WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM MORRIS, ***Applicant***

vs.

DETROIT TIGERS; TRAVELERS INDEMNITY COMPANY, GULF INSURANCE COMPANY; CINCINNATI REDS, permissibly self-insured; ***Defendants***

Adjudication Number: ADJ12733322
Santa Ana District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Detroit Tigers ("Tigers") seeks reconsideration of the March 28, 2024 Findings & Order ("F&O"), wherein the workers' compensation administrative law judge (WCJ) concluded that applicant's cumulative trauma claim could be brought in California because subdivisions (c) and (d) of Labor Code section Labor Code section 3600.5[1] do not apply to the claim due to the fact that applicant was hired in California on one of his contracts during the relevant cumulative trauma injury period. Defendant contends that the WCJ erred, and that the WCJ's reliance on our panel decision in *Hansell v. Arizona Diamondbacks* (2022) 87 Cal.Comp.Cases 602 was misplaced because that case was in defendant's view wrongly decided.

We did not receive an Answer. 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, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition for Reconsideration.

[1] Further references are to the Labor Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

Applicant filed an Application for Adjudication, alleging a cumulative trauma injury to multiple body parts sustained while employed as a professional baseball player. According to the Minutes of Hearing, applicant's playing history during the cumulative trauma period was as follows:

New York Yankees	June 4, 1986 to December 12, 1989
Cincinnati Reds	December 12, 1989 to October 29, 1997
Kansas City Royals	December 12, 1997 to December 23, 1998
Cincinnati Reds	January 15, 1999 through July 18, 2000
Detroit Tigers	July 18, 2000 through November 1, 2000
Cincinnati Reds	March 6, 2001 through April 4, 2001

(Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 7/12/2023, at p. 2.) The Petition does not contest that applicant was hired in California on his 1995 contract with the Cincinnati Reds ("Reds"). (Petition for Reconsideration, at p. 2.)

The matter proceeded to trial on July 12, 2023. According to the stipulations of the parties, the issues for trial were: (1) jurisdiction; (2) "whether there is a lack of subject matter jurisdiction"; (3) the application of *Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556 [83 Cal. Comp. Cases 1175]; and (4) section 3600.5(d). (MOH/SOE, 7/12/2023, at p. 2.) Exhibits were admitted, and the matter as adjourned to a later date for applicant's testimony. (*Id.* at pp. 3–5.)

On January 10, 2024, applicant and the Reds submitted a Compromise and Release ("C&R"), settling applicant's portion of his claim against the Reds for $150,000.00. (C&R, at p. 6.) The C&R states that the Tigers were invited to join the settlement but declined to do so. (*Id.*). The WCJ approved the C&R that same day. (Order Approving Compromise and Release, at p. 1.)

Because the matter was not fully settled, applicant proceeded to testify. (MOH/SOE, 1/10/2024, at p. 2–6.) As relevant to the Petition before us, applicant testified that he was hired in California on his 1995 contract with the Reds; he was in the state to discuss terms with the San Francisco Giants, but he ended up accepting the Reds' offer instead, verballing accepting the contract in Marina Del Rey and signing a written contract while in Atherton. (*Id.* at p. 3.) Applicant did not remember the locations where he signed his other contracts. (*Id.* at pp. 3–6.)

The WCJ issued the F&O on March 28, 2024, finding in relevant part that applicant's contract of hire for the 1995 season was formed in California and provided for subject-matter jurisdiction under section 3600.5(a), and that consideration of subdivisions (c) and (d) of that same

statute was unnecessary in light of applicant's hire in California. (F&O, at p. 2; Opinion on Decision, at pp. 3–6.)

This Petition for Reconsideration followed.

DISCUSSION

Under California's workers' compensation law, benefits are to be provided for industrial injuries when the statutory conditions of compensation are met. (Cal. Const., art. XIV, § 4; §§ 3600 et seq., 5300 and 5301.) The statutes establishing the scope of the WCAB's jurisdiction reflect a legislative determination regarding California's legitimate interest in protecting industrially-injured employees. (*King v. Pan American World Airways* (1959) 270 F.2d 355, 360 ["The [California Workmen's Compensation] Act applies to all injuries whether occurring within the State of California, or occurring outside the territorial boundaries if the contract of employment was entered into in California or if the employee was regularly employed in California."].)

