WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ORLANDO MERCADO ZAPATA, *Applicant*

vs.

ARIZONA DIAMONDBACKS, LOS ANGELES DODGERS, LOS ANGELES ANGELS insured by ACE AMERICAN INSURANCE COMPANY/ CHUBB, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ14405690
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 and opinion on decision, both of which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination(s). (*Id*.)

Additionally, 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 August 15, 2024, and 60 days from the date of transmission is October 14, 2024. This decision is issued by or on October 14, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 15, 2024, and the case was transmitted to the Appeals Board on August 15, 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 August 15, 2024.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2024

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

ORLANDO MERCADO ZAPATA
GLENN STUCKEY, ESQ.
GOLDBERG SEGALLA

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'S PETITION FOR RECONSIDERATION

I
INTRODUCTION

1.	Applicant's Occupation		Professional Athlete
	Applicant's Age		27
	Date of Injury		07/02/2003-12/27/2012 (alleged)
	Parts of Body Injured		Upper extremities, trunk, lower extremities, body system (not specified) and multiple body parts (more than five major body parts)
	Parts of Body Disputed	:	Upper extremities, trunk, lower extremities, body system (not specified) and multiple body parts (more than five major body parts).
2.	Identity of Petitioner		Defendant
	Timeliness:		The petition is timely filed.
	Verification		The petition is verified.
	Answer:		No answer has been filed as of this Report.
3.	Date of Findings of Fact		07/08/2024

4. Petitioner's contentions:

(a) The evidence does not justify the Findings of Fact.

(b) The order is not justified.

II

FACTS

Applicant alleged pre-trial that he sustained injury arising out of and during the course of employment while employed as a professional baseball player by the Arizona Diamondbacks, Atlanta Braves, Los Angeles Dodgers, Los Angeles Angels, Newark Bears, and Rockland Boulders.[1] Employment with Gigantes de Carlona, Leones de Ponce and Congrejeros de Santruce was disputed, as was employment at various locations in California.[2]

The parties proceeded to trial over three (3) separate days on the issues of subject matter jurisdiction, exemption pursuant to Labor Code §3600.5, whether the Arizona Diamondbacks, Los Angeles Dodgers and Los Angeles Angels received due process and whether there is employment with Gigantes de Carlona, Leones de Ponce and Congrejeros de Santruce.

The undersigned issued Finding of Fact an Order(s) on July 8, 2024.[3]

Defendant filed timely Petition for Reconsideration appearing to challenge Findings of Fact 1-2:

1. There is subject matter jurisdiction over Applicant's cumulative trauma claim and those baseball teams and/or clubs within the cumulative trauma period.
2. Defendants have not proved exemption pursuant to Labor Code §3600.5.[4]

The undersigned recommends against the granting of reconsideration for the reasons below.

[1] Minutes of Hearing and Summary of Evidence, 03/28/2023 EAMS Doc ID: 76583454 (hereinafter "MOH/SOE 3/28/2023") p. 2, ll: 6-10.
[2] Pre-Trial Conference Statement (hereinafter "PTCS") [amended at trial] EAMS Doc ID: 77431431 pp. 2-3.
[3] Findings of Fact and Order(s) (hereinafter "FFO") EAMS Doc ID: 78154277. Note a single order issued despite a scrivener's error referring to "orders" in the plural.
[4] PFR 4-14; FFO p.1.

III

DISCUSSION

A. IS THERE ERROR IN FINDING APPLICANT'S CONTRACT OF HIRE WITH THE LOS ANGELES ANGELS WAS FORMED IN CALIFORNIA?

Defendant asserts error in finding a California contract of hire with the Los Angeles Angels.[5]

The Workers' Compensation Appeals Board (hereinafter "WCAB") has found Labor Code § 3600.5 exemptions inapplicable to Applicants' claims of cumulative trauma injuries *even where hired outside of California* when they are hired by multiple California teams during a cumulative injury period, creating jurisdiction over claim pursuant to Labor Code §§ 3600.5(a) and 5305, reasoning Labor Code § 3600.5(c) is ambiguous as applied to cumulative injury claims.[6]

The WCAB has recently affirmed an Applicant's contract of hire made within California's territorial jurisdiction is sufficient to confer subject matter jurisdiction over a claimed cumulative injury pursuant to Labor Code §§5305 and 3600.5(a). It applied the analysis in *Hansell v. Arizona Diamondbacks* (April 7, 2022, ADJ10418232) [2022 Cal. Wrk. Comp. P.D. LEXIS 83) (hereinafter "*Hansell"*) to determine that the Legislature did not intend for section 3600.5(c) and (d) to apply to athletes who have been hired in California during the cumulative trauma injury period.[7]

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[5] PFR pp. 8-10.

