WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JONATHAN SANCHEZ, *Applicant*

vs.

SAN FRANCISCO GIANTS, et al.; ACE AMERICAN INSURANCE COMPANY, administered by SEDGWICK, *Defendants*

Adjudication Numbers: ADJ11434546; ADJ12141473
Oxnard District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Applicant seeks reconsideration of the February 18, 2020 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from May 1, 2004 to February, 2019, claims to have sustained industrial injury to his left elbow, left ankle, and left shoulder. The WCJ found that California lacks jurisdiction over this cumulative trauma claim based on application of Labor Code[2] Section 3600.5(d)(1).

Applicant contends that the Workers' Compensation Appeals Board has subject matter jurisdiction over the claimed injury and that he meets the requirements for the exception of section 3600.5(d) to the exemption of section 3600.5(c) because he worked less than seven seasons for teams other than California-based teams.

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[1] Commissioner Lowe, 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.

We have received an Answer from ACE American Insurance (defendant). 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 February 18, 2020 F&O and substitute new findings that the Workers' Compensation Appeals Board (WCAB) has subject matter jurisdiction over applicant's claimed cumulative injury, and deferring all other issues.

FACTS

Applicant has filed two claims of injury. In ADJ11434546, applicant claimed injury to his left elbow, left ankle, and left shoulder while employed as a professional athlete by defendants San Francisco Giants, Kansas City Royals, Colorado Rockies, Pittsburgh Pirates, Los Angeles Dodgers, Chicago Cubs, and Cincinnati Reds, and while allegedly employed by the Mayaguez and York and Saltillo baseball outfits as alleged by defendants, from May 1, 2004 to February of 2019.

In ADJ1214173, applicant claimed injury to his chest while employed as a professional athlete by the San Francisco Giants on July 4, 2007.

The parties have selected Robert M. Wilson, M.D., to act as the Agreed Medical Evaluator (AME) in orthopedic medicine.

On December 6, 2019, the parties proceeded to trial. Regarding applicant's claimed cumulative injury in ADJ11434546, the parties raised issues including, in relevant part, whether the WCAB had subject matter jurisdiction over the claimed injury. The parties also raised the related issue of whether applicant was employed by "Mayaguez, York and Saltillo" within the meaning of section 3600.5. (Minutes of Hearing and Summary of Evidence (Minutes), dated Dember 6, 2019, at p. 3:7.) With regard to the claimed specific injury in ADJ1214173, the WCJ ordered all issues deferred. The WCJ heard the applicant's testimony under direct and cross-examination, and ordered the matter submitted for decision the same day.

On February 18, 2020, the WCJ issued the F&O, determining in relevant part that "California lacks jurisdiction over this cumulative trauma claim based on application of Labor Code Section 3600.5(d)(1)." (Finding of Fact No. 2.) The Opinion on Decision explained that section 3600.5(d) would exempt the parties from California jurisdiction unless the applicant

worked at least two seasons for California-based teams (Lab. Code § 3600.5(d)(1)(A)), and in addition, worked less than seven seasons for non-California-based teams (Lab. Code § 3600.5(d)(1)(B)). Here, the WCJ explained that applicant's employment with the baseball leagues in Puerto Rico qualified as seasons played for non-California-based teams as defined in section 3600.5(g)(4). Because applicant's total seasons played for non-California-based teams was seven or more seasons, California lacked jurisdiction over applicant's claimed cumulative injury. (Opinion on Decision, at pp. 1-2.)

Applicant's Petition contends the definition of a season under section 3600.5(g)(4) requires applicant to be employed as a professional athlete. Section 3600.5(g)(1) defines a professional athlete as being "employed at either a minor or major league level," and because applicant was in neither the minor nor major leagues while playing in Puerto Rico, applicant was not a professional athlete within the meaning of section 3600.5(g)(1). (Petition, at p. 2:12.) Because applicant's activities in the Puerto Rican league were not that of a professional athlete, the time spent playing there cannot be considered a "season" under section 3600.5(g)(4). Applicant further contends that the Santillo and Mayaguez teams are not professional major or minor league baseball teams but simply a place where players go between seasons for conditioning and honing their skills for the following season and are not major or minor league teams. (*Id.* at p. 2:19.) Accordingly, applicant's time spent playing for those teams cannot be considered "seasons" under section 3600.5(g)(4). Applicant further contends that defendant has not established the baseline insurance requirements for the exemption of section 3600.5(c) to apply, as a precondition to the analysis required under section 3600.5(d). (*Id.* at p. 5:19.)

