WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WAYNE GANDY, *Applicant*

vs.

ATLANTA FALCONS, GREAT DIVIDE INSURANCE COMPANY, administered by BERKLEY ENTERTAINMENT; PITTSBURGH STEELERS, STATE WORKERS INSURANCE FUND (SWIF); NEW ORLEANS SAINTS, LOUISIANA WORKERS' COMPENSATION CORPORATION; ST. LOUIS RAMS, FAIRMONT PREMIER INSURANCE COMPANY, administered by ZENITH AND TRAVELERS INSURANCE COMPANY; ST. LOUIS RAMS; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, for LEGION INSURANCE, in liquidation, *Defendants*

Adjudication Number: ADJ10110126
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant seeks reconsideration of the October 24, 2019 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from July 25, 1995 to February 27, 2009, claims to have sustained industrial injury to his head, neck, shoulders, hands, wrists, fingers, elbows, back, hips, knees, ankles, feet, toes, neurological system, internal system, sleep, psyche, and in the form of chronic pain. The WCJ found that the applicant and the Atlanta Falcons met the conditions described in Labor Code[2] section 3600.5(c) and (d) and were therefore exempt from the provisions of California's workers' compensation laws.

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[1] Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been assigned in her place.
[2] All further references are to the Labor Code unless otherwise noted.

Applicant contends that the Workers' Compensation Appeals Board has jurisdiction over the claimed injury pursuant to section 5305 because applicant's contract of hire was made in California.

We have received an Answer from Great Divide Insurance on behalf of the Atlanta Falcons. 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. For the reasons discussed below, we will rescind the F&A, and substitute new Findings of Fact that the Workers' Compensation Appeals Board has subject matter jurisdiction over applicant's claimed injury and defer the issue of whether compensation is barred by section 5405.

FACTS

Applicant claimed injury to his head, neck, shoulders, hands, wrists, fingers, elbows, back, hips, knees, ankles, feet, toes, neurological system, internal system, sleep, psyche, and in the form of chronic pain while employed as a professional athlete by the Atlanta Falcons, the New Orleans Saints, the Pittsburgh Steelers, the Los Angeles Rams, and the St. Louis Rams, from July 25, 1995 to February 27, 2009. Defendants assert that California lacks subject matter jurisdiction over the claim.

The parties proceeded to trial on June 27, 2019, and stipulated as follows:

> The applicant played five years with the Rams under California contract. This would have been the Los Angeles Rams in 1994, the St. Louis Rams on August 12th, 1995 at Oakland, on August 25th, 1995 at San Diego; on November 26, 1995 at San Francisco, on September 8, 1996 at San Francisco, on September 28, 1997 at Oakland, on October 12, 1997 at San Francisco, and December 27, 1998 at San Francisco.
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> (Minutes of Hearing and Summary of Evidence (Minutes), dated June 27, 2019, at p. 3:14.)

The parties placed in issue defendant's denial of jurisdiction under section 3600.5 and jurisdiction pursuant to the analysis in *McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23 [2013 Cal. Wrk. Comp. LEXIS 2], writ den. *sub nom. McKinley v. Workers' Comp. Appeals Bd. (2013)* 78 Cal.Comp.Cases 872 [2013 Cal. Wrk. Comp. LEXIS 122] (Appeals Board en banc).

The parties also placed in issue whether compensation was barred under the statute of limitations of section 5405. The applicant testified, and the WCJ ordered the matter submitted as of August 1, 2019.

The WCJ issued his decision on October 24, 2019, determining in relevant part that the provisions of section 3600.5(c) and (d) applied to applicant's claim, that applicant was temporarily within California doing work for the Atlanta Falcons, and that applicant and the Atlanta Falcons "satisfy all conditions per Labor Code section 3600.5 and are therefore exempted from the provisions of California workers' compensation laws." (Finding of Fact No. 13.)

Applicant's Petition for Reconsideration (Petition) avers that California has subject matter jurisdiction over the claimed injury because applicant entered into a California contract of hire with the Los Angeles Rams. (Petition, at p. 4:3.)

