WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CLAYTON BELLINGER, *Applicant*

vs.

SAN FRANCISCO GIANTS, et al., *Defendants*

Adjudication Numbers: ADJ10789547
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.[1]

Defendant San Francisco Giants ("Giants") sought reconsideration of the March 11, 2019 Findings and Order ("F&O"), wherein the workers' compensation administrative law judge (WCJ) concluded that applicant's cumulative trauma claim could be adjudicated by the Workers' Compensation Appeals Board (WCAB) and was not exempted by application of Labor Code section 3600.5[2] subdivisions (c) and (d). The Giants contend that the WCJ erred because applicant worked for seven seasons for non-California teams, and the fact that he did not include the last season of his employment in his claim should not allow him to circumvent the terms of section 3600.5, subdivision (d).

We received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted.

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&O and return the matter to the WCJ for further development of the record on the issue of whether applicant was hired in California, because we conclude in the absence of a

[1] Commissioners Lowe and Sweeney, who were on the panel that granted reconsideration, no longer serve on the Appeals Board. Other panelists have been assigned in their place.
[2] Further references are to the Labor Code unless otherwise stated.

California hire, defendant is correct that applicant's claim would be exempt according to section 3600.5, subdivision (d).

FACTS AND PROCEDURAL HISTORY

Applicant filed an Application for Adjudication, alleging a cumulative trauma injury to multiple body parts sustained while employed by as a professional baseball player from June 8, 1989 to October 15, 2003. According to the stipulation of the parties at trial, applicant's professional playing history is as follows:

San Francisco Giants	June 9, 1989 to October 16, 1995
Baltimore Orioles	November 22, 1995 to October 15, 1996
New York Yankees	November 4, 1996 to January 17, 2002
Anaheim Angels	February 7, 2002 to October 15, 2002
San Francisco Giants	March 18, 2003 to October 15, 2003
Baltimore Orioles	February 5, 2004 to October 15, 2004

(Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 11/8/2018, at p. 2.)[3]

The matter proceeded to trial on November 8, 2018. The sole issue for trial is listed as: (1) whether there is subject-matter jurisdiction over the claim pursuant to section 3600.5, subdivision (d). (*Id.* at p. 3.) Exhibits were admitted without objection, and applicant was the only witness to testify. (*Id.* at pp. 3–10.)

Applicant testified at length about his playing career, largely confirming the stipulated dates of his employment with his various employers. (Transcript of 11/8/2018 hearing, at pp. 3–39.) Applicant was drafted by the Giants while living in New York; he signed his contract there and returned it to them. (*Id.* at pp. 4–5.) Applicant played for the Giants for seven years during his initial stint, plus one additional year in 2003. (*Id.* at p. 6.) All of applicant's subsequent contracts with the Giants were signed in Arizona. (*Id.* at pp. 18–19.)

In 1996, applicant signed for the Baltimore Orioles ("Orioles"). (*Id.* at p. 9.) He did not play any games in California during that year; he was assigned to an Orioles affiliate in Rochester, New York. (*Id.* at p. 10.) This contract was signed in Arizona. (*Id.* at p. 18.)

[3] Applicant also played in Mexico and the Dominican Republic in the winters of 1996–1998, outside the normal Major League Baseball season.

In 1997, he was signed by the New York Yankees ("Yankees"). (*Id.* at pp. 10.) During his employment with the Yankees, in 1999, he was called up to the major leagues. (*Id.* at pp. 10–11) He played games for the Yankees in California in Oakland and Anaheim. (*Id.* at p. 11.)

In 2002, applicant signed for the Anaheim Angels ("Angels"); he signed the contract in Arizona. (*Id.* at p. 13.) He was assigned to an affiliate in Salt Lake City; some of their games were played in California. (*Id.* at p. 14.) He was called up to the major leagues for about a week in April 2002, and played those games in California as well. (*Ibid.*)

In 2003, applicant signed with the Giants again. (*Id.* at pp. 14–15.) He was assigned to a Fresno minor league affiliate, where he played 117 games that year. (*Id.* at pp. 15–16.)

