WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARK CARPER, *Applicant*

vs.

NEW YORK YANKEES;
TIG/FAIRMONT PREMIER INSURANCE CO.,
administered by ZENITH INSURANCE CO.;
BALTIMORE ORIOLES; TRAVELERS INDEMNITY CORP.;
ATLANTA BRAVES;
AMERICAN INSURANCE CO., administered by ALLIANZ;
NEW YORK YANKEES;
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION
on behalf of LEGION INSURANCE COMPANY, in liquidation, *Defendants*

Adjudication Number: ADJ13657099

Santa Ana District Office

OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION

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

I.

Under California's workers' compensation law, benefits are to be provided to workers for industrial injuries when the statutory conditions of compensation are met. (Cal. Const., art. XIV, § 4; Lav. Code, §§ 3600 et seq., 5300 and 5301.) The statutes establishing the scope of the Workers' Compensation Appeals Board's jurisdiction reflect a legislative determination that California has a legitimate interest in protecting industrially injured employees. (*Hansell v. Arizona Diamondbacks* (Apr. 7, 2022; ADJ10418232) [2022 Cal.Wrk.Comp. P.D. LEXIS 83, *6], citing *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." (*Id*.)

In general, the WCAB may assert its subject matter jurisdiction in a 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 Lab. Code §§ 5300, 5301; *King v. Pan American World Airways*, *supra*, 270 F.2d at p. 360; *Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116, 1128; *Hansell v. Arizona Diamondbacks*, *supra*, 2022 Cal.Wrk.Comp. P.D. LEXIS at pp. *6-7.)

One means of establishing subject matter jurisdiction by the WCAB occurs when a worker is hired in California. Labor Code 3600.5(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.

(Lab Code, § 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 contract of hire was made in this state. Any employee described by this section, or his or her dependents, shall be entitled to the compensation or death benefits provided by this division.

(Lab. Code, § 5305.)[1] As applicant was hired in California (5/21/24 Minutes of Hearing/ Summary of Evidence, p. 6; Amended Findings and Award, Finding of Fact no. 8), the state of California and the WCAB have subject matter jurisdiction over this injury.

[1] We note that Labor Code section 5305's purported additional requirement that the worker be a resident of California at the time of injury 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]; *Hansell v. Arizona Diamondbacks*, *supra*, 2022 Cal.Wrk.Comp. P.D. LEXIS at p. *13.)

II.

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

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

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on July 22, 2024, and 60 days from the date of transmission is September 20, 2024. This decision is issued by or on September 20, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on July 22, 2024, and the case was transmitted to the Appeals Board on July 22, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 22, 2024.

For the foregoing reasons,

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

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

September 20, 2024

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

MARK CARPER
PRO ATHLETE LAW GROUP, P.C.
BOBER, PETERSON & KOBY, LLP
DIMACULANGAN & ASSOCIATES
GUILFORD SARVAS & CARBONARA, LLP
LEWIS BRISBOIS BISGAARD & SMITH, LLP

JMR/mc

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

REPORT AND RECOMMENDATION ON DEFENDANT, AMERICAN INSURANCE COMPANY'S, PETITION FOR RECONSIDERATION

I

INTRODUCTION

1.	Date of Injury	:	2/15/1991-10/15/1996
2.	Identity of Petitioner	:	Defendant, American Insurance Company administered by Allianz for the Atlanta Braves by and through counsel Bober Peterson
	Timeliness:		The Petition is timely filed
	Verification:		The Petition is verified
3.	Date of Findings of Fact	:	6/19/2024

4. Petitioner's contentions:
   (a) The evidence does not justify the findings of fact; and
   (b) The findings of fact does not support the Order, Decision or Award.