Defendant's Answer responds that applicant was employed as a professional athlete by the Mayaguez and Saltillo teams, that applicant received payment to play baseball for every season played with the team, and that applicant signed yearly contracts with Mayaguez prior to engaging in baseball related activities. (Answer, at p. 3:2.)

The WCJ's Report observes that applicant received a monthly salary while employed by the "foreign teams" and that section 3600.5(g)(1) provides that the applicant must play at the minor league level, not that the player must play in the minor league. (Report, at p. 2.) The Report further observes that the definition of the term "season" in Section 3600.5 is not based on any specific length of time, and that a season runs from "the date of 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." (*Ibid*.)

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; Lab. Code, §§ 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* (9th Cir. 1959) 270 F.2d 355, 360 [24 Cal.Comp.Cases 244], cert den., 362 U.S. 928, 80 S. Ct. 753, 4 L. Ed. 2d 746 (1960).)

In general, the WCAB can assert subject matter jurisdiction in a presented 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 [165 Cal.Rptr.3d 288]).)

Labor Code section 3600.5 provides:

> (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.
> (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.

(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 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.
(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.

(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.

(f) For purposes of this section, a certificate from the duly authorized officer of the appeals board or similar department of another state certifying that the employer of the other state is insured in that state and has provided extraterritorial coverage insuring his or her employees while working within this state shall be prima facie evidence that the employer carries workers' compensation insurance.

(g) For purposes of this section, the following definitions apply:

(1) 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.

(2) The term "California-based team" means a team that plays a majority of its home games in California.

(3) The term "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.

(4) 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.

(h) The amendments made to this section by the act adding this subdivision apply to all claims for benefits pursuant to this division filed on or after September 15, 2013. The amendments made to this section by the act adding

> this subdivision shall not constitute good cause to reopen any final decision, order, or award.
>
> (i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.
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> (Lab. Code, § 3600.5.)

Here, there is no dispute that during the claimed cumulative injury, applicant was employed by California-based teams, including eight seasons with the San Francisco Giants and a partial season with the Los Angeles Dodgers. (Ex. Z, Baseball Reference Page, undated; Minutes, at p. 5:23.) Thus, to the extent that the parties dispute whether California may legitimately exercise jurisdiction over the claimed injury, applicant's regular employment for the Giants and the Dodgers during the claimed cumulative injury provides a reasonable connection between the claimed injury and California to support the exercise of subject matter jurisdiction. (*Johnson, supra*, 221 Cal.App.4th at 1116; see also *Sutton v. San Jose Sharks* (2018) 83 Cal.Comp.Cases 1613 [2018 Cal. Wrk. Comp. P.D. LEXIS 249] [applicant's regular employment by California team establishes sufficient connection to forum state sufficient to allow for the exercise of subject-matter jurisdiction].)

Notwithstanding section 3600.5(a), however, section 3600.5(c) exempts professional athletes and their employers from California jurisdiction under certain circumstances. Section 3600.5(c) limits the exercise of California jurisdiction where a professional athlete has been hired outside of this state and is temporarily working in California. In that event, if the employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California, and that insurance covers the professional athlete's work while in California, the professional athlete and his employer are *exempt* from the subject matter provisions of section 3600.5. (Lab. Code, § 3600.5(c).)

Section 3600.5(d) provides an *exception* to the jurisdictional *exemption* of section 3600.5(c) if applicant can meet specific criteria. As is relevant to this discussion, the criteria include applicant establishing that he has worked two or more seasons for California-based teams (§ 3600.5(d)(1)(A)), and that he has worked fewer than seven seasons for non-California-based teams (§ 3600.5(d)(1)(B)). If applicant meets those criteria, he may nonetheless bring a claim of injury under California's workers' compensation laws.

Here, there is no dispute that applicant worked for two or more seasons for California based-teams. (Lab. Code, § 3600.5(d)(1)(A).) Defendant avers, however, that applicant's work for non-California-based teams was seven or more seasons. This includes applicant's time spent playing baseball in Puerto Rico for the Mayaguez and York teams, and in Mexico for the Saltillo team. (Answer, at p. 2:16.) Thus, defendant contends that applicant does not qualify for the exception available under section 3600.5(d), and that both applicant and his employers are exempt from California jurisdiction.