In 2004, applicant signed with the Orioles for the second time. (*Id.* at p. 16.) He was assigned to their minor league affiliate in Ottawa, and did not play any games in California. (*Ibid.*)

In addition to the above, applicant played winter ball for three seasons, two in Mexico and one in the Dominican Republic; these engagements lasted for about four weeks in November and December, and the last season he played winter ball was in 1998. (*Id.* at pp. 21–22, 28.)

Applicant initially testified on cross examination that he did not "believe" that he signed any of his contracts in California. (*Id.* at p. 19.) However, on redirect examination, applicant testified that when he was called up to the major league with Anaheim in April of 2002, he "would have" signed a contract with them "before he stepped foot on the field." (*Id.* at p. 33.)

On March 11, 2019, the WCJ issued her F&O, finding that the WCAB could exercise jurisdiction over applicant's claim, and that section 3600.5 did not bar the claim. (F&O, at p. 2, ¶¶ 2, 4.) The F&O also found that the WCAB did not have jurisdiction over the Orioles. (*Id.* at ¶ 3.) The appended Opinion on Decision indicates that the WCJ's decision was based upon the reasoning that because applicant did not have any California exposure during the 2004 season with the Orioles, that season should not be considered when determining whether section 3600.5, subdivision (d) barred his claim. (Opinion on Decision, at p. 4–6.)

This Petition for Reconsideration followed. In her Report, the WCJ opined that she had previously erred, and that the 2004 season with the Orioles should have been included for purposes of section 3600.5, subdivision (d), meaning that the claim should have been barred pursuant to that subdivision. (Report, at pp. 5–7.)

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, and is considered on the basis of the claim as a whole. (*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.)[4]

[4] 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].)

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, even when the injuries are sustained fully out-of-state. (*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"]; *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, subdivision (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.
>
> (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 3600.5, subdivision (d)(1) makes clear by reference, an important provision for determining the meaning of section 3600.5, subdivision (d) is section 3600.5, subdivision (c), which 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.
>
> (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.

(§ 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, while 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.)

Section 3600.5 also defines some of the terms used in the above subdivisions. Subdivision (g)(1) states: "The term 'professional athlete' means an athlete who is employed at either a minor

or major league level in the sport of baseball, basketball, football, ice hockey, or soccer." (§ 3600.5(g)(1).) "California-based team" means "a team that plays a majority of its home games in California." (§ 3600.5(g)(2).) "Duty day" means "a day in which any services are performed by a professional athlete under the direction and control of his or her employer pursuant to a player contract." (§ 3600.5(g)(3).) The term "season" means "the period from the date of the first preseason team activity for that contract year, through the date of the last game the professional athlete's team played during the same contract year." (§ 3600.5(g)(4).)

The Legislature also included a note of intent, stating that the 2013 amendments to section 3600.5 should "have no impact or alter in any way the decision of the court in [*Bowen]*." (Stats. 2013 ch. 653 (AB 1309) § 3.). Because *Bowen* affirmed the exercise of jurisdiction based upon a hire in California, we have previously held that subdivisions (c) and (d) of section 3600.5 apply only where an applicant cannot establish hire in California on at least one contract during the relevant cumulative trauma injury period. (See *Hansell v. Arizona Diamondbacks* (2022) 87 Cal. Comp. Cases 602, 611–618.)

REGULAR EMPLOYMENT IN CALIFORNIA

Initially, we address applicant's claim that his regular employment with the Giants and Angels, standing alone, exempts him from the application of section 3600.5, subdivisions (c) and (d).[5] The parties do not dispute the fact that applicant was regularly employed in California during a portion of his career, and therefore the question is a pure question of law. Applicant asserts that just as subdivisions (c) and (d) do not apply when there is a California hire during the relevant injury period, they also do not apply where there is regular employment during the relevant injury period. If applicant were correct, we would not need to consider whether applicant could meet the conditions of subdivision (d), or whether he was hired in California on at least one of his contracts during the relevant period.

