WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHAEL BIANUCCI, ***Applicant***

vs.

TEXAS RANGERS; ANGELS BASEBALL LP; ACE AMERICAN INSURANCE, administered by SEDGWICK RIVERSIDE, ***Defendants***

Adjudication Number: ADJ15824668
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendants Texas Rangers and Angels Baseball LP, both insured by Ace American Insurance and administered by Sedgwick Riverside, seek reconsideration of the May 22, 2024 First Amended Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that California has substantial interest in exercising subject matter jurisdiction over applicant Michael Bianucci's claimed injury because applicant was regularly working in this state.

Defendants contend that Labor Code,[1] section 3600.5(d), controls this case and that section 3600.5(a) does not control. Defendants then contend that pursuant to section 3600.5(d), California does not have subject matter jurisdiction to adjudicate applicant's worker's compensation claim.

We received and reviewed an answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and

[1] All statutory references are to the Labor Code unless otherwise indicated.

incorporate, except for the court's finding that there was no contract formation in California,[2] and for the reasons discussed below, we grant reconsideration and amend the First Amended Findings of Fact solely to indicate that it is unclear where the subject contract between the parties was formed.

Based on applicant's trial testimony, the trial court found that the contract between applicant and the Los Angeles Angels was formed orally while applicant was on the road in Mexico playing for the Monclova team. (Opinion on Decision to First Amended Findings of Fact, p. 8.) It then concluded that the subsequent signing of the written contract, whether in California or Arkansas, was a condition subsequent.

We are not convinced. Applicant's testimony at trial concerning the formation of the contract was as follows:

> While he was in the leagues playing for Monclova, he was communicating with the Angels. He was told to "shut down" his playing with Monclova. He went on loan from Monclova. If he had returned to the Mexican Leagues at that time, Monclova had rights. He was on the road playing for Monclova when he had the conversation with the Angels. They asked him if he wanted to play for them and if he wanted to get out of the Mexican Leagues. He told them that he did. He went to California by air, to San Diego for approximately two days, and then was assigned by the Angels to a club in Arkansas.
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> During the two days he was in San Diego, he had discussions with the Angels. He received an offer to play in Arkansas for an affiliate of the Angels. He played at the Arkansas affiliate under a contract to play there. He believed it was the Uniform Contract. He could not recall the amount of compensation. During his discussions with the Angels, he unequivocally accepted their offer to play for them. He dealt with Scott. He could not recall if someone else made the travel arrangements other than Scott. (Minutes of Hearing and Summary of Evidence (MOHSOE), p. 5:9-19; emphasis added.)
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> ***
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> Prior to getting on the plane to travel from Mexico to San Diego and then to Arkansas, the applicant felt he had a deal in place. Without a deal in

[2] We do not adopt and incorporate the sentences "This court found that there was no contract formation in California" on p. 3, 3rd paragraph, of the Report, and "The court has found that there has been no contract formation in California" on p. 6, 2d paragraph, of the Report.

> place, he would not have gotten on a plane. (MOHSOE, p. 6:6-8; emphasis added.)
>
> ***
>
> With regard to the 2014 season, the applicant was told to "shut down" when he was playing with Monclova in order to avoid injury. At the time, he was working toward a deal with the Angels. He was asked whether he had interest in playing with the Angels and getting out of Mexico. He indicated that he did. He went from Mexico to San Diego. His travel was arranged by the Angels. He did not meet with Angels personnel while he was in San Diego. With regard to the 2014 contract, he was not sure where he may have been located when he signed the contract with the Angels in 2014. (MOHSOE, p. 6:20-25; emphasis added.)
>
> ***
>
> In 2014, the physical contract that he signed did not differ in any significant manner from what he had orally agreed upon with the Angels during contract discussions in California. (MOHSOE, p. 9:15-16; emphasis added.)

Applicant's trial testimony does not provide a clear picture of where his contract with the Los Angeles Angels was formed. Some of applicant's testimony supports the trial court's finding that the contract was orally formed in Mexico (e.g. applicant would not have traveled to San Diego if he did not think he had a deal in place). However, some of his testimony indicates that he was working towards a deal in Mexico but that the contractual offer and acceptance did not happen until he reached San Diego (e.g. while in San Diego, he received an offer to play in Arkansas for an affiliate of the Angels.) There is no other evidence in the record with regards to contract formation. In short, we are unclear where the contract was formed. Nevertheless, we agree with the trial court that subject matter jurisdiction is proper under section 3600.5(a).