[6] See generally *Hanna, Cal. Law of Emp. Inj. And Workers' Comp*. 2d §§ 3.22[2], [3], 21.02, 21.06, 21.07[5]; *Rassp & Herlick, California Workers' Compensation Law*, Ch. 13, § 13.01[2].] *Hansell v. Arizona Diamondbacks*, 2022 Cal. Wrk. Comp. P.D. LEXIS 83, *1 (Cal. Workers' Comp. App. Bd. April 7, 2022); *Gandy v. Atlanta Falcons*, 2024 Cal. Wrk. Comp. P.D. LEXIS 163 (Cal. Workers' Comp. App. Bd. May 16, 2024); *Ohman v. Washington Nationals*, 2024 Cal. Wrk. Comp. P.D. LEXIS 162 (Cal. Workers' Comp. App. Bd. May 16, 2024). *Emphasis added*. Note, all references to panel WCAB panel decisions herein are made to the extent that the undersigned finds their reasoning persuasive [see *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc Opinion)].

[7] *Id*. *Gandy v. Atlanta Falcons* p.1.

The WCAB explained "that in drafting the 2013 amendments to section 3600.5 concerning professional athletes, the legislature was clear: its intent was 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];" it reasoned its analysis in *Hansell* affirmed the central holding of *Bowen* 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 a player's signing of a contract while in this state constitutes hire in this state for that purpose. (*Bowen, Id.*, 73 Cal.App.4th at 27).

Defendant cites as support for its non-jurisdiction assertion that a document refutes Applicant's testimony because "(i)n fact, Mr. Hostetter performed Applicant's physical for the organization on March 31, 2011." [8] The exhibit references no time, place or location, only that "Orlando Mercado Jr." (Applicant) underwent "Medical Examination" on "3-31/11." [9] Most significant to the undersigned is the examination report appears signed by an unidentifiable "M.D." which appears to start with "F." [10] It appears perhaps a second signature appears on the document, that of witness Hostetter. There is no reference to contract or contract of hire in the document.

Witness Hostetter's testimony is also credible as well as persuasive that "he did not recall if Applicant was brought to the physical because he did not recall him specifically getting the physical," though did recall "*being involved in the physical* (only) on March 31, 2011, which would have been in Tempe, Arizona," after having his recollection refreshed.[11]

[8] PFR p. 9; Ex. U.
[9] Ex. U: p.1.
[10] *Id.*
[11] Minutes of Hearing (Further) and Summary of Evidence 06/11/2024 (Hereinafter "MOH/SOE 06/11/2024) p. 3, ll: 14-23. *Emphasis* added.

There is insufficient evidence in this document and in Witness Hostetter's testimony to explain the unknown "M.D.," the location where the contract of hire took place, where each participant was located when participating in the examination or negotiation of Applicant's contract of hire. A plain reading of Exhibit U reflects nothing regarding a contract of hire.

Defendant further asserts "(t)here was no reason for any member of the organization's baseball operation team to be in California at the time, or on the date, applicant signed with the club. All of Mr. Hostetter testimony went unrebutted." [12] Applicant provided credible testimony he had memory of the contract of hire, recalling the physical at Anaheim Stadium by Anaheim doctors or trainers for the team after finishing spring training, then after signing with the Angels being flown from Orange County by the Angels to Arkansas and playing for the Arkansas affiliate of the Angels, divided with Triple A Salt Lake Bees, an affiliate for the Angels. [13]

The undersigned finds the testimony by witness Hostetter credible, but gives it less weight than Applicant's testimony as it relates to his contract of hire, and specifically that there was "no reason for any member of the organization's baseball operation team to be in California at the time, or on the date, applicant signed with the club."

Applicant credibly testified a doctor as well as others of the organization's baseball team were in Anaheim stadium when he entered into his contract. Witness Hostetter confirmed members of the organization were in multiple other states when Applicant entered into his contract of hire.