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

[5] Our analysis on this point mirrors that found in *Kouzmanoff v. Texas Rangers* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 189.

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

Historically, a California contract of hire and regular California employment have been treated as two largely interchangeable roads leading to the same destination, each providing an equally viable path to subject-matter jurisdiction for injuries that occur outside the state. This default position is reflected in section 3600.5, subdivision (a)'s grant of subject-matter jurisdiction over the out-of-state injuries of any "employee who has been hired or is regularly working in the state." (§ 3600.5(a).)

By contrast, the subdivisions of section 3600.5 which follow on from subdivision (a) denote exceptions that carve out certain employment situations from California jurisdiction. Subdivision (b), for example, is a carveout applicable to all employees injured while working temporarily within the state when there is reciprocity with the state where they are normally based, subject to certain conditions. (§ 3600.5(b).)

Subdivisions (c) and (d) are limitations on jurisdiction, but of a different sort: they are limited solely to professional athletes bringing occupational disease or cumulative injury claims. As such, they clearly represent a legislative intent to limit access to the California workers' compensation system to certain athletes who would otherwise be eligible.

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 possible 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 and therefore to prohibit athletes with a California hire from filing claims in this state, 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.)[6]

On the question of regular employment, as opposed to California hire, we are bereft of any such explicit declaration of legislative intent. This necessarily complicates our task, and requires us resort to other methods to discern the Legislature's intent.

The fact that hire in California and regular employment in California have historically been equally viable as paths to jurisdiction makes it initially tempting to conclude that the Legislature would not have intended to create a distinction between the two by applying subdivisions (c) and (d) to athletes who were regularly employed in California, while sparing those who were hired here. However, the very fact that the Legislature acted specifically to limit the ability of at least some professional athletes to file claims and obtain awards in the California workers' compensation system shows an indication to depart from the historical status quo. After all, just as hire in California and regular employment in California were historically interchangeable for purposes of subject-matter jurisdiction, whether an injured worker was a professional athlete had no legal relevance to their ability to file a California workers' compensation claim prior to the addition of subdivisions (c) and (d). We must therefore carefully consider the subdivisions to discern whether they show an intent to distinguish between hire in California and regular

[6] In so ruling, *Hansell* somewhat unfortunately conflated hire in California and regular employment in this state, suggesting that either would be sufficient to take a case outside the ambit of subdivisions (c) and (d). (See, e.g., *Hansell, supra,* 87 Cal. Comp. Cases at 617.) *Hansell* itself only directly considered the issue of hire in California, however, and therefore any statements in that case regarding regular employment are necessarily dicta.

employment in the state, just as they clearly show an intent to distinguish between professional athletes and other injured workers.

The major stumbling block to holding that subdivisions (c) and (d) do not apply to athletes who can establish regular employment in California comes from subdivision (d)(1)(A)&(B), which provides a limited failsafe mechanism for athletes whom subdivision (d) would otherwise bar from filing California workers' compensation claims. This exception to the exemption applies to athletes who can demonstrate that they (1) either worked two or more seasons for a California-based team or more than 20% of their career in California or for California-based teams, and (2) worked fewer than seven seasons for non-California-based teams. (§ 3600.5(d)(1)(A)&(B).)

The text of subdivision (d) is silent as to whether it is intended to apply to athletes with regular employment in California. However, the very structure of the exemption certainly appears designed to apply to such athletes. This is because the vast majority of athletes who can demonstrate eligibility under the first condition – two or more seasons played for a California-based team or 20% or more of their career duty days either played for California-based teams or in California – will in fact be athletes who have at least some period of regular employment in California. In other words, because California-based teams are necessarily based in California, in the ordinary course of events athletes employed by California-based teams will be regularly employed in California.