Defendant Atlanta Falcons' Answer submits that the more recent and specific statutory provisions of section 3600.5(d) control over the more general provisions of sections 5305 and section 3600.5(a). Defendant avers the WCJ correctly analyzed section 3600.5(d) and that there is no jurisdiction over applicant's last year of work as a professional athlete, and since applicant did not satisfy the conditions set forth in Labor Code section 3600.5(d), there is no jurisdiction over the entire claim. (Answer, at p. 5:14.)

The WCJ's Report submits that applicant's contract with the Los Angeles Rams terminated when applicant stopped playing with the Rams in 1999, and that because applicant played only one season for a California-based team out of the fifteen seasons spanning applicant's professional career, applicant has not met the requirements necessary to qualify for the section 3600.5(d) exception to the jurisdictional exemption of section 3600.5(c).

DISCUSSION

The parties dispute whether California has subject matter jurisdiction over applicant's claimed cumulative injury. The F&A determined that applicant was, at all relevant times, temporarily within California while working for the Atlanta Falcons, and that both applicant and the Atlanta Falcons are exempt from the provision of California's workers' compensation laws. (Findings of Fact, Nos. 12 & 13.)

Applicant's Petition contends that the Workers' Compensation Appeals Board is vested with subject matter jurisdiction over the claimed injury because applicant entered into a California

contract of hire with the (then)[3] Los Angeles Rams. Applicant asserts that irrespective of the amendments to section 3600.5, "professional athletes are not exempt from analysis under Labor Code §3600.5(a) or §5305." (Petition, at p. 4:13.)

Section 5305 provides:

> 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 injured employee is a resident of this state at the time of the injury and 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.
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> (Lab. Code, § 5305.)

Section 3600.5 provides, in relevant part:

> (a) 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.
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> (b)
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> (1) An employee who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the employee is temporarily within this state doing work for his or her employer if the employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than California, so as to cover the employee's work while in this state if both of the following apply:
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> (A) The extraterritorial provisions of this division are recognized in the other state.
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> (B) The employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation insurance or similar laws of the other state.
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> (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

[3] As is noted in the Opinion on Decision at p. 5, the Rams organization relocated to Missouri in 1995.

employer for any injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(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.

(3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete's last day of work for the employer within the state, the professional athlete performs less than 20 percent of his or her duty days in California during that 365-day period in California.

(d)

(1) With respect to an occupational disease or cumulative injury, a professional athlete and his or her employer shall be exempt from this division when all of the professional athlete's employers in his or her last year of work as a professional athlete are exempt from this division pursuant to subdivision (c) or any other law, unless both of the following conditions are satisfied:

(A) The professional athlete has, over the course of his or her professional athletic career, worked for two or more seasons for a California-based team or teams, or the professional athlete has, over the course of his or her professional athletic career, worked 20 percent or more of his or her duty days either in California or for a California-based team. The percentage of a professional

> athletic career worked either within California or for a California-based team shall be determined solely by taking the number of duty days the professional athlete worked for a California-based team or teams, plus the number of duty days the professional athlete worked as a professional athlete in California for any team other than a California-based team, and dividing that number by the total number of duty days the professional athlete was employed anywhere as a professional athlete.
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> (B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.
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> (2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5.
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> (e) An employer of professional athletes, other than a California-based team, shall be exempt from Article 4 (commencing with Section 3550) of Chapter 2, and subdivisions (a) to (c), inclusive, of Section 5401.
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> (Lab. Code, § 3600.5.)

Section 3600.5 thus provides California jurisdiction over injuries where, as is alleged here, the employee has been hired in the state and has received personal injury by accident arising out of and in the course of employment outside of this state. In those instances, the employee "*shall* be entitled to compensation according to the law of this state." (Lab. Code, § 3600.5(a), italics added.)

However, subdivision (c) exempts California jurisdiction in limited instances of a claimed cumulative injury where "a professional athlete who has been hired outside of this state," is temporarily working within California. (Lab. Code, § 3600.5(c).)

Here, the parties have stipulated that applicant began his professional career playing for the Los Angeles Rams under a California contract. (Minutes, at p. 3:15.) The WCJ's Opinion on Decision also observes that applicant "was in California when he signed the contract." (Opinion on Decision, at p. 5.) However, the WCJ determined that notwithstanding the California contract of hire, the exemption from California's workers' compensation law available to specified defendants under section 3600.5(c) applied, and that applicant did not meet the requirements for the exception available under 3600.5(d).