For the foregoing reasons,

IT IS ORDERED that Defendants Texas Rangers and Angels Baseball LP's Petition for Reconsideration of the May 22, 2024 First Amended Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 22, 2024 First Amended Findings of Fact is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. It is unclear where the professional athletic contract between Applicant Michael Bianucci and the Los Angeles Angels was formed.

. . .

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 5, 2024

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

MICHAEL BIANUCCI
PRO ATHLETE LAW GROUP, PC
BOBER, PETERSON & KOBY, LLP

LSM/oo

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

REPORT AND RECOMMENDATION OF WORKERS COMPENSATION ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

1. Applicant's Occupation: Professional Athlete (baseball)
   Applicant's Age: 29
   Date of Injury: CT 6/1/2008-10/6/2015
   Parts of Body Injured: claims head, neck, shoulders, back, spine, hips, elbows, wrists, hands, legs, knees, ankles, feet, toes, internal, ENT/TMJ, neuro/psyche, systems associated with hearing, vision, sleep and chronic pain.
2. Identity of Petitioner: Defendants Angels Baseball LP and the Texas Rangers, insured by Ace American Insurance and administered by Sedgwick Riverside (hereinafter "petitioner")
   Timeliness: Timely
   Verification: Verified
3. Date of Issuance of First Amended Findings of Fact: 5/22/2024 (issued pursuant to California Code of Regulations Section 10961(c))
4. Petitioner's Contentions: The petitioner contends that: The findings of fact do not support the order, decision, or award. Petitioner further contends "…the case is barred statutorily pursuant to Labor Code section 3600.5(d)…" (Petition For Reconsideration, page 2:6-7). Petitioner frames the issue presented as "Whether there is subject matter jurisdiction over the case pursuant to Labor Code section 3600.5" (Petition For Reconsideration, page 2:10-11.)
5. Petitioner contends that the WCAB lacks subject matter jurisdiction over this professional baseball player who suffers cumulative traumatic injury while working in Bakersfield, California over one and one-third years, participating in 170 games and additionally in practices while regularly working exclusively in California.

II
FACTS

Petitioner notes that "…Applicant's professional baseball career began in 2008 and ended in 2015 during which, the Applicant played the 2008, 2009, 2010, 2011, 2012 and 2013 season with the Texas Rangers organization. *See, Joint Exhibit 2*…The Applicant played games in California when he was assigned to the Rangers organization. He was assigned to the Rangers affiliate located in Bakersfield, California for part of the 2009 season; he played in Bakersfield from July 6, 2009 through September 7, 2009 (.33 of a season). *See, Joint Exhibit 2*. He was assigned to play in Bakersfield again for the entire 2010 season. *See, Joint Exhibit 2*…The game logs in Joint Exhibit 2 show that over the 2009 and 2010 seasons he played a total of 170 games

in Bakersfield. *See, Joint Exhibit 2*…" (Petition For Reconsideration, page 2:21-3:4 and page 4:6-11.)

Petitioner argues for a rule distinguishing an athlete whose contract is formed in California from an athlete injured while regularly playing 170 games and practicing in California over one and one-third years. Petitioner contends that statutory and case law may support California subject matter jurisdiction over the former but not over the latter. This court has found that this Applicant was regularly working in Bakersfield, California during a significant portion of the cumulative traumatic injury period, within the meaning of California Labor Code Section 3600.5(a). This court has concluded that the WCAB has subject matter jurisdiction over the claim at bar.

III
DISCUSSION

Petitioner contends that Labor Code Section 3600.5(a) must be subordinated to Labor Code Section 3600.5 (c) and (d). Petitioner contends there to be a distinguishing factor between contract formation in California and regular work in California, as each relates to the establishment of subject matter jurisdiction. Petitioner argues that the WCAB lacks subject matter jurisdiction over the claim of this injured worker, although he worked for more than a year exclusively in California at a California work site and suffered injury occurring exclusively at that work site during that period.

Petitioner concedes Applicant played all his games and practices in California in the latter portion of the 2009 season and the entirety of the 2010 season. The Applicant's unrebutted testimony is that he suffered cumulative traumatic injury over that period for which he received treatment from the team trainer.