Accordingly, if we were to rule that subdivisions (c) and (d) are not intended to apply to athletes with regular employment in California, it would leave subdivision (d)'s failsafe mechanism applicable to only an extremely narrow category of athletes. Practically speaking, the only way an athlete without regular California employment could meet the first condition would be through employment for a California-based team, but with that employment based out-of-state.[7]

Admittedly, cases of athletes hired by California teams but employed out-of-state do exist – particularly in baseball, where athletes are not infrequently hired by California-based teams and then dispatched to out-of-state minor league affiliates. Such athletes occasionally do complete their entire contract with a California-based team without ever having a period of regular California employment.

[7] Theoretically, an athlete could also qualify by having spent 20% or more of their duty days in California, despite never having been regularly employed in California. In practice, however, this is exceedingly unlikely, as it would be virtually impossible for an athlete in any of the covered sports to have spent 20% or more of their duty days over their entire career in California without at least one period of regular California employment.

However, we question whether it is reasonable to believe that the Legislature would have intended to create a failsafe mechanism that in practice applied to such a limited category of athletes, essentially only baseball players who play for out-of-state minor league affiliates of California-teams without ever being called up to the major league team for any regular period of employment. In the absence of any statutory language or legislative history suggesting such an intent, it seems unlikely to us that the Legislature would have created such a detailed framework designed to apply to such a small sliver of athletes.

Conversely, if we read subdivision (d) as being intended to apply to athletes with regular California employment, the structure of subdivision (d)'s safe harbor provisions are much more comprehensible, because they are applicable to a much wider range of athletes. In contrast to the very small number of athletes who could show multiple seasons of employment with a California-based team without regular California employment, a comparatively large number of professional athletes who have played multiple seasons for California-based teams were not hired in California. These athletes would be unable to have their claims heard in the California workers' compensation system without some kind of failsafe mechanism designed to catch those professional athletes who, despite the lack of a California hire, the Legislature believed should still be able to file for California workers' compensation benefits based upon a combination of the strength of their ties to this state, and the absence of a long period of employment in other states.

Moreover, the limited legislative history we do have in relation to subdivisions (c) and (d) reinforces the conclusion that the provisions were intended to apply to those with regular California employment. As explained in *Hansell,* 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.) Of equal relevance, 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 it would have applied to all professional athletes, regardless of whether they were hired in this state or had regular California employment, unless they met extremely stringent requirements. 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*.

It is relevant that the Senate did not also include any statement of legislative intent to affirm regular employment in California as an alternative basis for jurisdiction that would also take an injured worker's claim outside of the ambit of the new amendments. Instead, they modified what became subdivision (d) to make it less restrictive, by removing the necessity of hire in California, lowering the threshold of employment in California or for a California-based team to two seasons from eight, and replacing the 80% requirement with the requirement of less than seven seasons played for non-California-based teams. In other words, the Senate chose to widen the applicability of the exception to make it easier for those with regular California employment to meet its requirements, rather than to carve out regular California employment entirely, as it chose to do with California hire.

Admittedly, as a consequence of these choices, the statutory scheme allows some athletes who never played a day in California to recover California workers' compensation benefits (because they were hired here), while disallowing the claims of other athletes who played in California for years (because they were not hired here, did not finish their careers here, and played elsewhere for a long enough period of time). We are cognizant that this result may not seem intuitive. However, one could level the same criticism at much of the jurisprudence of jurisdiction, and we do not believe the Legislature's actions in this case are so odd as to demonstrate that they could not possibly have intended to do what they did. In particular, the Legislature's decision to maintain hire in California as a special case justifying the exercise of jurisdiction over out-of-state

injury follows a century of our jurisprudence, and therefore cannot be categorized as arbitrary or irrational. That the Legislature did not also choose to maintain regular employment in California as a similar case is a legislative judgement which we are not empowered to overrule.

In summary, subdivisions (c) and (d) of section 3600.5 do apply to athletes who have had a period of regular employment in California during the relevant injury period, if they do not also have a hire in California. This interpretation best accords with both the plain language of the statute, and the expressions of legislative intent we have reviewed.

APPLICATION OF SUBDIVISION (D) IN THE ABSENCE OF A CALIFORNIA HIRE

Because we have concluded that applicant cannot escape the application of subdivision (d) through his regular employment in California, we next consider whether applicant's claim would actually be barred under subdivision (d) in the absence of a California hire.

