may appear at odds with "common sense." However, one could level the same criticism at much of the jurisprudence of jurisdiction, and we do not believe the Legislature's actions in this case are so odd as to demonstrate that they could not possibly have intended to do what they did. In particular, the Legislature's decision to carve out hire in California as a special case follows a century of our jurisprudence, and therefore cannot be categorized as arbitrary or irrational. That the Legislature did not also choose to carve out regular employment in California is a legislative judgement which we are not empowered to overrule.

In summary, subdivisions (c) and (d) of section 3600.5 do apply to athletes who have had a period of regular employment in California during the relevant injury period. This interpretation best accords with both the plain language of the statute, and the expressions of legislative intent we have reviewed.

HIRE IN CALIFORNIA

Because we have determined that a period of regular employment in California is insufficient to bring a claim outside the scope of subdivisions (c) and (d), we must next consider whether applicant was hired in California; as described above, this would also bring his claim outside the confines of those subdivisions. (See *Hansell, supra,* 87 Cal. Comp. Cases at 611–618.)

Acceptance of an offer of employment in California by the injured worker or by his or her agent supports a finding of hire in California under sections 3600.5 and 5305. (*Palma, supra,* 1 Cal.2d 250 at 252; *Travelers Ins. Co. v. Workers' Comp. Appeals Bd.* (1967) 68 Cal.2d 7, 12-13; *Bowen, supra,* 73 Cal.App.4th at 17-18, 21-22, 26-27.) The burden of proof rests with the applicant to establish acceptance of an offer within California. (§ 5705.)

The time and place of contract formation is an integral factor in the evaluation of whether there is California jurisdiction over a claimed extraterritorial injury. The exercise of California

jurisdiction often hinges on fact specific testimony or evidence as to the time and place of acceptance of an offer. (See *Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556 [83 Cal.Comp.Cases 1175] [insufficient evidence to establish either applicant or his agent in California at time of acceptance of offer]; *Hafkey v. American Airlines, Inc.* (June 15, 2018, ADJ10293214) 2018 Cal. Wrk. Comp. P.D. LEXIS 283 [applicant's acceptance of offer of employment while in California established jurisdiction, irrespective of where initial claim for benefits was filed]; *Pierce v. Washington Redskins* (May 23, 2017, ADJ8937991) 2017 Cal. Wrk. Comp. P.D. LEXIS 244 [agent and applicant both in California when applicant accepted terms of contract sufficient for jurisdiction, notwithstanding applicant traveled out of state to sign the contract]; *Withrow v. St. Louis Rams* (May 23, 2017, ADJ6970905) 2017 Cal. Wrk. Comp. P.D. LEXIS 249 [applicant's acceptance of offer of employment in California sufficient for California jurisdiction]; *Walker v. Petrochem Insulation* (ADJ9674694, February 2, 2016) 2016 Cal. Wrk. Comp. P.D, LEXIS 60 [applicant's acceptance in Georgia of California employer's offer of employment is not hire in California]; *Stephens v. Nashville Kats* (ADJ4213301, April 1, 2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 207 [applicant hired in California when he accepted employment by telephone in this state].)

Moreover, caselaw is also clear that if the evidence shows that an agent had the authority to bind the player and the agent exercised that authority, the agent's presence in California at the time of acceptance can be sufficient to create a California contract of hire for purposes of sections 5305 and 3600.5, subdivision (a). (See, e.g., *Tampa Bay Devil Rays v. Workers' Comp. Appeals Bd. (Luke)* (2008) 73 Cal.Comp.Cases 550 (writ den.) [2008 Cal. Wrk. Comp. LEXIS 85], panel dec. [2007 Cal. Wrk. Comp. P.D. LEXIS 125] [terms of contract were agreed to by telephone through California agent]; *Clemons v. Indianapolis Colts* (May 3, 2017, ADJ9380444) [2017 Cal. Wrk. Comp. P.D. LEXIS 187] [acceptance of offer by authorized agent physically located in California sufficient to confer jurisdiction].)

Finally, the fact that a subsequent written contract may have been signed in a different state does not preclude the possibility that a prior oral contract was formed in California. If such a contract was formed, the fact that a subsequent written contract with an integration clause may supersede the prior oral contract for purposes of contract law does not negate the fact that a California contract of hire was formed, thereby establishing the basis for the exercise of California jurisdiction over the claim.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal. Comp. Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal. Comp. Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] … For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal. Comp. Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal. App. 4th 1117, 1121–1122 [63 Cal. Comp. Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal. App. 4th 396, 403 [65 Cal. Comp. Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, the parties do not dispute that none of applicant's written contracts were signed in California. The WCJ found that applicant was not hired in California based on his testimony that, although he delegated authority to his agents to negotiate the terms of each of his contracts, they could not accept a contract on his behalf without first conferring with him and obtaining his approval. (See Opinion on Decision at, p. 3.) Because applicant was not in California at the time the offers were communicated to him, the WCJ found that applicant could not have been hired in California. (*Ibid.*)

Applicant, by contrast, asserts in the Petition for Reconsideration that "[i]n each and every instance, he gave his agents authority to accept the contracts on his behalf," and that "but for applicant's agents conveying the words of acceptance, Applicant would not have played baseball for the subject teams." (Petition for Reconsideration, at p. 8.) Applicant goes on to assert that there is no requirement in sections 3600.5 or 5305 that the parties "sign or otherwise conclude all

the terms of a binding written employment contract in California" in order for the hire to have been considered to have occurred in this state. (*Id.* at p. 9.)