We previously discussed the interaction between subdivisions (a) and (c) of section 3600.5 in *Hansell v. Arizona Diamondbacks* (April 7, 2022, ADJ10418232) [2022 Cal. Wrk. Comp. P.D. LEXIS 83) (*Hansell*). Therein, applicant claimed a cumulative injury between June 5, 1989, and October 15, 2004, while employed by multiple professional baseball organizations. Several of applicant's contracts of hire during the course of his claimed cumulative injury were entered into within California's territorial limits, while other contracts of hire were entered outside California. (*Id.* at pp. 3-4.) We framed the issue of the interaction of subdivisions (a) and (c) of section 3600.5 as follows:

> These clarifications aside, we turn to the fundamental dispute between the parties: do subdivisions (c) and (d) of section 3600.5 override the general jurisdictional provisions of sections 3600.5(a) and 5305 that provide for jurisdiction where there is a California hire during the period of injury, or do these subdivisions apply only to claims where there is no California hire?
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> The fundamental purpose of statutory interpretation is to ascertain the Legislature's intent in order to effectuate the law's purpose. (*People v. Murphy* (2001) 25 Cal. 4th 136, 142 [105 Cal. Rptr. 2d 387, 19 P.3d 1129].) Interpretation begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal. 4th 822, 828 [68 Cal.Rptr.3d 769, 171 P.3d 1101].) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal. 4th 617 [42 Cal.Rptr.3d 743, 133 P.3d 636].) If, however, the language is susceptible to more than one interpretation, consideration must be given to other factors, such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)
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> We are directed to interpret statutory language "consistently with its intended purpose, and harmonized within the statutory framework as a whole." (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 585 [114 Cal.Rptr.3d 429, 75 Cal. Comp. Cases 817].) "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903 [135 Cal.Rptr.2d 30, 69 P.3d 951].) We accordingly cannot interpret section 3600.5(d) in isolation; it must be construed in the context of the entire statute of which it is a part.

Here, section 3600.5, subdivision (c) exempts "a professional athlete who has been hired outside of this state and his or her employer" when the professional athlete is injured while temporarily within this state. (§ 3600.5(c).) When applied to a cumulative trauma claim sustained while employed by a single employer, this clause is unambiguous in that it applies only when the contract of hire is made outside the state of California.

However, when applied to a mixed claim, where the applicant was hired in California for some of the cumulative trauma period, but also signed a contract outside California with the employer asserting it is exempt under subdivision (c), the statute is less clear. Does the phrase "a professional athlete who has been hired outside of this state and his or her employer" refer only to the contract of hire with the employer in question that is asserting the exemption, or to any contract of hire with any employer during the relevant injury period? In a strictly grammatical sense, the choice to place the phrase "who has been hired outside of this state" directly after "a professional athlete" arguably implies the subdivision applies only to an athlete who has no contract of hire in California during the cumulative trauma injury period. However, because the subdivision clearly contemplates one particular employment relationship between an athlete and a single employer, we cannot say the statute is unambiguous in limiting its application to athletes who have not been hired in California by any employer during the relevant period.

Expanding the inquiry to the language of subdivision (d) does not help matters, because subdivision (d) does not refer to hire at all. Moreover, because in this particular case defendant relies on the exemption of subdivision (c) to trigger subdivision (d) with regard to the Diamondbacks, if subdivision (c) is limited to cases where there is no hire in California by any employer during the relevant period, it would not matter if subdivision (d) applies more generally in the abstract.

In light of all of the above, we must conclude that the phrase "a professional athlete who has been hired outside of this state" in section 3600.5, subdivision (c) is ambiguous as applied to a claim like this one, where the applicant has California contracts of hire, but not with the particular employer that is asserted to be exempt pursuant to the subdivision.