As noted above, subdivision (d) applies "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[.]" (§ 3600.5(d)(1).)

Initially, it is clear that subdivision (c) does not apply to applicant's last year of employment in this case, because subdivision (c) applies only "while the professional athlete is temporarily within this state doing work for his or her employer[.]" (§ 3600.5(c)(1). Because it is undisputed that applicant did not work in California *at all* during his final year of professional employment, subdivision (c) cannot apply. (See *Sutton v. San Jose Sharks* (2018) 83 Cal. Comp. Cases 1613, 1619–21.)

This leaves us with the question of whether applicant's last year of employment, with the Orioles, was exempt according to "any other law." Although the statutory text provides no explicit definition of what qualifies an exemption according to "any other law," the structure of subdivisions (c) and (d) necessarily imply some conclusions about its contours. Most relevantly, even when subdivision (c) itself applies to a claim, the subdivision exempts only that portion of the injurious exposure sustained "while the professional athlete is temporarily within this state," and the laws of the other state are the exclusive remedy only for injury received "while working for the employer in this state." (§ 3600.5(c)(1)&(2).) In other words, subdivision (c) only ever prevents a worker from seeking benefits based on exposure in this state; it does not itself bar recovery for injurious exposure sustained *outside* this state.

By definition, any professional athlete who is temporarily present within the state must be ordinarily employed elsewhere, and therefore will almost certainly have out-of-state injurious exposure during their employment to go alongside their in-state injurious exposure. For a claim to be fully exempt, therefore, some "other law" must necessarily bar the remainder of the injurious exposure sustained while working for that employer out of state; otherwise, the injured athlete would still be free to file a workers' compensation claim in California and recover for everything *except* the injurious exposure incurred while temporarily within this state. Put another way, subdivision (c), despite being explicitly named in the statutory text, is actually a subordinate exemption that operates only when the remainder of the injurious exposure for that employer is *already* "exempt" according to "any other law."

Accordingly, an exemption according to "any other law" is not merely a minor addition to the statute designed to apply to situations where subdivision (c) does not apply; it is a critical component of the statute that applies *alongside* subdivision (c). In cases where subdivision (c) applies, the exemption according to "any other law" works in tandem with subdivision (c) to produce a complete exemption for injurious exposure during the period of work for that employer, a result that an exemption according to subdivision (c) alone could not achieve due to its limitation to in-state injurious exposure. Conversely, in situations where there is no in-state injurious exposure to exempt, subdivision (c) simply has no role to play, and no significance should be attached to its applicability or lack thereof.

This manner of structuring the exemptions only makes sense if the drafters of subdivision (d) believed that out-of-state injurious exposure for an employer – when the athlete was neither hired here nor regularly employed here – was *already* "exempt" according to "any other law," and therefore that there was no need to craft another such exemption in the style of subdivision (c). In other words, "exempt" as it is used in subdivision (d) does not refer only to a specific statute or subdivision exempting a category of injurious exposure that would otherwise be subject to California jurisdiction. Instead, it also refers to injurious exposure that could never be the basis of a California workers' compensation claim in the first place because it does not meet the subject-matter jurisdiction requirements for filing such a claim pursuant to sections 3600.5, subdivision (a), 5300 and/or 5305.

Accordingly, for a given period of employment *not* to be exempt according to "any other law" for purposes of subdivision (d) analysis, there must be some basis for the exercise of

jurisdiction over *that period of employment*. This presents a specific, statutory exception to the general rule that subject-matter jurisdiction analysis is conducted with regard to the entirety of a cumulative injury claim, not on an employer-by-employer basis.[8] As a result, even where there is subject-matter jurisdiction over the claim as a whole based upon injurious exposure sustained across the cumulative trauma injury period as a whole, an individual period of employment for a given employer may be "exempt" for purposes of subdivision (d)(1) if there would be no basis for the exercise of jurisdiction over a claim brought for that period of employment alone.