Neither Mr. Hostetter' s testimony nor Defendant's exhibits put a witness in California on the date Applicant swore under oath entering into his California contract of hire, after he was released by the Dodgers, went to visit his dad in Anaheim, then having played for the Los Angeles Angels (albeit being sent out of California to do so).[14]

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[12] PFR p. 9.

[13] *Minutes of Hearing (Further) and Summary of Evidence 12/27/2023 (hereinafter "MOH SOE 12/27/2023")* p. 10: ll: 2-8.

[14] *Supra*. P.3 and footnote 10. The WCAB has addressed such a fact scenario recently, remanding a case when Applicant's trial testimony does not provide a clear picture of where his contract was formed. *MICHAEL BIANUCCI, Applicant vs. TEXAS RANGERS; ANGELS BASEBALL LP; ACE AMERICAN INSURANCE*, administered by SEDGWICK RIVERSIDE, Defendants Adjudication Number: ADJ15824668. The undersigned finds Applicant's testimony to be clear, giving consideration to time as well as the variances of eye witness testimony after passage of it. This is not the case regarding location here. Applicant appeared to clearly remember agreeing to his contract of hire with the Angels at Angels' Stadium, California.

Applicant's father was an active coach for the Angels as well[15]. The undersigned therefore places heavier weight on Applicant's testimony. This record supports Applicant's testimony. The Angels may well have provided this player with a unique and more personalized recruiting experience because he was the son of one of its major league coaches.

Since Mr. Hostetter's own testimony confirms he was not in California, it is Applicant's testimony which is given more weight based on this record.

It is recommended Defendant's Petition for Reconsideration on this issue be denied based on Applicant's credible testimony of having agreed to a California contract of hire with the Angels, subsequently being sent by it to play for its Arkansas affiliate[,] thereafter, then having played for the team's minor league affiliates.

B. IF CALIFORNIA TEAMS ENTERED INTO CONTRACTS OF HIRE AND EMPLOYED APPLICANT DURING THE CUMULATIVE TRAUMA PERIOD CAN SUBJECT MATTER JURISDICTION OVER THE ARIZONA DIAMONBACKS DURING APPLICANT'S CUMULATIVE TRAUMA PERIOD BE PRECLUDED?

Defendant asserts exemption from WCAB jurisdiction pursuant to Labor Code §3600.5(b).

The WCAB has found Labor Code § 3600.5 exemptions inapplicable to Applicants' claims of cumulative trauma injuries *even where hired outside of California* when they are hired by multiple California teams during a cumulative injury period, creating jurisdiction over claim pursuant to Labor Code §§ 3600.5(a) and 5305, reasoning Labor Code § 3600.5(c) is ambiguous as applied to cumulative injury claims.[16]

The WCAB has recently explained (as well as affirmed) an Applicant's contract of hire made within California's is sufficient to confer subject matter jurisdiction over a claimed cumulative injury pursuant to Labor Code §§5305 and 3600.5(a), applying its analysis in *Hansell* to determine that the Legislature did not intend for Labor Code §3600.5 exemptions to apply to athletes who have been hired in California by at least one employer during the cumulative trauma injury period.[17]

[15] This is undisputed by any party or evidence.
[16] *Supra*. pp. 3-4
[17] *Id*. *Gandy v. Atlanta Falcons* p.1.

The WCAB explained "that in drafting the 2013 amendments to section 3600.5 concerning professional athletes, the legislature was clear: its intent was 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 (AB 1309) § 3.);" it noted its analysis in *Hansell* affirmed the central holding of *Bowen*, affirming sections 3600.5(a) and 5305, 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 a player's signing of the contract while in this state constitutes hire in this state for that purpose. (*Bowen, supra,* 73 Cal.App.4th at 27).

The undersigned recommends Defendant's PFR be denied because Applicant entered into a contract of hire while in this state. Therefore, California jurisdiction exists over Applicant's workers' compensation claim of cumulative trauma injury.

C. IS THERE ERROR IN FINDING LABOR CODE SECTION 3600.5, SUBDIVISION (B) DOES NOT PRECLUDE EXERCISE OF CALIFORNIA SUBJECT MATTER JURISDICTION OVER THE ARIZONA DIAMONDBACKS?