Because the language of the statute is ambiguous, we must consider the purpose of the statute, the legislative history, and public policy in determining which interpretation is more persuasive. (*King, supra*, 38 Cal.4th at 626.) In the second Assembly Floor Analysis of Assembly Bill 1390, the purposes of the amendments to section 3600.5 were described as follows:

> According to the author, out of state professional athletes are taking advantage of loopholes in California's workers' compensation system to the detriment of substantial California interests, and to the detriment of

> California sports teams. Specifically, as a result of the 'last employer over which California has jurisdiction' rule, and the absence of an enforceable one-year limitations period, California teams are facing cumulative injury claims from players with extremely minimal California contacts, but substantial playing histories for teams in other states. In addition, out of state sports teams are having claims filed against them in California that are resulting in a number of serious consequences to California, including: 1) clogging the workers' compensation courts with cases that should be filed in another state, thereby delaying cases of California employees, 2) causing all insured California employers to absorb rapidly escalating costs being incurred by CIGA, and 3) placing increasing pressure on insurers to raise workers' compensation rates generally in California to cover these rapidly rising unanticipated expenses. In many of these cases the players have already received workers' compensation benefits from other states, as well as employment benefits covering the same losses they are seeking compensation for in California.
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> (Assem. Com. on Ins., Second Assembly Floor Analysis of Assem. Bill No. 1390 (2013–2014 Reg. Sess.).)

Accordingly, the stated purpose of the amendments to section 3600.5 was to limit the ability of "out of state professional athletes" with "extremely minimal California contacts" to file workers' compensation claims in California. (*Ibid.*) The amendments were reacting in large part to a line of decisions that allowed athletes employed by out-of-state teams, who had not been hired in California or played regularly here, to recover California workers' compensation benefits based solely on a handful of games played in this state while employed by their out-of-state teams. (See, e.g., *Injured Workers' Ins. Fund of Maryland v. Workers' Comp. Appeals Bd.* (*Crosby*) (2001) 66 Cal.Comp.Cases 923 (writ den.) [single game played in California during career sufficient to exercise California jurisdiction over cumulative trauma claim].)

In understanding the Legislature's concern, it is critical to remember that *Johnson*,[4] which largely foreclosed the ability of athletes to file claims in California based solely on a small handful of games played in this state for an out-of-state employer, had not yet been issued. The Legislature was therefore crafting legislation in an environment where even a single game played in California over the course of a professional career could allow for the filing of a California workers' compensation claim for a cumulative trauma injury, and it was working to foreclose that possibility.

In addition to the above, when the Legislature amended section 3600.5, it provided specific notes of its intent. As is relevant here, the Legislature stated: "It is the intent of the Legislature that the changes made to law by this act shall

[4] *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116, 1128 [165 Cal.Rptr.3d 288] (*Johnson*).)

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.) The central holding of *Bowen*, affirming sections 3600.5(a) and 5305, is 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.)

Taken together, these two expressions suggest that the Legislature did not intend for subdivisions (c) and (d) to apply to athletes who have been hired in California by at least one employer during the cumulative trauma injury period. The Legislature appears to have been mainly concerned with athletes who were not hired in this state, who were filing claims and recovering benefits under the law as it existed prior to *Johnson* based upon a small handful of games. The reference to *Bowen* demonstrates the Legislature recognized and approved of the longstanding principle of California law, stretching back close to a century, that a contract of hire in California is itself a compelling connection to the state that validates the exercise of jurisdiction. (See *Alaska Packers, supra*, 1 Cal.2d at 261-262.) If a hire in California during the injury period is a compelling connection to the state, by definition such athletes would not fall into the category of those with "extremely minimal California contacts" whose claims the Legislature sought to exempt. If the Legislature had intended to depart from the position that California will exercise jurisdiction over a claim if the applicant was hired in California, we think the Legislature would clearly have said as much, and, at a minimum, would not have reaffirmed that principle by referencing *Bowen*.

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.

Similarly, subdivision (d) sets a 20% threshold for duty days worked "either in California or for a California-based team" over a career in order to meet the first prong of the exception to the exemption. (§ 3600.5(d)(1)(A).) Alternatively, this prong may also be met by a showing that the athlete has worked "two or more seasons for a California-based team or teams." (*Ibid.*) Notably, the two-season requirement of work for "a California-based team or teams" does not require that the work be in the state of California. Because professional athletes in some

of the covered sports are regularly dispatched out of state to affiliate teams or for training camps, it is not as rare as one might think that an athlete could be employed by a California-based team without being regularly employed in California. Therefore, the fact that subdivision (d) mentions two seasons or more of work for a California-based team does not show it is meant to apply even to athletes who were hired in this state or regularly employed here. Instead, 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.