In general, the WCAB may assert its subject matter jurisdiction in a given workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a significant connection or nexus to the state of California. (See §§ 5300, 5301; *King, supra,* 270 F.2d at 360; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116, 1128.) Whether there is a significant connection or nexus to the State of California is best described as an issue of due process, though it has also been referred to as a question of subject-matter jurisdiction. (*New York Knickerbockers v. Workers' Comp. Appeals Bd.* (*Macklin*) (2015) 240 Cal.App.4th 1229, 1238; *Johnson, supra,* 221 Cal.App.4th at 1128.)

In addition to injuries occurring in California, the WCAB can also assert subject matter jurisdiction over injuries occurring outside this state in certain circumstances. Section 3600.5, subdivision (a) states: "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." (§ 3600.5(a).) Similarly, section 5305 states: "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." (§ 5305.)[2]

For nearly a century, it has been established law that a hiring in California within the meaning of Labor Code sections 3600.5(a) and 5305 provides this state with sufficient connection to the employment to support adjudication of a claim of industrial injury before the WCAB. (*Alaska Packers Assn. v. Industrial Acc. Com.* (*Palma*) (1934) 1 Cal.2d 250, affd. (1935) 294 U.S. 532; *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] ["an employee who is a professional athlete residing in California, such as Bowen, who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract"]; *Johnson, supra,* 221 Cal.App.4th at p. 1126.)

Under certain circumstances, additional requirements apply to professional athletes filing workers' compensation claims involving occupational disease or cumulative trauma injuries. Section 3600.5(d) provides as follows:

> (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.

[2] The residency requirement of section 5305 has long been recognized as unconstitutional. (See *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 20, fn. 6 [64 Cal.Comp.Cases 745].)

> (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.
>
> (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.

(§ 3600.5(d).)

As section 3600(d)(1) makes clear by reference, an important provision for determining the meaning of section 3600.5(d) is section 3600.5(c).

Section 3600.5(c) provides as follows:

> (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.
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> (B) The employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this 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 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.
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> (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.

(§ 3600.5(c).) This statutory provision applies to a cumulative trauma claim asserted by a professional athlete who is hired in a state other than California, when that athlete is temporarily doing work in California. (See, e.g., *Carroll v. Cincinnati Bengals* (2013) 78 Cal.Comp.Cases

655, 660 (Appeals Board en banc); *Dailey v. Dallas Carriers Corp.* (1996) 43 Cal.App.4th 720, 727.)

The Legislature also included a note of intent as part of the statutory enactment amending section 3600.5, stating that the amendments should "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." (Stats. 2013 ch. 653 (AB 1309) § 3.).

Initially, it is important to emphasize that the Petition for Reconsideration does not dispute that applicant was hired in California on his 1995 contract with the Reds. (See, e.g., Petition for Reconsideration, at p. 2.)[3] Nor does the Petition contest any element of the F&O other than the conclusion that subdivisions (c) and (d) do not apply to this claim. Accordingly, the Petition raises a question purely of law – whether subdivisions (c) and (d) apply when there is a contract of hire in California during the relevant cumulative trauma period. Put another way, the Petition is a direct attack on our holding to the contrary in *Hansell*, *supra,* 87 Cal.Comp.Cases 602 and it succeeds or fails based on whether we agree that *Hansell* was wrongly decided.

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.) 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.) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) 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.)

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 [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

[3] The Petition for Reconsideration does not contain page numbers.

part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.)

In light of this fact, before considering defendant's contention, we will briefly summarize the basis for our decision in *Hansell.* In *Hansell*, we determined that subdivisions (c) and (d) were not intended to apply to injured workers who could show a California contract of hire. (*Hansell, supra,* 87 Cal. Comp. Cases at 611–618.) In so deciding, we relied heavily upon the Legislature's explicit statement of intent included with the enactment of the subdivisions: "It is the intent of the Legislature 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." (Stats. 2013 ch. 653 (AB 1309) § 3.)

