WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PAUL SMITH, III, *Applicant*

vs.

DETROIT LIONS, SAN FRANCISCO 49ERS; TRAVELERS DALLAS, LIBERTY MUTUAL, ZENITH, *Defendants*

Adjudication Number: ADJ6579284
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

On its own motion, the Appeals Board previously granted reconsideration of its Opinion and Decision After Reconsideration of November 18, 2022 to further study the factual and legal issues. This is our Decision After Reconsideration.[1]

In the Opinion and Decision After Reconsideration of November 18, 2022, the Appeals Board affirmed the Findings and Award ("F&A") issued by the Workers' Compensation Administrative Law Judge ("WCJ") on March 20, 2020, except the WCJ's finding that applicant Paul Smith III, a professional football player, is entitled to an award of 57% permanent disability. The Board found instead that applicant is entitled to an award of 75% permanent disability.

In its November 18, 2022 decision, the Board otherwise affirmed the WCJ's findings that applicant sustained cumulative trauma injury while employed as a professional football player at various cities and states by the San Francisco 49ers, Detroit Lions and St. Louis Rams during the period July 21, 2000 through April 1, 2008, that Fairmont Premier Insurance Company ("Fairmont") insured the San Francisco 49ers from August 1, 1997 through February 28, 2002, that Travelers Insurance Company ("Travelers") insured the 49ers from March 1, 2002 through September 5, 2003, that these two insurance carriers are liable for applicant's cumulative trauma

[1] Deputy Commissioner Patricia A. Garcia and Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration on Board Motion dated November 23, 2022. Commissioner Sweeney is no longer a member of the Appeals Board, and Deputy Commissioner Garcia is not available to participate in this matter. New panel members have been substituted in their place.

injury based upon their respective periods of coverage, that Liberty Mutual covered the Detroit Lions, that Great Divide Insurance Company ("Great Divide") covered the St. Louis Rams, that there is subject matter and personal jurisdiction over applicant's claim as to all teams, that there are insufficient contacts to exercise jurisdiction over the St. Louis Rams and Detroit Lions, and that the Denver Broncos "are not a necessary party to this matter."

Based on our re-review of the record and applicable law, and notwithstanding that applicant ultimately may be entitled to an award of 75% permanent disability, we conclude that the WCJ must revisit the issue of potential liability of all teams who employed applicant during the period of cumulative trauma, in addition to the San Francsico 49ers. Specifically, the WCJ must revisit her findings that there are insufficient contacts to exercise jurisdiction over the St. Louis Rams and Detroit Lions, and that the Denver Broncos are an unnecessary party. Therefore, we will rescind both the Board's Opinion and Decision After Reconsideration of November 18, 2022 and the WCJ's Findings and Award of March 20, 2020, and we will return this matter to the trial level for further proceedings and new decision by the WCJ.

We begin by noting that in its November 18, 2022 decision, the Board discussed its conclusions concerning the liable teams and carriers as follows:

> […] As to Travelers and Fairmont, we conclude the WCJ properly followed [*Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116 [78 Cal.Comp.Cases 1257] ("*Johnson*")] *Johnson* in determining that for the out-of-state teams "there were minimal if any contacts with California," and in declining to apply California's workers' compensation law against those teams. [¶] We note that Fairmont contends the Denver Broncos must be re-joined as a necessary party defendant. We disagree, as it is too late for Fairmont to raise this issue. (See *U.S. Auto Stores v. Workers' Comp. Appeals Bd. (Brenner)* (1971) 4 Cal.3d 469 [36 Cal.Comp.Cases 173; *Los Angeles Unified Sch. Dist. v Workers' Comp. Appeals Bd. (Henry)* (2001) 66 Cal.Comp.Cases 1220 (writ den.); *Hollingsworth v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 715 (writ den.) [objection waived if not raised at first hearing in which it is proper to do so].) [¶] At trial on March 4, 2015, the parties stipulated that "the terminal team Denver Broncos were dismissed as a party due to the arbitration decision regarding the Broncos' choice of forum." At trial on April 22, 2015, it was clarified that "the Denver Broncos were dismissed as a party due to applicant's request that they be dismissed as a party," and that the dismissal had been without prejudice. Only the St. Louis Rams, not Fairmont for the 49ers, requested re-joinder of the Broncos. Even so, the Rams likewise were dilatory - waiting until the second day of trial to raise the issue. As with Fairmont's contention, we reject Travelers' contention that the Broncos should be rejoined and that the record should be further

developed, pursuant to the motion made by the Rams on April 22, 2015. (See Travelers' Petition for Reconsideration, 8:10-13.)

We are now persuaded that although the WCJ and the Board correctly considered *Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116 [78 Cal.Comp.Cases 1257], the WCJ and the Board also should have considered the Court of Appeal's decision in *New York Knickerbockers v. Workers' Comp. Appeals Bd. (Macklin)* (2015) 240 Cal.App.4th 1229 [80 Cal.Comp.Cases 1141] ("*Macklin*") concerning whether California workers' compensation law is properly invoked against the Detroit Lions, the St. Louis Rams, and/or the Denver Broncos, in addition to the San Francisco 49ers.[2]

In addition to considering the Court's opinion in *Macklin*, the WCJ also should consider the following analysis provided by the panel of the Appeals Board in *Holmberg (Robert) v. Oakland Raiders* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 17:

> […] [T]he Second District Court of Appeal, Division Five, which decided [*Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116 [78 Cal.Comp.Cases 1257] ("*Johnson*")], further clarified its analysis in the 2015 opinion in *New York Knickerbockers v. Workers' Comp. Appeals Bd. (Macklin)* (2015) 240 Cal. App. 4th 1229 [193 Cal. Rptr. 3d 287, 80 Cal. Comp. Cases 1141] (*Macklin*). Therein, a professional basketball player claimed cumulative injury that included his employment with a California-based team, the Los Angeles Clippers, as well as various non-California teams. The Court of Appeal framed the question as "whether [applicant's] *injuries* have a sufficient relationship with California for the invocation of California workers' compensation law," and further noted that the analysis depended on a number of factors as set forth in *Johnson*. (Id. at p. 1239, italics added.) However, the *Macklin* court also observed that applicant's employment with a California based team, standing alone, meant "we do not have to determine if the other activities in California are sufficient by themselves to make the application of California workers' compensation law reasonable, although those activities are more than the one game that *Johnson* concluded was de minimis." (*Ibid*.)
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> Applying the analysis in *Macklin* to the facts of the current matter, we observe initially that the due process argument advanced by the New England Patriots is analytically incomplete insofar as it limits the question of California contacts to the last year of injurious exposure. (New England Patriots Petition, at p. 3:18.) The holding in *Macklin* was based on the relationship between the alleged injury and

[2] It appears the San Francisco 49ers employed applicant from July 21, 2000 through September 10, 2003; the Detroit Lions employed applicant from November 12, 2003 through March 1, 2006; the St. Louis Rams employed applicant from May 15, 2006 through February 20, 2007; and the Denver Broncos employed applicant from March 5, 2007 through April 1, 2008. As noted in the WCJ's Opinion on Decision, Dr. Woods found that applicant had injurious exposure throughout the employment period from July 21, 2000 through April 1, 2008.

> the forum state. Thus, to the extent that applicant alleges a cumulative injury from 1994 to 2002, the analysis must encompass the entire claimed injury, and is not otherwise limited to the last year of injurious exposure. (*Macklin, supra,* at p. 1239; see also *Worrell v. San Diego Padres* (2020) 85 Cal. Comp. Cases 246, 254 [2020 Cal. Wrk. Comp. P.D. LEXIS 1, 13–14] ("It has never been the law that each and every employer who is potentially liable must have a significant connection or nexus to the state of California in order for the WCAB to assert subject-matter jurisdiction over that employer as a matter of due process; as long as the claim as a whole has such a connection or nexus, this particular requirement is met."].) Moreover, as the *Macklin* court observed, 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. Accordingly, we are not persuaded that New England Patriots were denied due process by the WCJ's exercise of California jurisdiction herein.
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> (*Holmberg, supra,* 2024 Cal. Wrk. Comp. P.D. LEXIS 17, at *pp. 15-18.)

In this case, the WCJ should consider whether Mr. Smith's claim *as a whole* has a significant connection or nexus to California such that its workers' compensation law is properly applied against the Detroit Lions, the St. Louis Rams, and/or the Denver Broncos, in addition to the San Francisco 49ers. In reference to the Denver Broncos, we note that the evidence admitted at trial on March 4, 2015, April 22, 2015, November 17, 2015, and September 25, 2019 apparently does not include any evidence from the arbitration proceeding, pursuant to which applicant's attorney requested dismissal of the Denver Broncos without prejudice. Similarly, the Appeals Board record contains little evidence concerning whether Mr. Smith's claim *as a whole* has a significant connection or nexus to California such that its workers' compensation law is properly applied against the Denver Broncos.

In relevant part, Mr. Smith testified at trial on April 22, 2015:

> Mr. Baker [Smith's agent] called him and relayed an offer from the Broncos. He relayed the length of the contract, which was to be three years, and the financial aspect. He signed the contract in Denver. He agreed to the terms in El Paso. He had ultimate say whether to accept the terms of a contract or not. His employment with the Broncos began 3-05-07, when the contract was signed, and ended 4-28-08.
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> The NFL log shows that he played 14 games with the Broncos. He played fullback and special teams. He had physical contact while playing for the Broncos. He injured multiple parts of his body and had wear and tear. His neck pain returned while working for the Broncos.
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> (Summary of Evidence, 4/22/15, p. 10:17-10:23.)

Applicant's testimony does not shed much light on the possibility of the Denver Broncos' liability in this matter. In revisiting the issue of whether California workers' compensation law may properly be applied against the Detroit Lions, the St. Louis Rams, and/or the Denver Broncos, in addition to the San Francisco 49ers, the WCJ should further develop the record as necessary or appropriate. (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164 (66 Cal.Comp.Cases 1290) [Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence].)

In closing, we acknowledge that the Appeals Board stated in its November 18, 2022 decision, "the only connection [of the Denver Broncos] to California…is that applicant played two games for the Broncos in California, in December 2007 [,] and that "it [was] too late" to consider re-joining the Denver Broncos as a necessary party defendant. However, as discussed in *Holmberg, supra,* the Court of Appeal in *Macklin* observed 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. As for the possibility of re-joining the Denver Broncos at this stage of the proceedings, it appears there is no dispute the team was dismissed *without prejudice*, and we are persuaded that the interests of due process and substantial justice take precedence over the supposed waiver of the re-joinder of the Denver Broncos. In connection with revisiting the question whether California workers' compensation law may properly be invoked against the Detroit Lions, the St. Louis Rams, and/or the Denver Broncos (in addition to the San Francisco 49ers), the WCJ should consider re-joining the Denver Broncos as a party defendant, with notice and opportunity for all parties to be heard.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Opinion and Decision After Reconsideration of November 18, 2022 and the Findings and Award of March 20, 2020 are **RESCINDED,** and this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 5, 2024

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

CHERNOW & LIEB
DIMACULANGAN & ASSOCIATES
GOLDBERG SEGALLA
LEVITON DIAZ CINOCCHIO
MUHAR GARBER AV & DUNCAN
PAUL SMITH III
DETROIT LIONS
DENVER BRONCOS

JTL/*ara*

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