This interpretation is further bolstered by consideration of changes to the Act made by the Senate in response to concerns that the originally contemplated language went beyond the Act's intended purpose and was likely unconstitutional. The version of Assembly Bill 1309 sent to the Senate differed from the enacted law in several key ways. First, it did not contain the statement of legislative intent affirming the holding of *Bowen*, referenced above, that a California contract of hire will support the award of benefits for an injury sustained outside the state, regardless of any other relationship between this state and the injury. (Assem. Amend. To Assem. Bill 1309 (2013–2014 Reg. Sess.) April 25, 2013.) Second, subdivision (d) was a part of subdivision (c) rather than a separate subdivision, and read:

> (4) (A) An employer of a professional athlete that is subject to this division is not liable for occupational disease or cumulative injury pursuant to Section 5500.5 if at the time application for benefits is made the professional athlete performed his or her last year of work in an occupation that exposed him or her to the occupational disease or cumulative injury as an employee of one or more other employers that are exempt from this division pursuant to paragraph (1) or any other law.
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> (B) This paragraph shall apply to all occupational disease and cumulative injury claims filed against an employer of professional athletes if the employer is subject to this division, unless the professional athlete was employed for eight or more consecutive years by the same California-based employer pursuant to a contract of hire entered into in California, and 80 percent or more of the professional athlete's employment as a professional athlete occurred while employed by that California-based employer against whom the claim is filed.
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> (*Ibid.*)

Third, the changes to section 3600.5 applied to any athlete's claim, no matter when filed, if the claim had not yet been adjudicated by the date the Act became

law. (*Ibid.*). Fourth, the Act also amended section 5412 to create an entirely new statute of limitations solely for professional athletes, separate and apart from the statute of limitations that applied to all other injured workers. (*Ibid.*)

In other words, the statute that was sent to the Senate did not reaffirm the principal of *Bowen*, and its version of what became subdivision (d) explicitly applied to athletes with a California contract of hire, unless they played under that contract of hire for eight or more consecutive years for the same California employer. Had this version of the statute become law, there would be no controversy over whether provisions (c) and (d) were intended to apply to bar recovery even to athletes with a California contract of hire.

However, the version of the Act that ultimately became law, as described above, differs from the Assembly version in key, fundamental ways. The affirmation of *Bowen* was added, at the same time as the Senate removed the reference to a California contract of hire and liberalized the criteria of the exemption in what became subdivision (d). Both of these changes appear to have been influenced by the Analysis of the Senate Committee on Labor and Industrial Relations, which stated:

As noted above, players who played for California teams, but then leave to play for out-of-state teams for several years, would lose their ability to file for workers' compensation benefits under AB 1309. This raised some objections in the Assembly, and the author responded with what some refer to as the "Joe Montana" Exception: if a player signs a contract in California and plays for a team for 8 years AND 80% of their career, the player would have standing to file for workers' compensation benefits in California.

…

In our view, the most reasonable interpretation of the Senate's amendments—adding in the affirmation of *Bowen* and deleting the reference to a hire in California in subdivision (d)—is that they intended to significantly scale back the Assembly version of the Act to match the actual stated objective of barring claims by athletes with "extremely minimal California contacts," by reaffirming the principal of *Bowen* that a California contract of hire is sufficient to establish WCAB jurisdiction. Accordingly, their deletion of the reference to a California contract of hire in subdivision (d), combined with that affirmation, was intended to render the subdivision applicable only to athletes without a California contract of hire, and therefore to bar only claims from those athletes without the strong contact with California that is created by a California contract of hire.

(*Hansell, supra*, at pp. 17-31.)