Subdivision (d) of section 3600.5 is only applicable where all of the professional athlete's employers in his last year of work as a professional athlete are exempt from the division *pursuant to subdivision (c) or any other law*. (Lab. Code, § 3600.5(d).) Thus, the analysis required under subdivision (d) is only available when the requirements of section 3600.5(c) or any other law have been met. As we noted in *Sutton, supra*, 83 Cal.Comp.Cases at p.1618:

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

As discussed above, section 3600.5 provides that the employer who is asserting exemption from California jurisdiction must establish that it has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California, and that said insurance or its equivalent covers the professional athlete's work while in this state. (Lab. Code, § 3600.5(c)(1)(A)-(B).) While subdivision (f) allows an employer to make the required showings under subdivision (c) by offering a certificate from the duly authorized officers of the appeals board or similar department of another state certifying that the employer of the other state is insured in that state and has provided extraterritorial coverage insuring his or her employees while working within California, no such certificate or similar evidence of insurance has been offered into the record. In the absence of the required demonstration of collateral insurance coverage for applicant's work in California, we agree with applicant's contention that defendant has not met the

threshold requirements for the exemption from California subject matter jurisdiction under section 3600.5(c). (Petition, at p. 4:10.)

However, subdivision (d) of section 3600.5 also 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*. (Lab. Code, § 3600.5(d).)

In *Worrell v. San Diego Padres* (2020) 85 Cal.Comp.Cases 246 [2020 Cal. Wrk. Comp. P.D. LEXIS 1] (*Worrell*), applicant was employed as a professional athlete and alleged a cumulative injury from June 19, 2004 to May 8, 2013. Applicant was employed by a California-based team, the San Diego Padres, from December, 2008 to June, 2010. During his last year working as a professional athlete, applicant was employed by only one team, the Diablos Rojos del Mexico. (*Id. at p.* 249.) Our opinion in *Worrell* noted that applicant's employment with the Diablos Rojos was not the result of a California hiring, and that applicant had played no games in California during the period of employment with the Rojos. In the absence of a California hiring or injurious exposure in California, we concluded that no California jurisdiction existed as to the Rojos. Thus, the analysis in 3600.5(d) was required, because all of applicant's employers in his last year of work as a professional baseball player were exempt from this division pursuant to "any other law." (*Id.* at p. 256.)

Applying the same analysis to the present matter, we note that the last team for which applicant played in his professional career was the Saltillo team in the Mexican league in 2019. Pursuant to the Baseball Reference player page, the Saltillo team played at the AAA baseball level. (Ex. Z, Baseball Reference player page, dated August 20, 2019.) Applicant testified that after being released by the Chicago Cubs in 2014, he only played in foreign leagues, and that while playing with the Saltillo team, he never had games in California. (Minutes, at p. 6:3.) The evidentiary record thus does not support a California hiring by the Saltillos, or that applicant was injured in California while employed by the Saltillos. Accordingly, there is no basis upon which to assert subject matter jurisdiction over the teams in the final year of applicant's professional career under "any other law." (Lab. Code, § 3600.5(a) & (d).) Pursuant to section 3600.5(d)(1), applicant and his employers are exempt from California's subject matter jurisdiction unless applicant meets the conditions described in both subdivisions (d)(1)(A) & (d)(1)(B).

Subdivision (d)(1)(A) provides in relevant part that applicant must have worked two or more seasons for a California-based team. Here, applicant worked eight seasons for the San

Francisco Giants, and a partial season for the Los Angeles Dodgers. Applicant therefore meets the criteria described in section 3600.5(d)(1)(A).

Section 3600.5(d)(1)(B) requires that the professional athlete work fewer than seven seasons for non-California-based teams. Applicant was employed by the San Francisco Giants from 2004 through 2011. (Minutes, at p. 7:5; Ex. Z, Baseball Reference player page, dated August 20, 2019.) Applicant also testified that he played outside California in 2012 for the Kansas City Royals and the Colorado Rockies. In 2013, applicant played for the Pittsburgh Pirates and the Los Angeles Dodgers, and in 2014 for the Chicago Cubs. (*Id.* at p. 6:7.) From 2014 to 2018, applicant played for the Mayaguez team in Puerto Rico. In 2019, applicant played in a Mexican league for the Saltillo team. (*Id.* at p. 7:3.) Thus, if applicant's four years playing in Puerto Rico for the Mayaguez team qualify as seasons with a non-California-based team, then applicant will have worked more than six seasons for a non-California-based team, and applicant will not be excepted from the jurisdictional bar of section 3600.5(d)(1). If, on the other hand, the four years spent playing for the Mayaguez do *not* qualify as seasons played for a non-California-based team, applicant will have worked fewer than seven seasons for non-California-based teams and will qualify for the exception to the jurisdictional exemption of section 3600.5(d)(1).