The central holding of *Bowen*, respectively, 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 acceptance of a contract while in this state constitutes hire in this state for that purpose. (*Bowen, supra,* 73 Cal.App.4th at 27.) Because we saw no way to square this expression of intent with a holding that subdivisions (c) and (d) were intended to apply to injured workers who had a California contract of hire, we instead ruled that the subdivisions were meant to apply only to athletes who could *not* demonstrate they were hired in California during the relevant cumulative trauma injury period. (*Hansell, supra,* 87 Cal. Comp. Cases at 617.)

Our decision in *Hansell* also relied in part on a judgement that the text of subdivisions (c) and (d) themselves were ambiguous as to whether they were intended to apply to athletes hired in California. As noted therein:

> 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.

(*Hansell, supra,* 87 Cal. Comp. Cases at 612.) As a result of this judgement, *Hansell* proceeded to analyze prior versions of the bill, noting that the bill as originally introduced and amended in the Assembly went much further in restricting the ability of professional athletes to file claims in California than the final statute. (See *Hansell, supra,* 87 Cal. Comp. Cases at pp. 615–18.) As particularly relevant here, it did not contain any statement of legislative intent to retain the holding of *Bowen*. (See Assem. Amend. To Assem. Bill 1309 (2013-2014 Reg. Sess.) April 25, 2013.) Moreover, what became subdivision (d) was a part of subdivision (c), 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.
> (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.

(*Ibid.*)

The original text of the bill, therefore, made it abundantly clear that subdivisions (c) and (d) would have applied to all professional athletes, unless they met extremely stringent requirements, including but not limited to a hire in California. In response to concerns raised in the Senate about the wide-ranging impact of the Assembly bill, the bill was altered to become what is now subdivisions (c) and (d), including adding the explicit statement of legislative intent to retain *Bowen*. These legislative changes reinforced our conclusion that the newly-revised subdivisions (c) and (d) could not have been intended to apply to injured workers who were hired in California.

With this background in mind, we turn to defendant's contentions. First, defendant asserts that "subject matter jurisdiction is a requisite to finding exemption for an employer." (Petition for Reconsideration, at p. 3.) We have no disagreement with defendant here in the abstract; without subject-matter jurisdiction on some other basis, there would be no case to which to apply an exemption.

However, we certainly disagree with defendant's gloss that "California WCAB [*sic*] cannot exercise its authority without subject matter jurisdiction per Section 3600.5(a)." (*Ibid.*) Although section 3600.5, subdivision (a) is *one* source of subject-matter jurisdiction – in this case, for injuries occurring *outside* the state – it is not the only source of subject-matter jurisdiction for California workers' compensation proceedings. Section 5305, for example, provides a parallel source of jurisdiction for out-of-state injuries, while section 5300 provides a general grant of jurisdiction for proceedings related to the recovery of compensation, which covers the much more common situation of an injury occurring *within* the state. (§§ 5300, 5305.)

Although this may appear to be a nitpick of defendant's arguments, in fact this distinction is vital to understanding the basis for subject-matter jurisdiction in most athlete cases. Contrary to defendant's assertion that jurisdiction in this case is established solely as a result of 3600.5(a), this case, like most other cumulative trauma claims by athletes, involves injuries that were partially incurred *outside* the state – and therefore reliant on sections 3600.5 and 5305 for a grant of jurisdiction – and partially incurred *within* the state, and therefore covered by the general grant of jurisdiction in section 5300. Indeed, prior to the enactment of subdivisions (c) and (d), it was this latter path to jurisdiction – a claim that the injury was partially sustained in California, when made by athletes who played only a very limited number of games here – that appears to have most concerned the legislature. This is apparent from the structure of the subdivisions themselves –

subdivision (c) does not exempt the claims of athletes who sustained *out-of-state* injuries, it exempts the claims of athletes who sustain *in-state* injuries while "temporarily within this state[.]" (§ 3600.5(c)(1).) The exemption is explicitly limited to "occupational disease or cumulative injury . . . received by the employee *while working for the employer in this state.*" (§ 3600.5(c)(2) (emphasis added).)