Defendant asserts Labor Code §3600.6(b) precludes the exercise of California WCAB subject matter jurisdiction over Applicant's claim of cumulative trauma injury. The undersigned finds Applicant entered into a California contract of hire within its territorial limits with the Los Angeles Angels.[18]

The undersigned recommends Defendant's PFR be denied because Applicant entered into a contract of hire while in this state. Therefore the exercise of California jurisdiction exists over Applicant's workers' compensation claim of cumulative trauma injury.

[18] Supra. pp. 3-5.

D. IS THERE SUFFICIENT BASIS FOR EXERCISE OF SUBJECT MATTER JURISDICTION SIMPLY BASED ON APPLICANT'S EMPLOYMENT BY THE LOS ANGELES ANGELS AND LOS ANGELES DODGERS?

Defendant asserts Labor Code §3600.6(b) precludes the exercise of California WCAB subject matter jurisdiction over Applicant's claim of cumulative trauma injury. The undersigned finds Applicant entered into a California contract of hire within its territorial limits with the Los Angeles Angels.[19] The undersigned also notes in addition to the contract both teams are "Los Angeles" California employers who controlled where Applicant played and for which teams.[20]

The WCAB has found Labor Code § 3600.5 exemptions inapplicable to Applicants' claims of cumulative trauma injuries *even where hired outside of California* when they are hired by multiple California teams during a cumulative injury period, creating jurisdiction over claim pursuant to Labor Code §§ 3600.5(a) and 5305, reasoning Labor Code § 3600.5(c) is ambiguous as applied to cumulative injury claims.[21]

The undersigned recommends Defendant's PFR be denied because Applicant entered into a contract of hire while in this state. Therefore California jurisdiction exists over Applicant's workers' compensation claim of cumulative trauma injury.

The undersigned recommends Defendant's PFR be denied because Applicant entered into a contract of hire while in this state. Therefore California jurisdiction exists over Applicant's workers' compensation claim of cumulative trauma injury.

[19] *Id.*

[20] This undisputed fact appears to lend weight to the finding of minimum if not greater contact with California. It supports jurisdiction because a contract is found also, though absent a contract hire in this matter may not deprive Defendant of the exemption it seeks.

[21] *Supra*. p. 3.

IV

RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant's Petition for Reconsideration be denied.

Date: August 9, 2024

DAVID H. PARKER
Workers' Compensation Judge

OPINION ON DECISION

Applicant claims to have suffered injury during the period July 2, 2003 through December 27,2012, as a professional athlete, Occupational Group Number 590, asserted at various locations in California by the Arizona Diamondbacks, Atlanta Braves, Los Angeles Dodgers, Los Angeles Angels, The Gigantes De Corlona, Leones De Ponce and Congrejeros De Santruce, Newark Bears, and Rockland Boulders. Ace American Insurance Company/Chubb, administered by Sedgwick Claims Management Services were the workers' compensation carrier(s) and third-party administrator for the Arizona Diamondbacks, Los Angeles Dodgers, and Los Angeles Angels.

Employment at various locations in California is disputed. The matter proceeded to trial over three (3) separate days. The issues identified in the parties' Joint Pre-Trial Conference Statement (hereinafter "Joint PTCS") were submitted for decision by the undersigned on June 11, 2024.

IS THERE SUBJECT MATTER JURISDICTION OVER APPLICANT'S CLAIM AND THE CLUBS WITHIN THE CUMULATIVE TRAUMA PERIOD ASSERTED?

Defendants argue there is no subject matter jurisdiction over Applicant's claim of cumulative trauma injuries because they are exempt pursuant to Labor Code §3600.5.

The Workers' Compensation Appeals Board (hereinafter "WCAB") has found Labor Code §3600.5 exemptions inapplicable to Applicants' claims of cumulative trauma injuries *even where hired outside of California* when they are hired by multiple California teams during a cumulative injury period, creating jurisdiction over claim pursuant to Labor Code §§3600.5(a) and 5305, reasoning Labor Code § 3600.5(c) is ambiguous as applied to cumulative injury claims. See generally *Hanna, Cal. Law of Emp. Inj. And Workers' Comp*. 2d §§3.22[2], [3], 21.02, 21.06, 21.07[5]; *Rassp & Herlick, California Workers' Compensation Law*, Ch. 13, §13.01[2].] *Hansell v. Arizona Diamondbacks,* 2022 Cal. Wrk. Comp. P.D. LEXIS 83, *1 (Cal. Workers' Comp. App. Bd. April 7, 2022); *Gandy v. Atlanta Falcons*, 2024 Cal. Wrk. Comp. P.D. LEXIS 163 (Cal. Workers' Comp. App. Bd. May 16, 2024); *Ohman v. Washington Nationals*, 2024 Cal. Wrk. Comp. P.D. LEXIS 162 (Cal. Workers' Comp. App. Bd. May 16, 2024). *Emphasis* added. [1]