II

FACTS & PROCEDURAL HISTORY

Applicant filed an Application for Adjudication of Claim, alleging a cumulative trauma injury ("CT") to multiple body parts sustained while employed as a professional baseball player. (EAMS Doc. Id# 73311430.) Applicant played for several teams in this order:

Baltimore Orioles	February 15, 1991 to June 8, 1992
New York Yankees	June 8, 1992 to July 18, 1996
Atlanta Braves	August 2, 1996 to October 15, 1996

(Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 5/21/2024, at p. 2.) *See also* (Findings of Fact, 6/19/2024 at p. 2.)

The Baltimore Orioles ("Orioles") were insured by Travelers Indemnity Insurance for the period 2/15/1991 through 6/8/1992; the New York Yankees ("Yankees") were insured by TIG/Fairmont Premier Insurance Company administered by Zenith for the period 6/8/1992 through 5/28/1993 and then by Legion Insurance Company, in liquidation, currently being litigated/administered by California Insurance Group Association ("CIGA") for the period 5/28/1993 through 7/18/1996; and the Atlanta Braves ('Braves") were insured by American Insurance Company administered by Allianz for the period 8/2/1996 through 10/15/1996.

This matter proceeded to trial before the undersigned on May 21, 2024. Applicant testified credibly that in January 1991, he was in California when an Orioles regional scout, Mr. Sprague, recruited him. (MOH/SOE at p. 6:7-9). He recalled getting a check for $1,500 from Mr. Sprague and signing a document. *(Id*. at 12-17.) He did not recall what the document he signed was[,] nor was it in evidence. (*Id*. at 16-18.) Applicant also testified that he did not play games in California with the Yankees or the Braves[1] (*Id*. at pp. 9:15-18.) The crux of the dispute was whether Applicant accepted a contract for hire while in California. Defendants relied on a March 14, 1991; contract signed with the Orioles as the purported first contract signed by the Applicant. Applicant testified that this March 14, 1991, contract was not what he agreed to in California. (*Id*. at p. 7:17-19.) He testified that he likely arrived in spring training for the Orioles around March 14, 1991. (*Id*. at p. 13:9-11.) This contract was, however, the only contract available in the Orioles team records. (Joint Exhibit 3)

After submission of the matter, and upon review of the documentary evidence, the undersigned noted that Applicant's "Player History" documented he signed a minor league contract on February 15, 1991. (Joint Exhibit 2 at p. 3.) There is no disputing that Applicant was still in California on February 15, 1991, pursuant to a letter from Applicant's mother dated February 28, 1991, notifying the Orioles that the Applicant was still in California. (Joint Exhibit 3 at p. 19.)

[1] No evidence was presented as to if Applicant played any games in California with the Orioles.

Based on Applicant's credible testimony and the documentary evidence, the undersigned found a contract for hire in California and subject matter jurisdiction over Applicant's claim. The undersigned also found the Braves liable pursuant to Labor Code section 5500.5. Also at issue for trial was permanent disability, apportionment, future medical care, statute of limitation, CIGA defenses, and date of injury pursuant to Labor Code section 5412. A Findings and Award and Opinion on Decision issued on June 18, 2024, addressing all the issues presented to this court. On June 19, 2024, the undersigned issued an amended Findings & Award.[2] It is from these Findings & Award that the Braves Petition for Reconsideration. The gravamen of the Brave's dispute goes to the liability found over the Braves. The Braves argue that liability should roll back to the Orioles. Applicant filed an Answer in support of the undersigned's decision but that liability should roll back to the New York Yankees pursuant to *Grahe*.[3]

III

DISCUSSION

In its Petition for Reconsideration, the Braves argue that there is no statutory basis to place liability on the Braves and that the Braves lacked sufficient contacts with California violating their due process rights. Embedded into these issues are numerous arguments, which the undersigned summarizes as follows: Applicant had no injurious exposure in California; Applicant did not have a contract for hire in California with the Braves; the Braves are exempt from liability under Labor Code section 3600.5(c); lack of personal jurisdiction, and the court should have related liability back to the Orioles.