Section 3600.5(g)(1) defines the term "professional athlete" as an athlete "who is employed at either a minor or major league level in the sport of baseball, basketball, football, ice hockey, or soccer." (Lab. Code, § 3600.5(g)(1).) Applicant's undisputed trial testimony established that he played for the Mayaguez team in a winter league in Puerto Rico that was neither minor nor major league baseball. Applicant testified that the Mayaguez league was a "winter league," where players attend to get in shape for spring training in the major leagues. (*Id.* at p. 6:18.) The winter league season is timed to occur in the off season for major league play and is split between the winter of one year and the spring of the next. Applicant would play less than 10 games during the winter league season. (*Id.* at p. 6:23.) Applicant testified that "Mayaguez is not a professional organization…it is winter ball." (*Id.* at p. 7:23.) In addition, the documentary evidence submitted in the record distinguishes between applicant's time spent playing in the major leagues, the minor leagues, and "foreign" leagues. (Ex. Z, Baseball Reference player page dated August 20, 2019.) The Mayaguez team is not classified at either the major or minor league level. Moreover, there is no evidence that the Mayaguez team had any affiliation to major- or minor-league baseball, or that applicant's play for those teams was covered under applicable collective bargaining requirements.

Accordingly, applicant's time spent playing with the Mayaguez team would not qualify as employment at "either a minor or major league level in the sport of baseball...." (Lab. Code, § 3600.5(g)(1).) The record supports applicant's contention that his time spent playing for the Mayaguez teams was not equivalent to major or minor league level play, and that applicant's time spent playing for those teams cannot be considered work as a professional athlete as defined under section 3600.5(g)(1). Section 3600.5(g)(4) defines a "season" as a period of time played by a professional athlete. Accordingly, applicant was not a professional athlete as defined by section 3600.5(g)(1) while participating in winter league baseball for the Mayaguez team, and the "seasons" played in Puerto Rico would not qualify as seasons played for non-California-based teams under section 3600.5(d)(1)(B). Accordingly, applicant played less than seven seasons with non-California-based teams and is excepted from the jurisdictional bar of section 3600.5(d)(1).

In summary, we find that applicant's multiple seasons with the San Francisco Giants and the Los Angeles Dodgers provides a reasonable basis for the exercise of subject matter jurisdiction by the WCAB over applicant's claimed injuries. We further conclude that although defendant has not made the requisite showing of alternative insurance coverage required under section 3600.5(c)(1), there is no basis to assert subject matter jurisdiction with respect to applicant's employers during his last year as a professional athlete under section 3600.5(d)(1). However, we are further persuaded that applicant was not a professional athlete as defined by section 3600.5(g)(1) while employed by the Mayaguez team from 2014 to 2018, and thus played less than seven seasons for non-California-based teams. We therefore conclude applicant meets the exception to the jurisdictional bar of section 3600.5(d) that is available under 3600.5(d)(1)(A)&(B). We will therefore rescind the F&O and substitute new findings of fact that the WCAB has subject matter jurisdiction over applicant's cumulative injury claim and deferring all other issues.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of February 18, 2020 is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Jonathan Sanchez, while employed during the period May 1, 2004, through February of 2019, as a professional athlete, in Occupational Group No. 590, at various locations in and outside the state of California, by the San Francisco Giants, the Kansas City Royals, the Colorado Rockies, the Pittsburgh Pirates, the Los Angeles Dodgers, the Chicago Cubs, the Cincinnati Reds, and the Mayaguez, York and Saltillo baseball teams, sustained injury arising out of and in the course of employment to his left elbow, left ankle, and left shoulder.
2. The Workers' Compensation Appeals Board has subject matter jurisdiction over the claimed injury.

3. The issues of temporary disability, permanent disability, apportionment, need for further medical treatment, and the applicability of the statute of limitations of Labor Code section 5405 are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 28, 2025

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

JONATHAN SANCHEZ
THE LAW OFFICE OF HOWARD F. SILBER
BOBER PETERSON & KOBY

SAR/abs

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