WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SCOTT SELLNER, *Applicant*

vs.

CINCINNATI REDS; permissibly self-insured, *Defendants*

Adjudication Number: ADJ18569118
Anaheim District Office

OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION

Defendant Cincinnati Reds (Reds), specially appearing, seeks reconsideration of the September 16, 2024 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found that there is personal jurisdiction over the Reds.

The Reds contends that there is neither general personal jurisdiction nor specific personal jurisdiction against it. It contends that the three-part test set forth by the Ninth Circuit in *AMA Multimedia LLC v. Wanat* (2020) 970 F.3d 1201, 1208, is not met. Specifically, that it did not purposefully direct its activities towards California, applicant Scott Sellner's claimed injuries did not arise out of activities in California, and the exercise of personal jurisdiction against defendant is not reasonable. It points to the fact that applicant never played in California, was not directed to return to California during the off-season or for any required training, and was not directed to treat and rehabilitate in California for a past 1987 injury.

We received 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 incorporate, and for the reasons discussed below, we deny reconsideration.

I.

Preliminarily, 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 October 4, 2024, and 60 days from the date of transmission is December 3, 2024. This decision is issued by or on December 3, 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 October 4, 2024, and the case was transmitted to the Appeals Board on October 4, 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 October 4, 2024.

II.

Turning to the merits, we agree with the WCJ that the fact that applicant, a California resident, was recruited by a local scout for the Reds in California, negotiated and signed several contracts with the Reds in California, and the Reds made travel arrangements for applicant from California, provide sufficient minimum contacts for California to exercise specific personal jurisdiction over the Reds. The Reds contend that there were no acts linking it to applicant's claimed injury since applicant did not play any games in California. (Petition, p. 6:8-15.) However, a "strict causal relationship between the defendant's in-state activity and the litigation" is not necessary. (*Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* (2021) 592 U.S. 351, 362.) "As just noted, our most common formulation of the rule demands that the suit 'arise out of *or relate* to the defendant's contacts with the forum." (*Ibid.*; italics in the original.) "In other words, there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255, 262, citing *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 919 [internal quotation marks and brackets omitted].) That affiliation between the forum and the claimed injury is defendant's act of scouting and recruiting athletes from California.

In *Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472, a football player filed suit in California seeking damages arising out of a contract dispute with out-of-state employer Detroit Lions. The Lions responded by asserting the court lacked personal jurisdiction over the team. The superior court agreed, quashing the service of summons on the grounds that the Lions owned no property in California and transacted no business in California. Martin sought review by the Court of Appeal, which reversed and found personal jurisdiction. The court observed:

> It is undisputed that appellant [football player] was scouted by respondent [Detroit Lions] while he was playing football in California, that he was recruited in the City of Bakersfield and that the employment contract was signed in that city. It is also undisputed that respondent derives a substantial part of its income

> from paying customers who attend professional football games, that respondent's team, the Detroit Lions, plays at least one of the four California professional football teams regularly in California, that when the Detroit Lions play in California respondent receives a portion of the California gate receipts, that in 1970 the Detroit team played the Los Angeles Rams in Los Angeles before a sellout crowd, and that respondent's team was scheduled to play the San Francisco Forty Niners in this state in 1971. Finally, it is undisputed that in 1970 respondent employed a professional scout, that the scout maintained a residence in California and that he scouted and recruited football players in California for respondent.
> (*Id.* at p. 475.)

The contacts between the out-of-state employer and the forum state were sufficient that the exercise of personal jurisdiction did not "offend traditional notions of fair play and substantial justice." (*Id.* at p.476.) Here, as the WCJ described, the acts of using a local scout to recruit a California athlete who was injured as a result of that recruitment are sufficient minimum contacts to warrant the exercise of specific personal jurisdiction over the Reds. Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant Cincinnati Reds's Petition for Reconsideration of the September 16, 2024 Findings of Fact and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 3, 2024

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

SCOTT SELLNER
BETTS LAW GROUP
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 ON DEFENDANT'S PETITION FOR RECONSIDERATION

I.
INTRODUCTION

1. Applicant's Occupation : Professional Athlete
   Applicant's Age : 27 (on DOI asserted)
   Date of Injury : 06/15/1987-07/11/1991
   Parts of Body Injured : All in dispute
   Parts of Body Disputed : Upper extremities, trunk, lower extremities, body system, unclassified
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 : 09/16/2024
4. Date R&R transmitted to WCAB: 10/04/2024
5. Petitioner's contentions:

   (a) The Findings of Fact exceeds powers delegated pursuant to Labor Code §5903(a) in that the decision of the workers' compensation judge exceeds his power; and

   (b) The Findings of Fact exceeds powers delegated pursuant to Labor Code §5903(c) as the evidence does not justify the finding of fact.

II.
FACTS

Applicant alleges to have suffered injury arising out of and during the course of his employment with the Cincinnati Reds (hereinafter "Defendant") during the period of 06/15/1987-07/11/1991. Defendant denies there is personal jurisdiction over it, thus precluding the California Workers' Compensation Appeals Board (hereinafter "WCAB") legal power(s) to award benefits.

The parties could not resolve their dispute over personal jurisdiction, filed their Joint Pre-Trial Conference Statement (hereinafter "PTCS") and proceeded to trial before the undersigned on August 20, 2024, at which the matter was submitted for decision.[1] The undersigned issued

[1] EAMS Doc ID: 78284770

Findings of Fact and Orders on 09/16/2024.[2] The Findings of Fact included "(t)here is personal jurisdiction over the Cincinnati Reds."[3]

Defendant timely filed verified Petition for Reconsideration on 10/02/2024 asserting the Finding(s) of Fact exceeds the powers of the undersigned as well as the evidence does not justify the Finding(s) of Fact.[4] No answer has been received as of the date of this Report and Recommendation. The undersigned respectfully recommends against the granting of Defendant's petition based on the discussion below.