However, the Applicant played exclusively for the Bakersfield Blaze in California, in the latter portion of 2009 and 2010. Petitioner contends that the Applicant participated in 170 games and additionally in practices over that period, exclusively in California. An amalgam of trial testimony and exhibits suggest the number of California games over 2009 and 2010 was actually in excess of 200 games. Whether 170 or 200 games, this court found that in the latter portion of 2009 and entirety of 2010, the applicant was regularly working in California and that California has a substantial interest in exercising subject matter jurisdiction over the claimed injury in this case. This court found that the Texas Rangers and/or Los Angeles Angels are not exempt from Division 4 of the California Labor Code by virtue of California Labor Code Section 3600.5(d).

In the recent Board Panel Decision in the matter of Robert Holmberg v. Oakland Raiders, the panel opined that "…the applicant's time in the employ of a California-based team is sufficient, in and of itself, to make the application of California workers' compensation law reasonable…" (Robert Holmberg v. Oakland Athletics 89 Cal. Comp. Cases 356 at 364,)

The applicant testified that he was assigned by the Texas Rangers to an affiliate team in California called the Bakersfield Blaze, where he played the last half of the 2009 season and the entirety of the 2010 season. (MOH/SOE 3/20/2024, page 4:10-11.)

In 2009, Applicant played the last half of the season, after the All-Star break, for the Bakersfield Blaze. (MOH/SOE 3/20/2024, 4:12-14.) In 2009, the games and practices in which he participated were all in California. (MOH/SOE 3/20/2024, page 4:12-14.) In 2009, the Applicant played 60 games for the Bakersfield Blaze. (Joint Exhibit 1, game log page 3/5.) Applicant suffered injuries in 2009, consisting of wear and tear, including bumping into walls; he got treatment from the team trainer for his wear and tear injuries. (MOH/SOE 3/20/2024, page 4:15-17.)

In 2010, the applicant played in more than 140 games for the Bakersfield Blaze. (Joint Exhibit 1, Game Log page 3/5.) All the 2010 practices and games were in California. (MOH/SOE 3/20/2024, page 4:17-22.) In 2010 Applicant suffered injuries, including wear and tear, being hit in the head with pitches, and lower extremity issues, for which he received treatment. (MOH/SOE 3/20/2024, page 4:17-22.)

The Applicant's unrefuted testimony was that in the 2009 and 2010 seasons, he participated in games and practices, exclusively in California. The Applicant's unrefuted testimony was that he suffered injury in California. The Applicant's unrefuted testimony was that he received treatment for his injuries.

California Labor Code Section 3600.5, subdivision (a) provides that "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 [emphasis added]."

The Applicant in this case claims cumulative traumatic injury over the period 6/1/2008-10/6/2015 occurring both within and outside the State of California. Applicant's career included work over the years at multiple work sites for multiple employers. Petitioner focuses upon the last year of Applicant's work as a professional athlete. Petitioner argues "…Applicant's last year of

work as a professional athlete runs from October 6, 2014 through October 6, 2015. During this time, Applicant was employed by the Aguilas de Mexicali and the Kansas City Royals…" (Petition For Reconsideration, page 8:26-page 9:2.)

The Board has enunciated "…whether California can exercise subject-matter jurisdiction over a claim does not depend on a significant nexus between every single employer and the state…the operative question was the relationship between the applicant's injuries and the state, not the relationship between any one employer and the state..." (Ken Sutton v. San Jose Sharks, 83 Cal.Comp.Cases 1613, 1616, 1622-23).

The Board in its panel decision in Wilson v. Marlins stated that "…In general, the WCAB can assert subject matter jurisdiction in a presented workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a sufficient connection or nexus to the state of California. [citations omitted]…" (Wilson v. Marlins, 2020 Cal. Wrk. Comp. P.D. LEXIS 30).

Petitioner argues for a rule mandating disparate treatment under LC 3600.5(a) of an athlete whose contract is formed in California vs. one who is regularly working in California. Petitioner seems to acknowledge that a finding of contract formation in California may obviate need for further analysis but argues a finding of regular work in California requires further analysis under subdivisions (c) and (d).