The WCAB has also explained when injured employees have California team contracts with employees during a cumulative trauma injury period that, because the purpose of statute, legislative intent and public policy and the most reasonable interpretation of Labor Code §3600.5 exemptions in its subdivisions are intended to apply only to athletes who have extremely minimal California contacts and cannot establish jurisdiction under Labor Code §§3600.5(a) and 5305 *Id*. It affirmed in at least one case [that] where it is undisputed Applicant was born and raised in California, was employed by a California team and signed contracts of hire in California during his cumulative injury period that California has jurisdiction over his claim. *Id*.

[1] All citations to panel decisions herein are offered as the reasoning therein is persuasive even though not binding authority. See *Griffith v. WCAB* (1989) 54 CCC 145; *Gee v. WCAB* (2002) 67 CCC 236; *Guitron v. Santa Fe Extruders* 2011 76 CCC 228 fn. 7.

The law is well-settled that a contract of hire in California is itself a compelling connection to the state that validates the exercise of jurisdiction. *Alaska Packers Assn. v. Industrial Acc. Com*. (Palma) 1 Cal.2d 250; 261-262, affd. (1935) 294 U.S. 532; *Bowen v. Workers' Comp. Appeals Bd*. (1999) 73 Cal.App.4th 15, 27 [64 Cal. Comp. Cases 745]. A claimed cumulative trauma injury which arises out of a contract [of] here entered into within California's territorial borders is sufficient to confer jurisdiction over Applicant's claimed cumulative trauma injuries. *Hansell v. Arizona Diamondbacks* Cal. Wrk. Comp. P.D. LEXIS 83.

Applicant provided credible testimony[.] [H]e lived in California in an apartment in 2009, signed contract to play professional baseball with the Los Angeles Angels in California after being released from the Los Angeles Dodgers and was regularly employed by the Los Angeles Dodgers near 2010 and Los Angeles Angels in 2011. Minutes of Hearing (Further) and Summary of Evidence 12/27/2023 (hereinafter "MOH SOE 12/27/2023") p. 5, ll: 7-13. Applicant credibly testified remembering having signed the Los Angeles Angels contract after being released by the Dodgers, visiting his dad in Anaheim, and that is where he signed the Angels Contract. *Id*.

George Hostetter credibly testified there was no reason for Applicant's father to be in Anaheim when the team was on the road and to other details of Applicant's father's affiliation with the Angels which would have presented no reason for his father to be in Anaheim at the time Applicant asserts[,] he signed his contract in California. Minutes of Hearing and Summary of Evidence (Further) 06/11/2024 (hereinafter "MOH SOE 06/11/2023") pp: 3-4 ll: 23-25; 1-5.

Both witnesses are believable and reliable. Testimony of both are reconciled by the undersigned's finding Applicant had an apartment in California in 2009, remembers visiting his dad in California and signing his Angels contract in California after being released by the Dodgers. Witness Hostetter's testimony regarding absence of Applicant's father in California at the time of signing is still credible. A reasonable conclusion reached based on all credible testimony in this matter is Applicant signed his Angels contract in California, may have intended to be visiting his father at that time, but also that he found his father was not in California at the time the contract was actually signed. Applicant's father[,] not being in California at the time of contract signing does not alone negate a finding of its execution in California on a preponderance of credible evidence including testimony.

The record of Applicant's employment with two (2) Los Angeles California teams is legally sufficient alone to confer subject matter jurisdiction over Applicant's cumulative trauma claim. This is because the WCAB has consistently found Labor Code §3600.5 exemptions inapplicable to California worker's compensation cumulative trauma claims when an employee is hired by California teams then sent to play outside of California during a cumulative injury period, creating jurisdiction over claim pursuant to Labor Code §§3600.5(a) and 5305 as Labor Code §3600.5(c), as is the evidence in this case. *Supra* at pp. 3-4. Thus even if it is found Applicant did not sign his contract Angels Contract in California jurisdiction over his cumulative trauma claim is still appropriately found. *Hanna, Hansel, Ohman, Supra* p.4.