III.
DISCUSSION

IS THERE PERSONAL JURISDICTION OVER DEFENDANT BY THE CALIFORNIA WCAB IN THIS MATTER?

Defendant seeks the WCAB issue an Order that its Petition for Reconsideration be granted, finding there is no personal jurisdiction over Defendant in this matter.[5] It argues in material part "(t)here were no deliberate acts by the Reds the WCAB can link to Applicant's injury claim which is what is necessary to support the exercise of personal jurisdiction under the Bristol-Myers Squibb standard" and "(t)here must (have) been relevant direct conduct by the Reds to send Applicant to California in order to confer personal jurisdiction over them."[6] It asserts an applicable "three-part test" to determine when one may be subject to personal jurisdiction in a forum state, requiring "a defendant purposefully direct its activities toward the forum, (that) the claim must arise out of those activities in the forum state (and) the exercise of jurisdiction...be reasonable."[7]

Applicant was the only witness in this matter who credibly testified. Applicant's credible testimony confirms Defendant was his only professional baseball employer, that it recruited him in California by using its California scout Roger Ferguson (hereinafter "Mr. Ferguson"), that Mr. Ferguson resided and recruited Applicant from his Fresno, California home for Defendant, attended as well as watched his games periodically throughout his California college career, called

---

[2] EAMS Doc. ID: 78374626
[3] *Id.* at p. 1.
[4] EAMS Doc ID:54175338 p. 1, ll: 20-22.
[5] Id. p.11, ll: 4-6.
[6] Id. p.7, ll: 12-15; p. 8, ll: 22-23, citing *International Shoe Company v. Washington*, (1946) 326 U.S. 310, 316; *Bristol-Myers Squibb Company v. Superior Court of the State of California*, (2017) 137 S. Ct. 1773, 1779; *Ford Motor Company v. Montana*. 8th Judicial District Court (2021), 141 S. Ct. 1017, 1024.
[7] Id. p. 8, ll: 18-21 citing *AMA Multimedia LLC v. Wanat* (9th Cir. 2020) 970 F. 3d 1201, 1208.

Applicant from his Fresno home to discuss a bonus payable by Defendant, negotiated it directly with Applicant then finalized the amount as well as terms of its payment made by Defendant to Applicant.[8]

Applicant was in Gold River California when he verbally accepted Defendant's offer from its California scout who called him from California, subsequently received its written contract document via certified mail at the same California address at which the agreement was verbally accepted, then mailed it back from California with the understanding once he signed it Defendant was his employer.[9]

The record of exhibits reflects two signed contracts[10] as well as a Christmas card which affirms Mr. Ferguson's California home address, corroborating Applicant's credible testimony.[11]

Defendant urges the WCAB reconsider, then reverse the Finding(s) of Fact. It does so despite a preponderance of evidence its purposeful activities directed at Applicant resulted in his injuries. Applicant would not have engaged in the repetitive physical activities of professional baseball he asserts caused him cumulative trauma injury had Defendant not signed as well as transported him to play for it.

Defendant avers its position despite purposeful activities including its California baseball scout recruiting Applicant via numerous and various means (talking with him, visiting him, corresponding with him, suggesting a proper course of pre-signing baseball play, negotiating a signing bonus, entering into an oral contract of hire and acting as directed and direct "go between" Applicant and Defendant in his hire), then ultimately imposing upon Applicant a condition subsequent of written contract execution, which occurred in California.

The written contractual process was finalized by Defendant via mail to and from California. Defendant lastly arranged for Applicant's travel from California to Defendant's sites of professional baseball play once the agreement was mutually finalized. Subsequent to his hiring and play it also sent him off-season strength and conditioning educational materials.[12]

There is no evidence Applicant could have played baseball for any professional team absent Defendant's purposeful actions in California directed to "sign" him to their mutual "Uniform

[8] Minutes of Hearing and Summary of Evidence 08/24/2024 (hereinafter "MOH/SOE") p. 4, ll: 11-19; Id. p. 4, ll: 23-25, p.6, ll: 1-3.
[9] Id. ll: 4-7.
[10] Ex's. 2-7.
[11] Ex. 9.
[12] Ex. 1.

Player Contracts."[13] It is undisputed Applicant played for Defendant then had off-season education to maintain his strength and conditioning.

The undersigned recognizes the WCAB's recent holding consistent with the reasoning employed in issuing the Finding(s) of Fact at issue. The WCAB recognized similar facts of Applicant being scouted by an agent for a professional baseball team, evaluated by it and signed to a contract with it - all in California - to reach the same conclusion reached by the undersigned.[14]

The record in this matter supports WCAB exercise of personal Jurisdiction over Defendant. Defendant purposefully directed its activities toward California and at Applicant specifically for the purpose of employing Applicant, then did so. Applicant's claim arose directly out of Defendant's activities in California. Defendant transported Applicant to its sites of play for it as a result of its purposeful efforts. It is that play for Defendant which Applicant asserts resulted in repetitive exposures which caused him cumulative trauma injuries.

The Findings of Fact are supported by the evidentiary record herein and the Findings of Fact support the undersigned's Findings of Fact and Orders.

IV.
RECOMMENDATION

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

Notice is hereby given that this matter was transmitted to the Reconsideration Unit on the below date.

DATE: October 4, 2024

David H Parker
WORKERS' COMPENSATION JUDGE

[13] *Supra*. p.4, footnote 10.
[14] *The Cincinnati Reds LLC v. WCAB* (Chad Fonseca) May 30, 2024 89 Cal. Comp. Cases 698; 2024 Cal. Wrk. Comp. LEXIS
30 (writ denied).