Here, as in *Hansell*, *supra*, the claimed cumulative injury arises out of a contract of hire entered into within California's territorial borders, which is sufficient to confer California

jurisdiction over applicant's claimed cumulative injury. (*Hansell, supra*, at p. 31; see also *Vaughn v. Colorado Rockies* (February 5, 2024, ADJ11208094) [2024 Cal. Wrk. Comp. P.D. LEXIS 33]; *Slavin v. St. Louis Rams/Los Angeles Rams* (March 13, 2024, ADJ12766196) [2024 Cal. Wrk. Comp. P.D. LEXIS 75]; *Hermanson v. San Francisco Giants* (November 20, 2023, ADJ11134795) [2023 Cal. Wrk. Comp. P.D. LEXIS 328]; *Neal v. San Francisco 49ers* (March 9, 2021, ADJ9990732) [2021 Cal. Wrk. Comp. P.D. LEXIS 68]; *Wilson v. Florida Marlins* (February 26, 2020, ADJ10779733) [2020 Cal. Work. Comp. P.D. LEXIS 30]; cf. *Harrison v. Texas Rangers* (May 26, 2023, ADJ13604193) [2023 Cal. Wrk.Comp. P.D. LEXIS 151] [no jurisdiction over injury where applicant had no California contract of hire, played more than seven seasons with out-of-state teams, and worked less than 20 percent of duty days in California].)

The WCJ's Report acknowledges that in *Bowen, supra*, 73 Cal.App.4th 15, "[t]he court of appeal found jurisdiction over the claim per Labor Code §3600.5(a) and Labor Code §5305 because the contract was signed in California." (Report, at p. 3.) While acknowledging that the present matter also involves a California contract of hire, the Report distinguishes the present matter from *Bowen* by observing that in *Bowen* the California contract was the only operative, or "active" contract in question. (*Ibid*.) Here, the WCJ observes that applicant's original contract with the Rams organization concluded in 1999, attenuating California's interest in asserting jurisdiction over the claim. The WCJ also points out that the legislature intended its amendments to section 3600.5 to encourage professional athletes whose career was substantially played outside of California to seek compensation in other states "where much of the athlete's career was played out." (*Id.* at p. 4.)

However, we believe the more salient question is whether the WCAB has been statutorily vested with the authority over "a cause of action or to act in a particular way" with respect to the *subject matter of the dispute*. (*Greener v. Workers Comp. Appeals Bd.* (1993) 6 Cal.4th 1028 [58 Cal.Comp.Cases 793, 795].) Here, the subject matter of the dispute is not a specific injury, or the period of liability relating to an injury, or the last team for whom applicant played under a California contract of hire. (Lab. Code, § 5500.5.) Rather, the subject matter of the dispute is applicant's claim of cumulative injury. And in this respect, section 5305 provides that "[t]he 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 injured employee is a resident of this state at the time of the

injury *and the contract of hire was made in this state*." (Lab. Code, § 5305, italics added.) Thus, the legislature in the exercise of their plenary power to establish a complete system of workers' compensation, has determined that the making of a contract of hire in California is sufficient, standing alone, to vest with the California Division of Workers' Compensation and the Appeals Board, the jurisdiction to hear disputes arising of a claimed injury occurring outside California. (Cal. Const., Art. XIV, § 4; *Dep't of Corr. v. Workers' Comp. Appeals Bd. (Antrim)* (1979) 23 Cal.3d 197, 203 [77 Cal.Comp.Cases 114].)

Accordingly, we will rescind the F&A and substitute new findings that the Workers' Compensation Appeals Board has subject matter jurisdiction over the claimed injury.

The parties have further placed in issue "the McKinley case jurisdiction defense." (Minutes, at p. 3:22.) Although not a model of clarity, it appears that the issue as framed by the parties refers to the en banc decision in *McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23 [2013 Cal. Wrk. Comp. LEXIS 2] (*McKinley*). Therein, we held that where a claimed injury has a limited connection to California, the WCAB will decline to exercise jurisdiction when there is a reasonable mandatory forum selection clause in the employment contract specifying that claims for workers' compensation shall be filed in a forum other than California. (*Id.* at p. 24.) However, our analysis of California contacts in *McKinley* was necessary because applicant enjoyed *no California contract of hire*, which would otherwise provide a "jurisdictional basis for legislating the terms of the employment agreement and hearing the workers' compensation claim." (*Id. at p.* 32, italics added.)