In *Wilson*, the panel opined "…a careful reading of the statute suggests that subdivision (d)(1) is concerned with determining under what circumstances an athlete who *does not* meet the requirements of section 3600.5, subdivision (a) or section 5305 should nevertheless be able to bring a claim in California, because their relationship to the state is sufficiently strong *despite* the lack of a hire in California or regular California employment…" (Wilson v. Marlins, 2020 Cal. Wrk. Comp. P.D. LEXIS 30, *19).

The panel in *Wilson* noted "…The Athletics, the Dodgers, and the Padres are California-based teams, Applicant was regularly employed in California for these teams, and was employed by the Dodgers as recently as 2004, less than two years before his retirement. It strains credibility to characterize Applicant's contacts with this state as "extremely minimal," and we do not think the Legislature had claims like his in mind when it sought to limit access to the California compensation system by out of state athletes with minimal connections to the state. (Wilson v. Marlins, 2020 Cal. Wrk. Comp. P.D. LEXIS 30, *20).

IV
CONCLUSION

The fundamental dispute on reconsideration seems to be: do subdivisions (c) and (d) of section 3600.5 override the jurisdictional provisions of section 3600.5(a) that provide for jurisdiction where Applicant is regularly working for an employer in California during the period of injury?

The parties in this matter have competing views of the interrelationship of subdivision (a) to subdivisions (c) and (d) of California Labor Code section 3600.5. Applicant argues that if subdivision (a) applies the court need not engage in analysis under subdivisions (c) and (d). Defendant argues that the court must engage in analysis under subdivisions (c) and (d), which in this case prevail despite Applicant having engaged in regular work in California which resulted in his injury.

Defendants do not challenge this finding. Based on unrefuted evidence, in the 2009 and 2010 seasons, the Applicant participated in at least 170 competitive games and additionally participated in practices, all in California, with cumulative traumatic injury therein. Defendants draw a distinction between a contract of hire in California and regular work in California. Defendants argue (and the court found) that there is not a contract of hire in California. Defendants contend that whereas a contract of hire in California may obviate the need for analysis under subdivisions (c) and (d), regular work in California does not obviate the need for analysis under those subdivisions.

The court believes there is no useful purpose served in this case, in drawing such a distinction. Subdivision (a) speaks to an employee who "has been hired or is regularly working" in California. The subdivision draws no distinction concerning the impact one or the other has upon entitlement to compensation according to the law of this state.

Subdivisions (c) and (d) were in part our legislature's response to out-of-state athletes, who had not been hired or regularly worked in California, with extremely minimal California contacts, who were filing workers' compensation claims in California.

In the recent panel decision in the matter of Wayne Gandy vs. Atlanta Falcons, et. al., ADJ10110126, relating to a professional athlete, the Board examined the interrelationship between subdivisions (a) and subdivisions (b) and (c) of California Labor Code section 3600.5. The focus in Gandy was a California contract of hire, but the case provides an excellent discussion of the

interrelationship between subdivisions (a), (b) and (c) of Labor Code section 3600.5. In Gandy, the panel noted:

> "…This reading of the statute is also supported by the nature of subdivisions (c) and (d), both of which reference a 20% threshold for determining the strength of an injured athlete's connection to the state. Subdivision (c) uses this 20% threshold to determine whether a worker injured here while working on an out-of-state contract is within the state "temporarily." (§ 3600.5(c).) This focus on how much work time in the state transforms an injured worker's status from "temporary" to "regular" mirrors the due process concerns identified in *Johnson* with ensuring a sufficient connection to the state—concerns which only apply where there is not a hire in California at some point during the cumulative trauma period…" (Wayne Gandy vs. Atlanta Falcons, et. al. ADJ10110126.)

In the instant case, the Applicant was regularly working 100% of the time in the State of California while participating in games and practices in California for the Bakersfield Blaze. In 2009, the Applicant played the second half of the season (games and practices) in California. In 2010, the Applicant played the entire season and all practices in California. This would appear to be the polar opposite of the "handful of games" of concern to the California Legislature.

This Court concludes that during significant portions of the period of alleged cumulative trauma, Applicant was regularly working in California. As in *Wilson, supra*, this court does not believe that the Legislature had claims in mind like this when it sought to limit access to the California compensation system by out of state athletes with minimal connections to the state.

V
RECOMMENDATION

It is recommended that the Petition For Reconsideration be denied.

DATE: June 7, 2024

NATE HALPRIN
WORKERS' COMPENSATION JUDGE