[2] The amended Findings & Award was issued to add the finding of a contract for hire in California to the Findings of Fact.

[3] In *Grahe*, the WCJ never made a finding as to a hiring in California nor was 3600.5(c) at issue. Instead, the parties agreed that the employer met the requirements for exemption under subdivision (c). (*Grahe v. Phila. Phillies* (2018) 84 Cal.Comp.Cases 123,129.) As will be discussed supra, subsequent cases makes clear that an analysis under subdivision (c) is obviated when there is a hiring in California.

i. NO INJURIOUS EXPOSURE IN CALIFORNIA NOR CONTRACT FOR HIRE WITH THE BRAVES

Injurious exposure in California is immaterial because 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. The plain meaning of Labor Code sections 3600.5(a) and 5305 embodies a public policy that California has a strong interest and sufficient connection to exercise subject matter jurisdiction when there is a hiring in California. *See also Clemons v. Indianapolis Colts*, 2017 Cal. Wrk. Comp. P.D. Lexis 187 (holding that applicant was hired in California for purposes of Sections §§3600.5(a) and 5305 even absent games in California; *Alaska Packers Assn. v. Industrial Acc. Com.*, 1 Cal. 2d 250, (holding that California had authority to hear cases for injuries sustained out of state by workers hired within the state); *Bowen v. Workers' Comp. Appeals Bd*. (1999) 73 Cal. App. 4th 15 (finding an employee who signs a player's contract in California furnished to the athlete by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract.)

The fact that the Braves had no contract for hire in California is also not determinative. Subject matter jurisdiction is derivative and applies to a claim in its entirety not to individual teams. (*Withrow v. St Louis Rams*, 2017 Cal. Wrk. Comp. P.D. Lexis 249, (finding California subject matter jurisdiction over the entire CT claim based on an acceptance of offer for employment telephonically while physically in California); *Colts v. Indianapolis Colts*, 2017 Cal. Wrk. Comp. P.D Lexis 187 (finding subject matter jurisdiction based on hiring in California notwithstanding no California games and that Applicant's subsequent signing of the written contract in another state did not preclude WCAB jurisdiction); *Sutton v. San Jose Sharks*, 2018 Cal. Wrk. Comp. P.D. Lexis 249 (expressly rejecting defendant's 'employer by employer' subject matter jurisdiction argument.)

The Braves do not challenge subject matter jurisdiction over the claim, but rather argue that this court should not exercise jurisdiction over them. The Braves cite to the *Smith* case for support that this court should chose not to exercise subject matter jurisdiction over the team. *Smith v. Detroit Lions*, 2022 Cal. Wrk. Comp. P.D. LEXIS 368. The Braves reliance on this case is misplaced and premature as on November 22, 2022, the WCAB issued an 'Opinion and

Order Granting Petition for Reconsideration on Boards Motion' and this matter remains up on reconsideration. The Braves also argue a lack of sufficient contact with the Braves pursuant to *Johnson. Fed. Ins. Co. v. Workers' Comp. Appeals Bd. (Johnson),* 221 Cal.App. 4th 1116. Here, any argument under *Johnson* is moot since the court has subject matter jurisdiction by virtue of a hiring in California.

ii. BRAVES ARE EXEMPT PURSUANT TO SECTION 3600.5(c)

The Braves also argue that there should be no liability as to the Braves pursuant to Labor Code section 3600.5(c). This argument is without merit for a plethora of reasons. Section 3600.5(c) reads as follows:

> (c)(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.

Lab. Code §3600.5(c) (emphasis added)

The plain meaning of Labor Code section 3600.5(c)(1) requires that the Applicant was temporarily within this state doing work. The Merriam-Webster Dictionary defines temporary as "lasting for a limited time."[4] Here, Applicant was never in California with the Braves.