Therefore, to determine whether subdivision (d) applies to a claim because all the employers during the last year were exempt according to subdivision (c) or "any other law," in practical terms we must consider whether there would be jurisdiction over the last year of the injured athlete's career if the claim was limited to injurious exposure during that period of time alone. If there is any injurious exposure during that last year that would support the exercise of jurisdiction standing alone, and that is not barred by some other specific statutory exclusion, the claim as a whole is "exempt" according to "any other law" for purposes of subdivision (d) (unless both of the conditions of subdivision (d)(1)(A) and (d)(1)(B) are met, as analyzed below). If, on the other hand, there *is* injurious exposure during that last year that would support the exercise of jurisdiction over that period of employment if considered separately, subdivision (d)'s exemption is not triggered, and there is no need to consider the remainder of the subdivision.

Here, it appears undisputed that there is no basis for the exercise of California jurisdiction based upon the injurious exposure during the last year of applicant's career. Applicant did not sign a contract in California with the Orioles, he was not regularly employed by the Orioles in

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[8] For example, the question of whether there is a sufficient nexus between the injury and the state of California to satisfy due process is analyzed as to the entire claim, not on an employer-by-employer basis. (*Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116, 1128; *New York Knickerbockers v. Workers' Comp. Appeals Bd. (Macklin)* (2015) 240 Cal.App.4th 1229, 1238.) Similarly, as referenced above and below, if an injured worker was hired in California by any employer during the cumulative trauma period, that hire in California is sufficient to support the exercise of jurisdiction over the claim. (*Bowen, supra,* 73 Cal.App.4th at 27; *Hansell, supra,* 87 Cal. Comp. Cases at 617.) Finally, for injured workers who are *not* professional athletes subject to section 3600.5, subdivisions (c) and (d), regular employment in California pursuant to section 5305 and/or section 3600.5 during any portion of the injurious exposure is similarly sufficient to support the exercise of jurisdiction over the claim. (§§ 3600.5(a); 5305.) In such cases, recovery against individual employers may be barred by reason of a lack of personal jurisdiction and/or statutory subject-matter exclusions, but such a bar applies only against the particular employer, not against the claim as a whole, and liability may "roll back" according to section 5500.5 if the terminal employer cannot be found liable. (See § 5500.5(a); *San Francisco 49ers v. Workers' Comp. Appeals Bd.* (1996) 61 Cal. Comp. Cases 301 (writ den.); *Employers Mutual Liability Ins. Co. v. Workers' Comp. Appeals Bd.* (1987) 52 Cal. Comp. Cases 284 (writ den.) (*Patterson*).)

California, and in fact he had no injurious exposure in California with the Orioles whatsoever. (Transcript, at p. 16.) The lack of a California hire or regular California employment means that section 3600.5, subdivision (a) could not provide jurisdiction over this employment, and the total lack of any in-state injurious exposure means a claim could not be brought based upon the WCAB's general jurisdiction to hear claims involving in-state injury. Indeed, applicant appears to have tacitly admitted this fact by never even attempting to join the Orioles to the litigation, and by arguing that his period of employment with the team should not be considered *at all* for purposes of analyzing his claim.

Accordingly, we find that the precondition for the application of subdivision (d) is met, because the lack of any statutory basis for the exercise of jurisdiction over the injurious exposure sustained during applicant's employment with the Orioles meets the requirement of an exemption according to "any other law" for purposes of subdivision (d).

Our inquiry does not end there, however, because subdivision (d) does not bar *all* claims where the injured athlete's final year of employment is exempt. Instead, it contains a built-in exception to its application, contingent on the athlete having met two different conditions. To trigger the exception to 3600.5(d), the athlete must first have worked two or more seasons for a California-based team, or worked 20 percent or more of his or her duty days either in California or for a California-based team. (§ 3600.5(d)(1)(A).) Additionally, the applicant must also have "worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section." (§ 3600.5(d)(1)(B).) When both these conditions are met, the entire claim is *not* exempt, and "liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5." (§ 3600.5(d)(2).)