Defendant, in turn, suggests that applicant's testimony established that applicant retained the final right to veto any contract, and never delegated to his agent authority to accept any of the contracts he was offered without first obtaining applicant's permission. (Answer, at pp. 9–10.) Defendant also alleges that applicant failed to prove that his agents were actually present in California at the time any of the alleged acceptances were made.

After extensive review of the trial transcript, we find the record insufficiently developed on a factual basis to allow for a determination of whether applicant was hired in California on at least one of his contracts during the relevant cumulative trauma injury period. Specifically, we note that one key factual question was left unresolved: whether applicant's agents had authority to bind applicant and exercised that authority, or whether they were simply relaying applicant's intentions to the teams.

If the agents were merely relaying information to the teams regarding applicant's willingness to accept the offers, the location of the contract formation would be governed by applicant's location at the time of *his* acceptance, whether that acceptance occurred orally or in writing. Conversely, if an agent with authority to bind applicant *actually accepted* a contract on applicant's behalf, an oral contract would have been formed at that moment – and, assuming the agent was in California at the time – such a contract would be a California contract of hire, in the same manner as if applicant himself had accepted an offer while in California.

Applicant's testimony on this point was not entirely clear. For example, when testifying about his contract with the Padres, applicant responded "yes" when asked whether he gave Sosnick authority to accept the contract, and "yes" to whether Sosnick "conveyed the acceptance." (Transcript, 1/15/2018, at pp. 20–21.) Applicant averred that he had "already agreed to the contract" by the time he signed the written contract in Arizona. (*Id.* at p. 21.) However, applicant also agreed that he retained ultimately authority to accept or reject contracts. (*Id.* at p. 42.) And under cross-examination, applicant agreed that when he stated that his agent would "accept the deal on my behalf," he meant that the agent would "take [his] decision to the team." (*Id.* at p. 63.)

Based on this testimony, we cannot conclude whether applicant's agents had the power to bind him to contracts, and therefore whether an actual oral contract was formed between one of applicant's agents and any of the relevant teams. Applicant did not testify that his understanding

was that a contract had been formed by his agent on his behalf, and testimony that applicant's agent "[took his] decision to the team" appears to call into question whether applicant's prior testimony that his agent "conveyed the acceptance" was intended to affirmatively state that the contract had been accepted by applicant's agent, as opposed to the agent simply communicating to the team that applicant was willing to accept the contract.

Nor do we have any evidence from applicant's agent or from anyone handling defendant's side of the contract negotiations on this key point. We are therefore left in the position of stumbling in the dark based upon the ambiguous testimony of someone who was not actually witness to the critical conversations that determined whether any oral contracts of hire were formed, and without any clear evidence that applicant's agents were able to bind applicant to contracts in the first place. Accordingly, are unable to determine whether applicant was hired in California on any of the relevant contracts. As such, we will return the matter to the WCJ for further development of the record on this key question.[10]

STATUTE OF LIMITATIONS

The parties also dispute whether applicant's claims – both his specific injury claim and his cumulative trauma claim – are barred by the statute of limitations found in section 5405, which generally requires that a claim for benefits be commenced within one year of the date of injury, or within one year of the last time any benefits were provided. However, if an employer furnishes medical treatment for an injury, the one-year limitation of section 5405 is tolled, and the injured worker may instead avail himself of the five-year period to commence an action under section 5410. (*McDaniel v. Workers' Comp. Appeals Bd.* (1990) 218 Cal.App.3d 1011, 1016-1017.) "In other words, after the voluntary furnishing of benefits, including medical treatment, section 5410 extends the period within which an original proceeding may be instituted from one to five years." (*Ibid.,* at p. 117.) The one-year limitations period of section 5405 then begins to run again "once a potential claimant has been fully informed that the employer and its carrier disclaim compensation liability for an industrial injury[.]" (*Ibid.*) The burden of proof for demonstrating

[10] If the parties desire, they may also introduce further evidence regarding the location of applicant's agents at the relevant times. However, in the absence of any evidence to the contrary, we believe that applicant's testimony that his agents were based in California, that he believed they were in California when he spoke to them about offers he had received, and that he saw the California area code on his phone when they called, is sufficient to establish that the agents were in fact present in California at the times the relevant calls were made.

the applicability of the statute of limitations rests with the defendant. (*State, Dep't of California Highway Patrol v. Industrial Acci. Com.* (1961) 26 Cal. Comp. Cases 176, 178.)