Finally, on this issue, Labor Code section 3600.5(c) does not apply to this claim since Applicant was hired in California for one of his contracts during the relevant cumulative trauma period. *See, e.g., Hansell v. Arizona Diamondbacks,* 2022 Cal. Wrk. Comp. P.D. LEXIS 83, 87 Cal.Comp.Cases 602; (finding 3600.5(c) not applicable because although applicant was

[4] Merriam-Webster Dictionary website <http://www.merriam-webster.com/dictionary/temporary>

hired outside of California by teams asserting exemption from California jurisdiction, he was hired by multiple teams in California during the cumulative injury period, creating jurisdiction over the claim pursuant to sections 3600.5(a) and 5305); see also *Slavin v. St. Louis Rams/ Los Angeles Rams*, 2024 Cal. Wrk. Comp. P.D. LEXIS 75 (affirming that Labor code section 3600.5(c) is not applicable when applicant was hired in California.) The *Hansell* court explained that the phrase "a professional athlete who has been hired outside of this state" in Labor Code section 3600.5(c) is ambiguous as applied to cumulative injuries claim where an applicant has California contracts for hire though not with employers asserting exemption from California jurisdiction. *(Id.* at 611-612.) Also material to the *Hansell* decision was that when the Legislature amended Labor Code §3600.5, it provided specific notes of its intent stating "[I]t 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 [86 Cal. Rptr.2d 95]. (Stats. 2013 ch. 653 (AB1309) § 3.)" *Id.* at 614. Therefore, a hiring in California with the Orioles obviates the requirement for any analysis under Labor Code section 3600.5(c).

iii. PERSONAL JURISDICTION AS TO THE BRAVES

The Braves raise the issue of personal jurisdiction for the first time in its Petition for Reconsideration citing to *Bristol-Myers Squibb. Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773. With respect to this argument, few rules are more firmly established than that which requires a party raising an issue to do so by the time of trial. A WCJ will not hear an issue that was not raised for trial if to do so would deny a party due process of law. *See, e.g.*, *Andrade v. Southern California Edison,* 2014 Cal. Wrk. Comp. P.D. LEXIS 311; *Flores v. Reegs, Inc. dba Monterey Construction Co.,* 2014 Cal. Wrk. Comp. P.D. LEXIS 427.

Here, personal jurisdiction was not raised at trial, to do so now would be improper, and a violation of the other parties' due process rights. Moreover, the Braves made a general appearance in this matter at least twice. The Braves filed a Notice of Representation making a special appearance contesting subject matter jurisdiction with no reference to personal jurisdiction[5] (EAMS Doc. Id# 50077325) and entered a general appearance at the

[5] See *Janzen v. Workers' Comp. Appeals Bd*., 61 Cal.App. 4th 109, 116.

Mandatory Settlement Conference[6] on March 9, 2023. (EAMS Doc. Id# 76517180).[7] If a person makes a general appearance without objecting to personal jurisdiction, this defense is waived and the court may properly exercise personal jurisdiction.

An exception to allocating liability to the last year is allowed under Labor Code section 5500.5 only when there is no insured defendant in the last year. The provision for "relation back" in Labor Code section 5500.5(a) has also applied when the WCAB does not have personal jurisdiction over an employer. Here there is no evidence that the Braves were uninsured nor does this court lack personal jurisdiction. Therefore, there is no basis to relate back liability.

IV.

RECOMMENDATION

For the reasons stated above, it is respectfully requested that the decision not be disturbed and the Brave's Petition for Reconsideration be denied.

DATE:7/22/2024

Josephine K. Broussard
WORKERS' COMPENSATION JUDGE

[6] *Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341; *Neal v. San Francisco 49ers*, 2021 Cal. Wrk. Comp. P.D. LEXIS 68.
[7] The court takes judicial notice of the pleadings pursuant to Evidence Code 452(d). *See also Herrera v. University of California San Francisco*, 2013 Cal. Wrk. Comp. P.D. LEXIS 553 (allowing judicial notice of the EAMS file.)