Here, the stipulations of the parties clearly demonstrate that applicant worked for more than two seasons for California-based teams – specifically, for the Giants from 1989 to 1995, for the Angels in 2002, and for the Giants again in 2003. (See MOH/SOE, at p. 2.)

The stipulations of the parties also appear to establish, however, that applicant worked seven or more seasons for non-California based teams, and therefore that he cannot meet the requirements of subdivision (d)(1)(B). Specifically, the parties stipulated that applicant worked for the Orioles during the 1996 season, for the Yankees during the 1997, 1998, 1999, 2000 and 2001 seasons, and for the Orioles again during the 2004 season. This amounts to seven seasons, while the subdivision requires applicant to have worked *fewer* than seven seasons.

Applicant objects to counting the 2004 season with the Orioles, on the grounds that applicant had no California exposure during that season, citing to *Sutton* for the alleged proposition that "there must be some evidence of temporary employment in the State of California for the relevant period of analysis, or it cannot be considered." (Answer, at p. 8, citing *Sutton, supra,* 83 Cal. Comp. Cases 1613.)

This misreads *Sutton* – which held, as described above, that subdivision *(c)* requires evidence of temporary employment in California, not that subdivision *(d)* requires proof of temporary employment in California. (*Sutton, supra,* at pp. 1619–21.) *Sutton* specifically noted that subdivision (d) also applies when the exemption is according to "any other law," and that such an exemption does not depend upon temporary presence in California. (*Id.* at p. 1621.) In that case, the panel found that the defendant had failed to prove any applicable exemption according to "any other law" – not that it was impossible to assert such an exemption without proof of temporary presence in California. (*Id.* at p. 1613 ["Because defendant identifies no "other law" which exempts the claim, the claim is not exempt pursuant to section 3600.5(d), and applicant may bring his claim for benefits within the California workers' compensation system."].)

Here, as described above, defendant has asserted an exemption according to "any other law," and applicant's testimony confirmed the factual predicates for that assertion. Perhaps more germanely, applicant's argument relates to a prior step of the analysis – whether to apply subdivision (d) at all – not to which teams should be counted in the subdivision (d) analysis. The entire purpose of subdivision (d) is to exempt claims where the connection to California is insufficiently robust, or where the applicant's periods of employment with out-of-state teams are so extensive as to diminish the connection to California. Having reached the step of counting seasons, it would completely defeat the purpose of such an exercise to exclude teams without California exposure.

Applicant's fundamental objection – that it is wrong to exempt the claim of an athlete who was employed for nearly a decade by California teams, simply on the basis that he was also employed for exactly seven seasons by out-of-state teams and happened to be employed by one of those teams during his last year of injurious exposure – is the sort of policy argument that must be addressed to the Legislature. Whatever our personal views on the matter, we are not empowered to second-guess the Legislature's decision that such claims should be exempted from the California workers' compensation system.

To summarize, assuming applicant was not hired in California, subdivision (d) applies to his claim and he cannot meet the requirement of subdivision (d)(1)(B), that he worked for fewer than seven seasons for non-California-based teams. Therefore, pursuant to subdivision (d)(1), in the absence of a California hire, his entire claim will be exempt and cannot be heard in the California workers' compensation system.

HIRE IN CALIFORNIA

Because we have determined that a period of regular employment in California is insufficient to bring a claim outside the scope of subdivision (d), and that applicant's claim would be barred by that subdivision in the absence of a California hire, we must next consider whether applicant was hired in California. As described above, such a California hire would also bring his claim outside the confines of subdivision (d), and therefore allow for the exercise of WCAB jurisdiction over his claim. (See *Hansell, supra,* 87 Cal. Comp. Cases at 611–618.)

Acceptance of an offer of employment in California by the injured worker or by his or her agent supports a finding of hire in California under sections 3600.5 and 5305. (*Palma, supra,* 1 Cal.2d 250 at 252; *Travelers Ins. Co. v. Workers' Comp. Appeals Bd.* (1967) 68 Cal.2d 7, 12-13; *Bowen, supra,* 73 Cal.App.4th at 17-18, 21-22, 26-27.) The burden of proof rests with the applicant to establish acceptance of an offer within California. (§ 5705.)