Here, the formation of an oral contract of hire within California is sufficient to confer subject matter jurisdiction. (*Palma, supra,* 1 Cal.2d 250, 256; *Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116, 1126 [165 Cal.Rptr.3d 288] ["the creation of the employment relationship in California, which came about when he signed the contract in San Francisco, was a sufficient contact with California to warrant the application of California workers' compensation law"].) Thus, a hiring in this state is by itself sufficient connection with California to support the exercise of WCAB jurisdiction over a workers' compensation claim. (*Jackson v. Cleveland Browns* (December 26, 2014; ADJ6696775) [2014 Cal. Wrk. Comp. P.D. LEXIS 682].) Where the hiring is made in California, the employee "shall be entitled to the compensation … provided by this division" (Lab. Code, § 5305), and "shall be entitled to compensation according to the law of this state." (Lab. Code, §3600.5(a).) The word

"shall" as used in the Labor Code is mandatory. (Lab. Code, § 15; *Smith v. Rae-Venter Law Group* (2003) 29 Cal. 4th 345, 357 [127 Cal. Rptr. 2d 516].) As we noted in *Jackson, supra,* 2014 Cal. Wrk. Comp. P.D. LEXIS 682, the conferral of jurisdiction arising out of California contracts of hire as embodied in sections 5000, 5305, and 3600.5(a) reflects the public policy of California, and precludes the enforcement of the choice of law/forum selection clauses that purport to deprive California of that jurisdiction. Accordingly, we are persuaded that applicant's California hiring is sufficient to justify the exercise of California jurisdiction over claim.

In summary we are persuaded that applicant's California hiring is sufficient to justify the exercise of California jurisdiction over applicant's claim of cumulative injury. We further conclude that the California contract of hire is sufficient to invoke California jurisdiction, which is a reflection of California public policy, and precludes the enforcement of forum selection provisions that would serve to obviate that jurisdiction. Accordingly, we will rescind the F&A and substitute new Findings of Fact that the Workers' Compensation Appeals Board has subject matter jurisdiction over the claimed injury, and that the alleged forum selection clauses in applicant's contracts do not preclude California jurisdiction. We will defer the issue of whether compensation is barred by section 5405 pending further proceedings, including a determination of injury arising out of and in the course of employment, and the date of injury pursuant to section 5412.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award dated October 24, 2019, is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. WAYNE GANDY, while employed during the period July 25, 1995 to February 27, 2009, as a professional athlete, Occupational Group No. 590, by the Atlanta Falcons, New Orleans Saints, Pittsburgh Steelers, the Los Angeles Rams, and the St. Louis Rams, claims to have sustained injury arising out of and in the course of employment to head, neck, shoulders, hands, wrists, fingers, elbows, back, hips, knees, ankles, feet, toes, neurological, internal, sleep, psyche, and chronic pain.
2. At the time of the claimed injury, the workers' compensation carriers for the various employers were: (1) Great Divide Insurance, administered by Berkley Entertainment for the Atlanta Falcons; (2) Louisiana Workers' Compensation Corporation for the New Orleans Saints; (3) State Workers Insurance Fund for the Pittsburgh Steelers; (4) California Insurance Guarantee Association for Legion Insurance, in liquidation for the Los Angeles Rams; (5) Fairmont by Zenith for the St. Louis Rams; and, (6) Travelers Insurance also for the St. Louis Rams.
3. The Workers' Compensation Appeals Board has subject matter jurisdiction over the claimed injury.
4. The conferral of jurisdiction arising out of applicant's California contract of hire precludes the enforcement of choice of law/forum selection clauses.
5. The issue of whether compensation is barred by Labor Code section 5405 is deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 16, 2024

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

WAYNE GANDY
PRO ATHLETE LAW
BOBER, PETERSON & KOBY
CHERNOW & LIEB
DIMACULANGAN & ASSOCIATES
LAW OFFICES OF GRAY & PROUTY
LAW OFFICES OF JOSHUA B. VINOGRAD
WALL, MCCORMICK, BAROLDI & DUGAN

SAR/abs

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