Therefore, it follows that *subdivision (c) does not exempt an employer from liability for claims brought under subdivision (a)*, and was never intended to do so. Instead, the purpose of subdivision (c) was to spare employers of liability for California workers' compensation benefits when the only injurious cumulative trauma exposure on their watch was derived from temporary work in this state while employed on an out-of-state contract.[4]

To the extent that an employer asserts an exemption to a claim brought for injuries sustained *out-of-state*, where jurisdiction is derived under section 3600.5(a) and/or 5305, some other basis must be advanced besides subdivision (c). It is this fact – apparently unappreciated by defendant – that creates the difficulty in assessing the relationship between the two subdivisions when a claim covers a cumulative injury period that spans several employers. Because subdivision (c) does not directly serve as an exemption for claims otherwise brought under subdivision (a), but can trigger the exemption of the entire claim under subdivision (d), the relationship between the subdivisions is complicated rather than straightforward.

As noted in *Hansell*, when there is only one employer during the cumulative trauma injury period, the subdivisions of the statute interact simply – any athlete who qualifies under subdivision (a) will not be exempt according to subdivision (c), and subdivision (d) is only relevant when there are multiple employers. Where there are multiple employers during the cumulative trauma period, however, the interaction between subdivisions (a), (c), and (d) has the potential to become very convoluted. If, as in this case, a claim is brought in part pursuant to subdivision (a) based upon a hire in California with one employer, but where not all the athlete's hires were in California, there is the potential for subdivision (c) to trigger with relation to one or more employers, and therefore

[4] Also in 2013, shortly after the passage of the 2013 amendments, the Court of Appeal issued the *Johnson* decision, requiring as a matter of due process a significant nexus between California and an applicant's injuries in order to permit the exercise of jurisdiction. (See *Johnson, supra,* 221 Cal.App.4th at 1128.) In practical terms, this has significantly limited the possibility of claims from athletes predicated upon only very limited California exposure from a handful of games played here, where the athlete in question had neither a hire in California nor any sustained period of California employment at any point during the cumulative trauma injury period. However, because the amendments to section 3600.5 were enacted prior to the *Johnson* decision, the Legislature was operating in an environment where such claims were still possible.

for subdivision (d) to bar the entire claim in certain circumstances, despite the presence of jurisdiction pursuant to subdivision (a), and despite the fact that subdivision (c) by its very terms does not directly relate to subdivision (a). *Hansell* considered this situation, concluding that it was not the legislature's intent that subdivisions (c) and (d) should apply in this manner when the path to jurisdiction under subdivision (a) was based on a hire in California, for the comprehensive list of reasons provided in that decision and summarized above.[5]

With this clarification in mind, we turn to defendant's remaining contentions. Defendant's second contention is that the decision in *Hansell* is inconsistent with other Appeals Board decisions which recognized the possibility that an employer could be exempt according to subdivision (c) even where there was a California hire during the relevant cumulative trauma injury period.

This argument fails both conceptually and factually. On a conceptual level, even if *Hansell* did conflict with prior decisions, that does not indicate that *Hansell* must be wrong, any more than it indicates that those prior decisions must be right. If previous cases incorrectly applied subdivision (c) in cases where it should not have been, it would not be appropriate to continue to do so simply because it had been done in the past.

Moreover, defendant's assertion is not even correct on a factual level. In *Grahe*, the issue of potential hire in California was never raised at the trial level as being legally significant, the WCJ never made a finding as to whether applicant was hired in California, nor did the parties raise the issue before the Appeals Board; instead, the parties agreed that the employer in question met the requirements for exemption under subdivision (c). (*Grahe v. Phila. Phillies* (2018) 84 Cal. Comp. Cases 123, 129.) There was therefore no basis for the panel in that case to consider whether a hire in California might obviate the need to consider subdivisions (c) and (d). Similarly, in *Riggs*, no party asserted that the applicant had been hired in California. (*Riggs (Eric) v. Miami Marlins* (2022) 88 Cal. Comp. Cases 170, 172.)