The time and place of contract formation is an integral factor in the evaluation of whether there is California jurisdiction over a claimed extraterritorial injury. The exercise of California jurisdiction often hinges on fact specific testimony or evidence as to the time and place of acceptance of an offer. (See *Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556 [83 Cal. Comp. Cases 1175] [insufficient evidence to establish either applicant or his agent in California at time of acceptance of offer]; *Hafkey v. American Airlines, Inc.* (June 15, 2018, ADJ10293214) 2018 Cal. Wrk. Comp. P.D. LEXIS 283 [applicant's acceptance of offer of employment while in California established jurisdiction, irrespective of where initial claim for benefits was filed]; *Pierce v. Washington Redskins* (May 23, 2017, ADJ8937991) 2017 Cal. Wrk. Comp. P.D. LEXIS 244 [agent and applicant both in California when applicant accepted terms of contract sufficient for jurisdiction, notwithstanding applicant traveled out of state to sign the contract]; *Withrow v. St. Louis Rams* (May 23, 2017, ADJ6970905) 2017 Cal. Wrk. Comp. P.D. LEXIS 249 [applicant's acceptance of offer of employment in California sufficient for California jurisdiction]; *Walker v. Petrochem Insulation* (ADJ9674694, February 2, 2016) 2016 Cal. Wrk.

Comp. P.D, LEXIS 60 [applicant's acceptance in Georgia of California employer's offer of employment is not hire in California]; *Stephens v. Nashville Kats* (ADJ4213301, April 1, 2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 207 [applicant hired in California when he accepted employment by telephone in this state].)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal. Comp. Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal. Comp. Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] … For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal. Comp. Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal. App. 4th 1117, 1121–1122 [63 Cal. Comp. Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal. App. 4th 396, 403 [65 Cal. Comp. Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, applicant testified that he did not sign any of his contracts in California, with one possible exception: a contract he may have signed in April of 2002 in Anaheim when called up to the major leagues by the Angels. (See Transcript, at p. 19.) The sole reference to this possible hiring is the following exchange on redirect examination, at the very conclusion of applicant's testimony:

> Q. When you were called up to Anaheim before you stepped on the field, did you sign a contract with the Angels?
> A. Yeah, it would have been – yes.

(Transcript, at p. 33.) The parties did not direct our attention to any exhibit containing this contract, and our own review of the record did not uncover any contract that appears to correspond to this testimony. Nor did the WCJ comment on this testimony, in either the Opinion on Decision or in the Report.

Standing alone, we question whether this testimony is sufficient to establish that applicant was hired in California; although documentary evidence is not required to establish a hiring in California, here applicant's testimony was at best tentatively affirmative, rather than a definitive assertion of a California hire. However, it does appear sufficient to require further development of the record – particularly because the trial in this matter preceded our decision in *Hansell,* and therefore the parties may not have been fully aware of how critical the issue was to the resolution of the claim. Certainly, the fact that neither party attempted to elicit further testimony on this possible California hire suggests a lack of recognition by the parties as to the importance of the issue.

Therefore, under the circumstances, we will rescind the F&O, and return the matter to the WCJ for further development of the record to establish whether applicant was hired in California on at least one of the contracts during the relevant period. If evidence can establish such a California hire, his claim may properly be heard in California; if he was not hired in California, his claim is barred by section 3600.5, subdivision (d) as described above, and any remedy must be sought elsewhere.

CONCLUSION

As described above, we conclude that applicant's claim will be barred by the provisions of section 3600.5, subdivision (d) unless he can establish that he was hired in California on at least one of his contracts. Accordingly, we rescind the F&O and return the matter to the WCJ for further proceedings to determine whether such a California hire occurred.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 11, 2019 Findings and Order is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
March 24, 2025

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

CLAYTON BELLINGER
LEVITON, DIAZ & GINOCCHIO
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP
BOBER, PETERSON & KOBY

AW/pm

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