HAVE DEFENDANTS PROVED EXEMPTION PURSUANT TO LABOR CODE §3600.5?

Defendants assert exemption pursuant to Labor Code §3600.5.

Again, where California teams hire an employee during a period of cumulative trauma injury the WCAB has found exemptions inapplicable to California worker's compensation cumulative trauma claims particularly when Applicant signs his contract in California, but also when Applicant has not signed his contract in California. *Id*. and Supra. at pp. 4.

Defendants have not proved exemption pursuant to Labor Code §3600.5 because two (2) California teams hired Applicant during his cumulative trauma period of injury and he also signed a California contract of hire in California, then he was sent elsewhere by the California teams which employed him to play major league baseball.

HAVE THE LOS ANGELES ANGELS AND LOS ANGELES DODGERS SUFFERED DUE PROCESS VIOLATIONS PURSUANT TO THE FINDING IN *FARLEY*?

Brandon Varley v. San Francisco Giants; Ace American Insurance Company Administered by Sedgwick Claims Management Services ADJ10510769 is a WCAB panel decision issued September 14, 2020, after which a Petition for Writ of Review was filed and denied. *Farley v. Workers' Comp. Appeals Bd.,* 86 Cal. Comp. Cases 129 (Cal. App. 4th Dist. December 2, 2020). The WCAB declined to exercise jurisdiction over an Applicant's claim in that case because "no statute provides for the exercise of jurisdiction based solely on the fact that Defendant is a

California-based employer that supervised (A)pplicant's employment from this state." *Id*. ADJ10510769 WCAB PANEL OPINION p: 8.

Subsequent WCAB panels have found Labor Code §3600.5 exemptions inapplicable to Applicants' claims of cumulative trauma injuries, even where hired outside of California when they are hired by multiple California teams during a cumulative injury period, reasoning jurisdiction is properly asserted over a cumulative trauma claim pursuant to Labor Code §§3600.5(a) and 5305 under similar factual circumstances. *Supra*. at pp. 4; above. The WCAB has also recently granted reconsideration of this issue in the case of *Isaac Davis v. Oakland Athletics; Ace American Insurance, Administered by Sedgwick Claims Management Services* ADJ14711373.

In this case the undersigned finds the WCAB's most recent panel decisions are persuasive, even if Applicant was hired outside of California. This finding is not "solely based on the fact that Defendant is a California-based employer" but because there are multiple additional findings including Applicant was hired by multiple California teams during his cumulative injury period, resided in a California apartment when he contracted with at least one of the California employers, Applicant's assignments were controlled by both teams and both teams directed and sent Applicant out of state to play professional baseball for them. His contracts are further found to have been executed in California, despite credible testimony from several witnesses on the specific, though deferring, surrounding circumstances of signing.

WAS APPLICANT EMPLOYED WITH/BY THE GIGANTES DE COROLONA, LEONES DE PONCE AND CONGREJEROS DE SANTRUCE?

Defendants assert Applicant was not employed with/by The Gigantes De Corolona, Leones De Ponce and Congrejeros De Santruce.

Labor Code §3357 reflects any person rendering service for another, other than as an independent contractor, or unless expressly excluded, is presumed to be an employee. The presumption of Lab C §3357 that a person rendering services for another is presumed to be an employee will be overcome if the essential contract of hire be not present, and the burden of proof is on the one for whom the service was rendered. *Jones v. Workers' Comp. Appeals Bd*. (Cal. App. 1st Dist. 1971), 20 Cal. App. 3d 124, 97 Cal. Rptr. 554, 36 Cal. Comp. Cases 563, 1971 Cal. App. LEXIS 1156.

Exhibit A reflects Applicant “played for” The Gigantes De Corolona, Leones De Ponce and Congrejeros De Santruce which deny having employed him. Service was rendered for The Gigantes De Corolona, Leones De Ponce and Congrejeros De Santruce.

Applicant “the player” was “moved to” these teams from other teams, though such movement and/or assignment alone does not rebut the presumption of employment afforded Applicant for the provision of services to these teams in the form of playing baseball for them. *Id*.

The Gigantes De Corolona, Leones De Ponce and Congrejeros De Santruce are found to have employed Applicant because he provided service to these teams which is unrebutted by a preponderance of evidence to the contrary.

DATE: July 8, 2024

David H Parker

WORKERS' COMPENSATION JUDGE