Finally, defendant cites *Neal v. San Francisco 49ers* (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 68, asserting that in that case the Appeals Board considered the application of subdivision (c) despite the presence of a California hire. (Petition for Reconsideration, at p. 5.) What defendant fails to mention is that while *Neal* did indeed determine that the requirements of

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[5] We note that where the basis for jurisdiction under subdivision (a) is not hire in California, but instead regular employment in California, subdivisions (c) and (d) do apply. A more extended discussion of this issue can be found in *Kouzmanoff v. Texas Rangers,* ADJ Nos. ADJ10501182, ADJ10501198 (WCAB panel decision, May 17, 2024).

subdivision (c) were not met in that case, it *also* noted that even if the requirements *could* have been established, the claim would *still* not have been exempt because applicant was hired in California, and therefore subdivisions (c) and (d) would not apply regardless. (*Neal, supra,* 2021 Cal. Wrk. Comp. P.D. LEXIS 68, at p. 16.) In other words, *Neal* concluded that the employer's claim failed both on the facts and on the law. Far from demonstrating inconsistency, *Neal* instead demonstrates the consistency of the Appeals Board's decisions on this point. We trust that defense counsel will take more care in future to thoroughly review cases before citing them for a proposition they in fact directly refute.

With this list of allegedly conflicting cases out of the way, defendant then reaches the heart of the matter, asserting that *Hansell* is wrong because section 3600.5 (c) and (d) unambiguously apply even where there is a hire in California during the cumulative trauma injury period. (Petition for Reconsideration, at pp. 5–6.) As evidence for this charge, defendant writes:

> The separate phrases, "a professional athlete" and "his or her employer" are obviously singular references among whom the condition under the statute are to be tested once California has jurisdiction to adjudicate the claim.
>
> Throughout Sections (c)(1), (c)(2) and (c)(3), the word, "the", is used before all subjects as, "the professional athlete", "the employer", "the laws of a state", and so on which is reference to a particular single subject. This appears to be consistent in all cases, the *Hansell* application is not.

(Petition for Reconsideration, at p. 6.)

These observations miss the mark, because they ignore the actual source of ambiguity in the statute. The question is not whether the phrase "a professional athlete" is a singular reference, but rather whether the complete phrase, "a professional athlete who has been hired outside of this state," is meant to include athletes who *were* hired in this state during the period of the cumulative trauma injury for which they are seeking compensation, but by a different employer than the one asserting the application of subdivision (c). We do not think it credible that the phrase "a professional athlete who has been hired outside of this state" can *unambiguously* include a professional athlete who *has* been hired inside this state during the period of cumulative trauma injury exposure for which the athlete is seeking compensation – whatever conclusion is ultimately reached as to that question, it cannot be said to be "unambiguous."

The assertion that subdivisions (c) and (d) unambiguously apply despite a California hire during the relevant period also ignores the explicit statement of the Legislature referenced in

Hansell, and above, that the 2013 amendments to section 3600.5 shall "have no impact or alter in any way the decision of the court in [*Bowen]*." (Stats. 2013 ch. 653 (AB 1309) § 3.). This statement is no mere extrinsic source to be dismissed as of limited relevance, or to be considered only as a last resort if all other methods of interpretation fail; it was included in the enactment amending section 3600.5 itself, and therefore must be accorded due respect and consideration.

On this point, defendant does not even attempt to explain how its view of subdivisions (c) and (d) can be reconciled with this explicit declaration that the subdivisions in question shall "have no impact or alter in any way" the decision of *Bowen,* namely that an athlete hired in California is entitled to recover workers' compensation benefits in the California workers' compensation system. (See *Bowen, supra, 73* Cal.App.4th at 27.) If subdivisions (c) and (d) were held to apply to athletes hired in California during the relevant cumulative trauma period for their injuries, some such athletes could no longer recover workers' compensation benefits for their injuries in the California workers' compensation system, and therefore such a result would necessarily conflict with the holding of *Bowen,* directly contradicting the Legislature's command that the subdivisions have "no impact or alter in any way" that decision.

We therefore disagree with defendant that *Hansell* was wrongly decided. Accordingly, we concur with the WCJ that subdivisions (c) and (d) do not apply to this claim, and we will deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Order issued on March 28, 2024 is **DENIED**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 10, 2024

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

WILLIAM MORRIS
GLENN STUCKEY LAW FIRM
DIMACULANGAN ASSOCIATES
BOBER PETERSON LAW FIRM

AW/pm

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