For cumulative trauma injures, section 5412 sets the date of injury as "that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." Whether an employee knew or should have known the employee's disability was industrially related is generally a question of fact to be determined by the trier of fact, i.e., the WCJ. (*Chambers v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 556 [33 Cal.Comp.Cases 722]; *City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467 [50 Cal.Comp.Cases 53]; *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918 [50 Cal.Comp.Cases 104].) If the WCJ's findings are supported by substantial evidence, including reasonable inferences from the evidence, the decision will be upheld. (*Alford v. Industrial Accident Com.* (1946) 28 Cal.2d 198 [11 Cal.Comp.Cases 127].)

Knowledge of industrial origin may constitute either actual knowledge or reasonably inferred knowledge. (*Johnson, supra,* 163 Cal.App.3d at 473 [holding that knowledge of industrial origin generally requires medical advice unless case specific facts indicate otherwise].) As regards applicant's knowledge that his injury was work-related, "[t]he burden of proving that the employee knew or should have known rests with the employer. This burden is not sustained merely by a showing that the employee knew he had some symptoms." (*Id.*, at p. 471.) Generally, "an applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*Id.,* at p. 473.)

We first consider applicant's specific injury claim, which pertains to an injury sustained on either April 22 or 23, 2014. Because the Application for Adjudication was not filed until July 22, 2016, ordinarily applicant's claim would be barred by section 5405. Here, however, defendant admits that applicant received medical treatment for his injury. (See Answer, at p. 15.) The provision of this treatment triggered the longer five-year limitations period of section 5410. Contrary to defendant's assertions, an injured worker need not have received an award in order to benefit from section 5410's longer period; receipt of medical treatment is sufficient, as long as it was not made clear to the injured worker that the employer disclaimed responsibility for the

injury.[11] (See *McDaniels, supra,* 218 Cal.App.3d at pp. 1016–18.) The five-year period provided by section 5410 therefore applies, and applicant's specific injury is not barred by section 5405.

Turning to the cumulative trauma injury, we note that the parties' dispute centers not on medical treatment, but on the date of injury pursuant to section 5412. The first prong of section 5412 requires that an injured worker has sustained disability as a result of the cumulative injury, defined as an impairment of earning capacity. (*Permanente Medical Group v. Workers' Comp. Appeals Bd.* (1985) 171 Cal.App.3d 1171, 1179–80.)

Defendant asserts that applicant first sustained disability in 2005, "when he missed time while on the disabled list during the 2005 season due to worsening low back symptoms following an injury sustained during the 2004 season." (Answer, at pp. 12–13.) Defendant also argues "alternatively" that applicant sustained disability when he was again placed on the disabled list on April 23, 2014, after his specific injury, prompting two surgeries. (*Id.* at p. 13.)

The problem with this assertion is that it does not distinguish between specific and cumulative trauma injuries. In both cases, applicant sustained specific injuries shortly before he was placed on the disability list. Defendant provides no evidence to support its claim that applicant's periods of temporary disability in 2005 or in 2014 were caused by his cumulative trauma symptoms, rather than by the specific injuries he sustained immediately before those periods of disability. In the absence of any medical evidence as to when applicant first sustained disability as a result of his cumulative trauma injuries, there is no way to fix the date of injury pursuant to section 5412, and therefore no basis at this stage of proceedings for determining that the claim is barred by the statute of limitations.

In order to establish a section 5412 date of injury, the WCJ will also need to determine when applicant was aware or should have been aware of the fact that his cumulative-trauma-induced disability was work-related. Here, the WCJ found that applicant was aware or should have been aware that his injury was work-related based on testimony that he knew he had sustained injuries as a result of his baseball career. Although the record does support this conclusion, it is not enough to merely show that applicant recognized he had sustained work-related injuries or had work-related symptoms; applicant would also need to have known that it was his *cumulative trauma injuries* that were responsible, at least in part, for an impairment to his earning capacity.

[11] We note that defendant did not argue that it disclaimed liability for the injury or point to any evidence on that issue, as was its burden. (See § 5705.)

Accordingly, we will rescind the WCJ's findings that both of applicant's claims were barred by the statute of limitations, as they are not based on substantial evidence in the record. The issue of the application of the statute of limitations to applicant's cumulative trauma claim may be later revisited once a date of injury pursuant to section 5412 is established.

CONCLUSION

As described above, we conclude that: (1) applicant's regular employment in California does not exempt his claim from the provisions of section 3600.5, subdivisions (c) and (d); (2) further development of the record is required to determine whether applicant was hired in California on at least one of the contracts during the relevant cumulative trauma injury; (3) applicant's specific injury claim is not barred by section 5405; and (4) substantial evidence does not exist in the record at this time to establish that applicant's cumulative trauma claim is barred by section 5405. Accordingly, we will rescind the Findings of Fact and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 26, 2018 Findings of Fact is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 17, 2024

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

KEVIN KOUZMANOFF
LEVITON, DIAZ & GINOCCHIO
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP

AW/pm

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